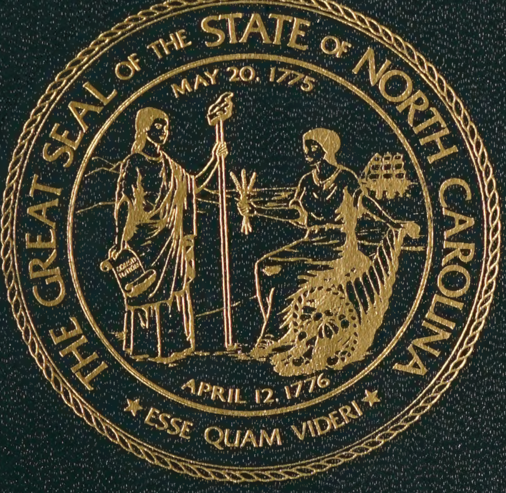
GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED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GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

Volume 17

Chapters 143A Through 159

Prepared Under the Supervision of
The Department of Justice
of the State of North Carolina
by
The Editorial Staff of the Publisher

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4539914 (hardbound volume)
4535014 (hardbound set)
4640516 (softbound set)

ISBN 978-1-4224-5159-5 (hardbound volume)
ISBN 978-1-4224-5142-7 (hardbound set)
ISBN 978-1-4224-5140-3 (softbound set)

LexisNexis®

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www.lexisnexis.com

(Pub.45350) (HB)
(Pub.46405) (SB)

Preface

This volume contains the general laws of a permanent nature enacted by the General Assembly through the 2009 Regular Session that are within Chapters 143A through 159, and brings to date the annotations included therein.

A majority of the Session Laws are made effective upon becoming law, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 “from and after 60 days after the adjournment of the session” in which passed.

A ready reference index is included at the back of this volume. This index is intended to give the user a quick reference to larger bodies of statutes within this volume only. For detailed research on any subject, both within this volume and the General Statutes as a whole, see the General Index to the General Statutes.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, selected opinions which construe a specific statute are cited in the annotations to that statute. For a copy of an opinion or of its headnotes, write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

This recompiled volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any suggestions they may have for improving the General Statutes to the Department, or to LexisNexis, Charlottesville, Virginia.

Roy Cooper
Attorney General

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 2009 Regular Session affecting Chapters 143A through 159 of the General Statutes.

Annotations:

This publication contains annotations taken from decisions of the North Carolina Supreme Court, decisions of the North Carolina Court of Appeals, and decisions of the appropriate federal courts posted through September 18, 2009. These cases will be printed in the following reporters:

South Eastern Reporter 2nd Series.
Federal Reporter 3rd Series.
Federal Supplement 2nd Series.
Federal Rules Decisions.
Bankruptcy Reports.
Supreme Court Reporter.

Additionally, annotations have been taken from the following sources:

North Carolina Law Review.
Wake Forest Law Review.
Campbell Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

Abbreviations

(The abbreviations below are those found in the General Statutes that refer to prior codes.)

P.R.	Potter's Revisal (1821, 1827)
R.S.	Revised Statutes (1837)
R.C.	Revised Code (1854)
C.C.P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C.S.	Consolidated Statutes (1919, 1924)

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

December 2009

I, Roy Cooper, Attorney General of North Carolina, do hereby certify that the foregoing 2009 Replacement Code to the General Statutes of North Carolina was prepared and published by LexisNexis under the supervision of the Department of Justice of the State of North Carolina.

Roy Cooper
Attorney General of North Carolina

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143A-49.1. Attorney General; powers and duties.

Sec.
143A-50. Attorney General; transfer of powers and duties to Department.
143A-51. State Bureau of Investigation; transfer.
143A-52. Fire investigations; transfer.
143A-53. General Statutes Commission; transfer.
143A-54. Company police; powers, duties and functions; transfer.
143A-55. Police information Network; transfer.
143A-55.1. North Carolina Criminal Justice Training and Standards Council; transfer.
143A-55.2. North Carolina Sheriffs' Education and Training Standards Commission; transfer.
143A-55.3 through 143A-55.7. [Not effectuated.]

Article 7.

Department of Agriculture and Consumer Services.

143A-56. Creation.
143A-57. Commissioner of Agriculture; powers and duties.
143A-58. Commissioner of Agriculture; transfer of powers and duties to Department.
143A-59. Board of Agriculture; transfer.
143A-60. Structural Pest Control Division; transfer.
143A-61. The North Carolina Agricultural Hall of Fame; transfer.
143A-62. Gasoline and Oil Inspection Board; transfer.
143A-63. North Carolina Rural Rehabilitation Corporation; transfer.
143A-64. North Carolina Board of Crop Seed Improvement; transfer.
143A-65. North Carolina Public Livestock Market Advisory Board; transfer.
143A-66. [Repealed.]

Article 8.

Department of Labor.

143A-67. Creation.
143A-68. Commissioner of Labor; powers and duties.
143A-69. Commissioner of Labor; transfer of powers and duties to Department.
143A-70. Board of Boiler Rules and Bureau of Boiler Inspection; transfer.
143A-71. Apprenticeship Council; transfer.
143A-72. Voluntary arbitration of labor disputes; appointment of arbitrator or panel; Commissioner of Labor; transfer.

Article 9.

Department of Insurance.

Sec.
143A-73. Creation.
143A-74. Commissioner of Insurance; powers and duties.
143A-75. Commissioner of Insurance; transfer of powers and duties to Department.
143A-76, 143A-77. [Repealed.]
143A-78. Building Code Council; transfer.
143A-79. State Volunteer Fire Department; transfer.
143A-79.1. Public Officers and Employees Liability Insurance Commission; transfer.
143A-79.2. State Fire Commission; transfer.

Article 10.

Department of Administration.

143A-80 through 143A-96. [Repealed.]
143A-96.1. Transfer of Department of Veterans Affairs.

Article 11.

Department of Transportation and Highway Safety.

143A-97 through 143A-108. [Repealed.]

Article 12.

Department of Natural and Economic Resources.

143A-109 through 143A-129. [Repealed.]

Article 13.

Department of Human Resources.

143A-130 through 143A-162. [Repealed.]

Article 14.

Department of Social Rehabilitation and Control.

143A-163 through 143A-170. [Repealed.]

Article 15.

Department of Commerce.

143A-171 through 143A-180. [Repealed.]
143A-180.1 through 143A-181. [Recodified.]
143A-182 through 143A-185.1. [Repealed.]

Article 16.

Department of Revenue.

143A-186 through 143A-190. [Repealed.]

Article 17.

Department of Art, Culture and History.

143A-191 through 143A-230. [Repealed.]

Article 18.

Department of Military and Veterans' Affairs.

Sec.
143A-231 through 143A-238. [Repealed.]

Article 19.

Transfers to Department of Crime Control and Public Safety.

143A-239. North Carolina National Guard.
143A-240. North Carolina Civil Preparedness Agency.

Sec.
143A-241. State Civil Air Patrol.
143A-242. State Highway Patrol.
143A-243. North Carolina Alcoholic Beverage Control Commission Enforcement Division.
143A-244. Governor's Crime Commission.
143A-245. Crime Control Division.

Article 1.

General Provisions.

§ 143A-1. Short title.

This Chapter shall be known and may be cited as the "Executive Organization Act of 1971." (1971, c. 864, s. 1.)

CASE NOTES

Cited in Tice v. DOT, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

§ 143A-2. Head of department defined.

Whenever the term "head of the department" is used it shall mean the head of one of the principal departments created by this Chapter. (1971, c. 864, s. 1.)

§ 143A-3. Agency defined.

Whenever the term "agency" is used it shall mean and include, as the context may require, an existing department, institution, commission, committee, board, division, bureau, officer or official. (1971, c. 864, s. 1.)

§ 143A-4. Policy-making authority and administrative powers of Governor; delegation.

The Governor, in accordance with Article III of the Constitution of North Carolina, shall be the chief executive officer of the State. Subject to the Constitution and laws of this State, the Governor shall be responsible for formulating and administering the policies of the executive branch of the State government. Where a conflict arises in connection with the administration of the policies of the executive branch of the State government with respect to the reorganization of State government, such conflict shall be resolved by the Governor, and the decision of the Governor shall be final. (1971, c. 864, s. 1.)

§ 143A-5. Office of the Lieutenant Governor.

The Lieutenant Governor shall maintain an office in a State building in the City of Raleigh which office shall be open during normal working hours throughout the year. The Lieutenant Governor shall serve as President of the Senate and perform such additional duties as the Governor or General

Assembly may assign to him. This section shall become effective January 1, 1973. (1971, c. 864, s. 1.)

§ 143A-6. Types of transfers.

(a) Under this Chapter, a Type I transfer means the transferring of all or part of an existing agency to a principal department established by this Chapter. When all or part of any agency is transferred to a principal department under a Type I transfer, its statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, are transferred to the principal department.

When any agency, or part thereof, is transferred by a Type I transfer to a principal department under the provisions of this Chapter, all its prescribed powers, duties, and functions, including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications are transferred to the head of the principal department into which the agency, or part thereof, has been transferred.

(b) Under this Chapter, a Type II transfer means the transferring intact of an existing agency, or part thereof, to a principal department established by this Chapter. When any agency, or part thereof, is transferred to a principal department under a Type II transfer, that agency, or part thereof, shall be administered under the direction and supervision of that principal department, but shall exercise all its prescribed statutory powers independently of the head of the principal department, except that under a Type II transfer the management functions of any transferred agency, or part thereof, shall be performed under the direction and supervision of the head of the principal department.

(c) Whenever the term "management functions" is used it shall mean planning, organizing, staffing, directing, coordinating, reporting and budgeting. (1971, c. 864, s. 1.)

Editor's Note. — Session Laws 2004-124, s. 22A.1.(a), provides: "All personnel and equipment presently assigned to the Rules Review Commission for the purpose of carrying out Article 2A of Chapter 150B of the General Statutes, are transferred to the Office of Administrative Hearings by a Type I transfer as defined by G.S. 143A-6(a). The Chief Administrative Law Judge shall be responsible for the hiring of the Director and other staff of the Rules Review Commission."

CASE NOTES

Power to Fire Within Scope of Subsection (c). — When an agency is transferred to a new department by a "Type II transfer," subsection (b) of this section provides that the management functions of the agency, which includes staffing pursuant to subsection (c) of this section, shall be performed not only under the "supervision" but also the "direction" of the head of the principal department. The power to fire clearly falls within the scope of subsection (c) of this section; therefore, the Secretary of Human Resources had the power to fire the superintendent of a state hospital for the mentally disordered before his six-year term expired, and it was not required that he be dismissed by the State Board of Mental Health. Smith v. State, 298 N.C. 115, 257 S.E.2d 399 (1979).

Effect of Shift of Power to Fire on Employment Contract. — The transfer of the power to dismiss from the State Board of Mental Health to the Department of Human Resources makes no change in either the obligations of the parties or the remedies available to plaintiff superintendent of a state hospital for the mentally disordered in enforcing his agreement. Plaintiff's contract of employment was not with the agency which appointed him but with the State, and the essential terms of that contract, namely, duration, dismissal for cause, and salary, remain unaffected by any shift of the power to fire from one agency of the State to another. Smith v. State, 298 N.C. 115, 257 S.E.2d 399 (1979).

Applied in Stanley v. Retirement & Health Benefits Div., 66 N.C. App. 122, 310 S.E.2d 637 (1984).

OPINIONS OF ATTORNEY GENERAL

This Section Incorporated in Former G.S. 143B-471. — By the reference in former G.S. 143B-471 to "Type II" transfers, the General Assembly incorporated the provisions of this section and G.S. 143A-9, which clearly place the authority for personnel decisions within the Department of Commerce. See opinion of Attorney General to Mr. Brent Lane, Executive Director, North Carolina Technological Development Authority, 59 N.C.A.G. 34 (1989).

Direction of Staffing of Positions at NCTDA. — Notwithstanding the provisions of former G.S. 143B-471.3A(2), the Department of Commerce has the authority to manage and direct the staffing of positions and hiring and firing of the employees of all agencies transferred to the department as "Type II" transfers, including the North Carolina Technological Development Authority. See opinion of Attorney General to Mr. Brent Lane, Executive Director, North Carolina Technological Development Authority, 59 N.C.A.G. 34 (August 14, 1989).

As to transfer under Type II transfer of burial commission records and administrative personnel to Department of Commerce, see opinion of Attorney General to Mr. Irvin Aldridge, Secretary, Department of Commerce, 41 N.C.A.G. 921 (1972).

Operation and management of the North Carolina State Fair. — The Department of Agriculture and Consumer Services, rather than the Board of Agriculture, has the authority to select the midway operator, execute contracts and operate and manage the North Carolina State Fair. See opinion of Attorney General to The Honorable Eric Miller Reeves, The North Carolina General Assembly, and The Honorable Alice Graham Underhill, The North Carolina General Assembly, 2002 N.C. AG LEXIS 6 (1/24/02).

§ 143A-7. Agencies not enumerated; continuation.

Any existing department, institution, board or commission not enumerated in this Chapter but established or created by the General Assembly shall continue to exercise all its powers, duties and functions. (1971, c. 864, s. 1.)

§ 143A-8. Internal organization of departments; allocation and reallocation of duties and functions; limitations.

The Governor shall cause the administrative organization of each department to be examined with a view to promoting economy and efficiency. The Governor may reorganize and organize the principal departments and assign and reassign the duties and functions among the divisions and other units, division heads, officers, and employees; except as otherwise expressly provided by statute. When such changes affect existing law they must be submitted in accordance with Article III, Sec. 5 of the Constitution. The head of a principal department shall have legal custody of all books, papers, documents and other records of the department. The head of a principal department shall be responsible for the preparation and presentation of the department budget request which shall include all funds requested and all receipts expected for all elements of the department. (1971, c. 864, s. 1.)

§ 143A-9. Appointment of officers and employees; salaries of department heads.

Any provisions of law to the contrary notwithstanding, and subject to the provisions of the Constitution of the State of North Carolina, the head of a principal department, except those departments headed by elected officials who are constitutional officers, shall be appointed by the Governor and serve at his pleasure.

The head of a principal department shall appoint the chief deputy or chief assistant and such chief deputy or chief assistant shall be subject to the State Personnel Act. Except where appointment by the Governor is prescribed by existing statute, the head of the principal department shall appoint the administrative head of each transferred agency and, subject to the provisions of the State Personnel Act, appoint all employees of each division, section or other unit under a principal department.

In establishing the position of secretary, and the supporting staff for the principal departments, the cost of such staff positions will be met insofar as possible by utilizing existing positions or funds available from vacant positions within agencies assigned to the principal departments. (1971, c. 864, s. 1; 1983, c. 717, s. 50.)

OPINIONS OF ATTORNEY GENERAL

This Section Incorporated in Former G.S. 143B-471. — By the reference in former G.S. 143B-471 to "Type II" transfers, the General Assembly incorporated the provisions of G.S. 143A-6 and this section which clearly place the authority for personnel decisions within the Department of Commerce. See opinion of Attorney General to Mr. Brent Lane, Executive Director, N.C. Technological Development Authority, 59 N.C.A.G. 34 (1989).

§ 143A-10. Governor; continuation of powers and duties; staff.

All powers, duties and functions vested by law in the Governor or in the office of Governor are continued, except as otherwise provided by this Chapter.

The immediate staff of the Governor shall not be subject to the State Personnel Act. (1971, c. 864, s. 1; 2006-203, s. 100.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 100, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "; however, salaries for these positions shall be filed with the General Assembly pursuant to G.S. 143-34.3 commencing with the 1973 General Assembly" following "State Personnel Act" in the second paragraph.

§ 143A-11. Principal departments.

Except as otherwise provided by this Chapter, or the State Constitution, all executive and administrative powers, duties and functions, not including those of the General Assembly and the judiciary, previously vested by law in the several State agencies, are vested in the following principal offices or departments:

(1) Office of the Governor.
(2) Office of the Lieutenant Governor.
(3) Department of the Secretary of State.
(4) Department of State Auditor.
(5) Department of State Treasurer.
(6) Department of Public Instruction.
(7) Department of Justice.
(8) Department of Agriculture and Consumer Services.
(9) Department of Labor.
(10) Department of Insurance.
(11) through (13) Repealed by Session Laws 1995, c. 509, s. 96.
(14) Repealed by Session Laws 1973, c. 476, s. 6.

(15), (16) Repealed by Session Laws 1995, c. 509, s. 96.
(17), (18) Repealed by Session Laws 1973, c. 476, s. 6.
(19) Repealed by Session Laws 1973, c. 620, s. 9. (1971, c. 864, s. 1; 1973, c. 476, s. 6; c. 620, s. 9; 1975, c. 716, s. 7; 1977, c. 771, s. 4; 1989, c. 727, s. 218(120); c. 751, s. 7(17); 1991 (Reg. Sess., 1992), c. 959, s. 36; 1993, c. 522, s. 12; 1995, c. 509, s. 96; 1997-261, s. 93.)

Cross References. — As to the transfer of the Division of Veterans Affairs of the Department of Military and Veterans Affairs to the Department of Administration, see G.S. 143A-96.1. As to the Department of Cultural Resources, see G.S. 143B-49 et seq. As to the Department of Revenue, see G.S. 143B-217 et seq.

§ 143A-12. Office of the Governor; creation.

There is hereby created an office of the Governor. (1971, c. 864, s. 2.)

§ 143A-13. Office of the Lieutenant Governor; creation.

There is hereby created an office of the Lieutenant Governor. (1971, c. 864, s. 3.)

§ 143A-14. Creation of new departments by executive order.

All departments not now in existence which this Chapter directs to be created shall be made operative by executive order of the Governor; provided that all new departments shall be activated by executive order not later than July 1, 1972. (1971, c. 864, s. 21.)

§ 143A-15. Date of transfer of agencies into existing departments.

The transfer of all agencies into departments of State government which now exist shall take place not later than October 1, 1971. (1971, c. 864, s. 21.)

§ 143A-16. Transfer of funds by Governor.

To implement this Chapter, the Governor shall have authority to transfer all or a part of any appropriations or funds of an agency to the department to which such agency is transferred. (1971, c. 864, s. 21.)

§ 143A-17: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 11.

§ 143A-18. Additional funds for reorganization.

When adequate funds to implement reorganization are not available from the budgets of the transferred agencies, the Governor and the Council of State may make other funds available for these purposes, not to exceed a total of five hundred thousand dollars ($500,000) per year for all departments created by this Chapter. (1971, c. 864, s. 21.)

Article 2.

Department of the Secretary of State.

§ 143A-19. Creation.

There is hereby created a Department of the Secretary of State. The head of the Department of the Secretary of State is the Secretary of State. (1971, c. 864, s. 4.)

§ 143A-20. Secretary of State; powers and duties.

The Secretary of State shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 4.)

§ 143A-21. Secretary of State; transfer of powers and duties to Department.

Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Secretary of State are transferred by a Type I transfer to the Department of the Secretary of State. (1971, c. 864, s. 4.)

§ 143A-22: Repealed by Session Laws 1973, c. 1409, s. 1.

§ 143A-23. Notaries public; powers, duties and functions; transfer.

All of the powers, duties and functions of the Governor under G.S. 10-1 of the General Statutes are transferred by a Type I transfer to the Department of the Secretary of State. (1971, c. 864, s. 4.)

Editor's Note. — The reference in this section to § 10-1 is to former § 10-1 as it stood before the revision of former Chapter 10 in 1973.

Article 3.

Department of State Auditor.

§ 143A-24. Creation.

There is hereby created a Department of State Auditor. The head of the Department of the State Auditor is the State Auditor. (1971, c. 864, s. 5.)

§ 143A-25. State Auditor; powers and duties.

The State Auditor shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 5.)

§ 143A-26. State Auditor; transfer of powers and duties to Department.

Except as otherwise provided in the Constitution or by this Chapter, all powers, duties and functions of the State Auditor are transferred by a Type I transfer to the Department of the State Auditor. (1971, c. 864, s. 5.)

§ 143A-27. North Carolina Firemen's Pension Fund; transfer.

The North Carolina Firemen's Pension Fund, as contained in Article 3 of Chapter 118 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Auditor. (1971, c. 864, s. 5.)

Editor's Note. — Article 3 of Chapter 118, referred to in this section, was rewritten by Session Laws 1981, c. 1029, s. 1, and recodified as Article 4 of Chapter 118, relating to the North Carolina Firemen's and Rescue Squad Workers' Pension Fund, which was in turn recodified and incorporated as Article 86 of Chapter 58 pursuant to Session Laws 1987, c. 752, s. 9, as amended by Session Laws 1987 (Reg. Sess., 1988), c. 975, s. 34.

§ 143A-27.1. North Carolina Firemen's and Rescue Squad Workers' Pension Fund; transfer.

The "North Carolina Firemen's and Rescue Squad Workers' Pension Fund", as contained in Article 3 of Chapter 118 of the General Statutes is hereby transferred by a Type II transfer to the Department of State Auditor. (1981, c. 1029, s. 3.)

Editor's Note. — Article 3 of Chapter 118, referred to in this section, was rewritten by Session Laws 1981, c. 1029, s. 1, and recodified as Article 4 of Chapter 118, relating to the North Carolina Firemen's and Rescue Squad Workers' Pension Fund, which was in turn recodified and incorporated as Article 86 of Chapter 58 pursuant to Session Laws 1987, c. 752, s. 9, as amended by Session Laws 1987 (Reg. Sess., 1988), c. 975, s. 34.

Session Laws 1991 (Reg. Sess., 1992), c. 833, s. 1, provides: "The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the Department of State Auditor to administer the North Carolina Firemen's and Rescue Squad Workers' Pension Fund are transferred to the Department of State Treasurer."

§ 143A-28: Repealed by Session Laws 1977, 2nd Sess., c. 1204, s. 2.

§ 143A-29. State Board of Pensions; transfer.

The State Board of Pensions, as contained in Article 2 of Chapter 112 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Auditor. (1971, c. 864, s. 5.)

Article 4.

Department of State Treasurer.

§ 143A-30. Creation.

There is hereby created a Department of State Treasurer. The head of the Department of State Treasurer is the State Treasurer. (1971, c. 864, s. 6.)

§ 143A-31. State Treasurer; powers and duties.

The State Treasurer shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 6.)

§ 143A-32. State Treasurer; transfer of powers and duties to Department.

Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the State Treasurer are transferred by a Type I transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-33. Local Government Commission; transfer.

The Local Government Commission, as contained in Article 1 of Chapter 159 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

Editor's Note. — The Local Government Commission is now provided for in Article 2 of Chapter 159.

§ 143A-34. Teachers' and State Employees' Retirement System; transfer.

The Teachers' and State Employees' Retirement System, and the board of trustees, as contained in Article 1 of Chapter 135 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-35. North Carolina Local Governmental Employees' Retirement System; transfer.

The North Carolina Local Governmental Employees' Retirement System, as contained in Article 3 of Chapter 128 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-36. Public Employees' Social Security Agency; powers, duties and functions; transfer.

All of the powers, duties and functions of the Public Employees' Social Security Agency as contained in Article 2 of Chapter 135 of the General Statutes and the laws of this State, are transferred by a Type I transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-37. Legislative Retirement Fund; transfer.

The Legislative Retirement Fund, as provided for in G.S. 120-4.1 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

Editor's Note. — Section 120-4.1, referred to in this section, was repealed by Session Laws 1973, c. 1482, s. 3. For the conditions of the repeal, see G.S. 120-4.2.

§ 143A-38: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

Editor's Note. — Session Laws 2007-491, s. 47, provides in part: "The remainder of this act becomes effective January 1, 2008. The procedures for review of disputed tax matters enacted by this act apply to assessments of tax that are not final as of the effective date of this act and to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a petition for review was filed with the Tax Review Board under G.S. 105-241.2 [repealed] before the effective date of this act. The repeal of G.S. 105-122(c) and G.S. 105-130.4(t) and Sections 11 and 12 apply to requests for alternative apportionment formulas filed on or after the effective date of this act. A petition filed with the Tax Review Board for an apportionment formula before the effective date of this act is considered a request under G.S. 105-122(c1) or G.S. 105-130.4(t1), as appropriate."

§ 143A-38.1. The Law-Enforcement Officers' Benefit and Retirement Fund; transfer.

The Law-Enforcement Officers' Benefit and Retirement Fund, as contained in Article 12 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Treasurer. (1977, 2nd Sess., c. 1204, s. 1.)

Editor's Note. — Article 12 of Chapter 143, referred to in this section, was repealed by Session Laws 1985, c. 479, s. 196(t). See now Articles 12A to 12G, G.S. 143-166.1 et seq.

ARTICLE 5.

Department of Public Instruction.

§§ 143A-39 through 143A-42: Repealed by Session Laws 1993, c. 522, s. 14.

§ 143A-43: Repealed by Session Laws 1983, c. 768, s. 14.

§ 143A-44: Repealed by Session Laws 1993, c. 522, s. 14.

§ 143A-44.1. Creation.

There is hereby created a Department of Public Instruction. The head of the Department of Public Instruction is the State Board of Education. Any provision of G.S. 143A-9 to the contrary notwithstanding, the appointment of the State Board of Education shall be as prescribed in Article IX, Section (4)(1) of the Constitution. (1995, c. 72, s. 3; 2008-187, s. 24.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 72, s. 3 having been G.S. 143A-39.

Effect of Amendments. — Session Laws 2008-187, s. 24, effective August 7, 2008, substituted "Article IX, Section (4)(1)" for "Article IV, Section 4(1)."

§ 143A-44.2. State Board of Education; transfer of powers and duties to State Board.

The State Board of Education shall have all powers and duties conferred on the Board by this Article, delegated to the Board by the Governor, and conferred by the Constitution and laws of this State. (1995, c. 72, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 72, s. 3 having been G.S. 143A-40.

§ 143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and duties.

The office of the Superintendent of Public Instruction, as provided for by Article III, Section 7 of the Constitution, and the Department of Public Instruction are transferred to the Department of Public Instruction. The Superintendent of Public Instruction shall be the Secretary and Chief Administrative Officer of the State Board of Education, and shall have all powers and duties conferred by the Constitution, by the State Board of Education, Chapter 115C of the General Statutes, and the laws of this State. (1995, c. 72, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 72, s. 3 having been G.S. 143A-42.

§ 143A-45. Interstate Compact for Education; rights, duties and privileges.

All of the rights, duties and privileges of this State obtained as a party to the Interstate Compact for Education as contained in Part 5 of Article 8 of Chapter 115C of the General Statutes and the laws of this State, shall be supervised and administered by the Superintendent of Public Instruction. (1971, c. 864, s. 7; 1983, c. 768, s. 16.)

§ 143A-46: Repealed by Session Laws 1983, c. 768, s. 14.

§ 143A-47. Interstate Agreement on Qualifications of Educational Personnel; rights, duties and privileges.

All of the rights, duties and privileges of this State obtained as a party to the Interstate Agreement on Qualifications of Educational Personnel as contained in Article 24 of Chapter 115C of the General Statutes and the laws of this State shall be supervised and administered by the Superintendent of Public Instruction. (1971, c. 864, s. 7; 1983, c. 768, s. 17.)

§ 143A-48. Textbook Commission; transfer.

The Textbook Commission, as created by G.S. 115C-87 and the laws of this State, is hereby transferred by a Type I transfer to the Department of Public Instruction. (1971, c. 864, s. 7; 1983, c. 768, s. 18; 1993, c. 522, s. 15.)

§ 143A-48.1. North Carolina Council on the Holocaust; creation; purpose; membership; expenses; assistance.

(a) There is hereby created the North Carolina Council on the Holocaust. The purpose of the Council is to prevent future atrocities similar to the systematic program of genocide of six million Jews and others by the Nazis. This purpose shall be accomplished by developing a program of education and observance of the Holocaust.

(b) The Council shall consist of 24 members, six appointed by the Governor, six appointed by the President Pro Tempore of the Senate, six appointed by the Speaker of the House of Representatives, and six appointed by the other 18 members. Members shall be appointed for two-year terms to begin July 1 of each odd-numbered year. The six at-large appointments shall be made by the Council at its first meeting after July 1 of each odd-numbered year. To be eligible for appointment as an at-large member, a person must either be a survivor of the Holocaust or a first-generation lineal descendant of such person. A majority of the members shall constitute a quorum for the transaction of business.

(c) The members of the Council shall be compensated and reimbursed for their expenses in accordance with G.S. 138-5.

(d) The Superintendent of Public Instruction may arrange for clerical or other assistance required by the Council. (1985, c. 757, s. 81(a); 1989, c. 47; 1995, c. 490, s. 23; 2002-126, s. 10.10D(a), (b).)

Editor's Note. — Session Laws 2002-126, s. 10.10D(d), provides: "The North Carolina Council on the Holocaust, as created by Part 28 of Article 3 of Chapter 143B of the General Statutes, and recodified as G.S. 143A-48.1 by this section, is transferred to the Department of Public Instruction by a Type II transfer, as defined in G.S. 143A-6."

ARTICLE 6.

Department of Justice.

§ 143A-49. Creation.

There is hereby created a Department of Justice. The head of the Department of Justice is the Attorney General. (1971, c. 864, s. 8.)

CASE NOTES

The Governor has the duty to supervise the official conduct of all executive officers. The constitutional independence of the executive offices, and their differing functions and duties, create clear potential for conflict between their respective holders. In the event of such conflict, power in the Attorney General to resolve, without their consent, controversies involving agencies or departments under the supervision of the Governor could be abused by exercise in a manner effectively derogative of the Governor's constitutional duties to exercise executive power and to supervise the official conduct of all executive officers. The General Assembly, in the enactment of G.S. 114-2(2), did not intend to create such potential. Tice v. DOT, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

§ 143A-49.1. Attorney General; powers and duties.

The Attorney General shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 8.)

Legal Periodicals. — For survey of 1984 administrative law, "A Declining Role for the Attorney General," see 63 N.C.L. Rev. 1051 (1985).

§ 143A-50. Attorney General; transfer of powers and duties to Department.

Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Attorney General are transferred by a Type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ 143A-51. State Bureau of Investigation; transfer.

The State Bureau of Investigation, as contained in Article 4 of Chapter 114 of the General Statutes and the laws of this State, is hereby transferred by a Type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ 143A-52. Fire investigations; transfer.

The duties of the Commissioner of Insurance with respect to the investigation of all fires, including forest fires, as contained in Article 1 of Chapter 69 of the General Statutes and the laws of this State, are hereby transferred by a Type I transfer to the Department of Justice; provided, however, that the duties of the Commissioner of Insurance with respect to the inspection of buildings, the removal of dangerous materials therefrom, hospital insurance, insurance regulation, and the preparation of annual reports, as contained in Chapters 57 and 58 of the General Statutes and G.S. 69-4, shall continue to be among the duties of the Commissioner of Insurance. (1971, c. 864, s. 8; 1977, c. 596, s. 3.)

Editor's Note. — Article 1 of Chapter 69, Chapters 57 and 58, and G.S. 69-4, referred to in this section, have been recodified as Article 79 of Chapter 58, Articles 65 and 66 of Chapter 58, Articles 1 to 64 of Chapter 58, and G.S. 58-70-20, respectively, under the authority of Session Laws 1987, c. 752, s. 9 and Session Laws 1987 (Reg. Sess., 1988), c. 975, s. 34.

§ 143A-53. General Statutes Commission; transfer.

The General Statutes Commission as contained in Article 2 of Chapter 164 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ 143A-54. Company police; powers, duties and functions; transfer.

All of the powers, duties and functions of the Governor contained in Chapter 74A of the General Statutes and the laws of this State relating to the appointment and commission of special police are hereby transferred by a Type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

CASE NOTES

Applied in North Carolina Ass'n of Licensed Detectives v. Morgan, 17 N.C. App. 701, 195 S.E.2d 357 (1973).

§ 143A-55. Police information Network; transfer.

The Police Information Network, as created by G.S. 114-10.1 and the laws of this State, is hereby transferred by a Type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ 143A-55.1. North Carolina Criminal Justice Training and Standards Council; transfer.

The North Carolina Criminal Justice Training and Standards Council, as created by Chapter 17A of the General Statutes and laws of this State, is hereby transferred by a Type II transfer to the Department of Justice. (1975, c. 372, s. 1.)

Editor's Note. — Chapter 17A, referred to in this section, has been recodified as Chapter 17C by Session Laws 1979, c. 763, s. 1.

§ 143A-55.2. North Carolina Sheriffs' Education and Training Standards Commission; transfer.

The North Carolina Sheriffs' Education and Training Standards Commission, as created by Chapter 17E of the General Statutes and laws of this State, is hereby transferred by a Type II transfer as defined in G.S. 143A-6(b) to the Department of Justice. (1983, c. 558, s. 4.)

§§ 143A-55.3 through 143A-55.7: Not effectuated.

Cross References. — As to the Rules Review Commission, see now G.S. 143B-30.1 et seq.

Editor's Note. — Section 18.2 of Session Laws 1985, c. 746, provided: "The President of the Senate and the Speaker of the House of Representatives shall request the Supreme Court to issue an advisory opinion on the constitutionality of Sections 5 and 6 of this act and the appointment of the chief hearing officer by the Chief Justice as provided in G.S. 7A-752 in Section 2 of this act."

Section 19 of Session Laws 1985, c. 746, provided that sections 5 and 6 of the act, which added G.S. 143A-55.3 through 143A-55.7 and amended G.S. 120-123, should become effective 30 days from the date the Supreme Court issued an advisory opinion on the constitutionality of those sections unless the opinion stated that those sections were unconstitutional, in which event those sections would not become effective.

In addition, s. 19 of Session Laws 1985, c. 746, provided that the act would expire Jan. 1, 1992, and would not be effective on or after that date. However, Session Laws 1991, c. 103, s. 1 amended Session Laws 1985, c. 746, s. 19 by deleting the January 1, 1992 Sunset Provision.

Section 19 of Session Laws 1985, c. 746, further provided that the act would not affect contested cases commenced before Jan. 1, 1986.

By letter of October 28, 1985, addressed to the President of the Senate and the Speaker of the House, the Supreme Court declined to issue an advisory opinion as contemplated by Session Laws 1985, c. 746, on the grounds that to issue such an opinion would be to place the Court directly in the stream of the legislative process, and in view of the prerogative of the General Assembly to first address and determine the constitutionality of its own legislation. See In re Advisory Opinion, 314 N.C. 679, 335 S.E.2d 890 (1985).

Session Laws 1985 (Reg. Sess., 1986), c. 1022, s. 7 deleted the word "advisory" preceding "opinion" in the third sentence of Session Laws 1985, c. 746, s. 19.

At the direction of the Revisor of Statutes, G.S. 143A-55.3 through 143A-55.7 are shown as not effectuated.

Article 7.

Department of Agriculture and Consumer Services.

§ 143A-56. Creation.

There is hereby created a Department of Agriculture and Consumer Services. The head of the Department is the Commissioner of Agriculture. (1971, c. 864, s. 9; 1997-261, s. 95.)

§ 143A-57. Commissioner of Agriculture; powers and duties.

The Commissioner of Agriculture shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 9.)

§ 143A-58. Commissioner of Agriculture; transfer of powers and duties to Department.

Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Commissioner of Agriculture are transferred by a Type I transfer to the Department of Agriculture and Consumer Services. (1971, c. 864, s. 9; 1997-261, s. 96.)

§ 143A-59. Board of Agriculture; transfer.

The Board of Agriculture, as contained in Article 1 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of Agriculture and Consumer Services. (1971, c. 864, s. 9; 1997-261, s. 97.)

OPINIONS OF ATTORNEY GENERAL

Operation and Management of the North Carolina State Fair. — The Department of Agriculture and Consumer Services, rather than the Board of Agriculture, has the authority to select the midway operator, execute contracts and operate and manage the North Carolina State Fair. See opinion of Attorney General to The Honorable Eric Miller Reeves, The North Carolina General Assembly, and The Honorable Alice Graham Underhill, The North Carolina General Assembly, 2002 N.C. AG LEXIS 6 (1/24/02).

§ 143A-60. Structural Pest Control Division; transfer.

The Structural Pest Control Division of the Department of Agriculture, as contained in Article 4C of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of Agriculture and Consumer Services. (1971, c. 864, s. 9; 1997-261, s. 98.)

§ 143A-61. The North Carolina Agricultural Hall of Fame; transfer.

The North Carolina Agricultural Hall of Fame, as contained in Article 50B of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type I transfer to the Department of Agriculture and Consumer Services. (1971, c. 864, s. 9; 1997-261, s. 99.)

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§ 143A-62. Gasoline and Oil Inspection Board; transfer.

The Gasoline and Oil Inspection Board, as contained in Article 3 of Chapter 119 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of Agriculture and Consumer Services. (1971, c. 864, s. 9; 1997-261, s. 100.)

§ 143A-63. North Carolina Rural Rehabilitation Corporation; transfer.

The North Carolina Rural Rehabilitation Corporation, and board of directors, as contained in Chapter 137 of the General Statutes and the laws of this State, is transferred by a Type I transfer to the North Carolina Agricultural Finance Authority in the Department of Agriculture and Consumer Services. (1971, c. 864, s. 9; 1997-261, s. 101; 2001-424, s. 17.2(a).)

§ 143A-64. North Carolina Board of Crop Seed Improvement; transfer.

The North Carolina Board of Crop Seed Improvement, as contained in Article 30 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of Agriculture and Consumer Services. (1971, c. 864, s. 9; 1997-261, s. 102.)

§ 143A-65. North Carolina Public Livestock Market Advisory Board; transfer.

The North Carolina Public Livestock Market Advisory Board, as contained in Article 35 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type I transfer to the Department of Agriculture and Consumer Services. (1971, c. 864, s. 9; 1997-261, s. 103.)

§ 143A-66: Repealed by Session Laws 1993, c. 561, s. 116.

Article 8.

Department of Labor.

§ 143A-67. Creation.

There is hereby created a Department of Labor. The head of the Department of Labor is the Commissioner of Labor. (1971, c. 864, s. 10.)

§ 143A-68. Commissioner of Labor; powers and duties.

The Commissioner of Labor shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 10.)

§ 143A-69. Commissioner of Labor; transfer of powers and duties to Department.

Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Commissioner of Labor are

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transferred by a Type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

§ 143A-70. Board of Boiler Rules and Bureau of Boiler Inspection; transfer.

The Board of Boiler Rules and the Bureau of Boiler Inspection, as contained in Article 7 of Chapter 95 of the General Statutes and the laws of this State, are hereby transferred by a Type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

Editor's Note. — Article 7 of Chapter 95, referred to in this section, has been repealed by Session Laws 1981 (Regular Session 1982), c. 1187, s. 1.

§ 143A-71. Apprenticeship Council; transfer.

The Apprenticeship Council, as contained in Chapter 94 of the General Statutes and the laws of this State, is hereby transferred by a Type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

§ 143A-72. Voluntary arbitration of labor disputes; appointment of arbitrator or panel; Commissioner of Labor; transfer.

All of the powers, duties and functions of the Commissioner of Labor under Article 4A of Chapter 95 of the General Statutes and the laws of this State, are transferred by a Type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

ARTICLE 9.

Department of Insurance.

§ 143A-73. Creation.

There is hereby created a Department of Insurance. The head of the Department of Insurance is the Commissioner of Insurance. (1971, c. 864, s. 11.)

§ 143A-74. Commissioner of Insurance; powers and duties.

The Commissioner of Insurance shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 11.)

§ 143A-75. Commissioner of Insurance; transfer of powers and duties to Department.

Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested in the Commissioner of Insurance are transferred by a Type I transfer to the Department of Insurance. (1971, c. 864, s. 11.)

§ 143A-76: Repealed by Session Laws 1985, c. 666, s. 11.

§ 143A-77: Repealed by Session Laws 1985, c. 666, s. 12.

§ 143A-78. Building Code Council; transfer.

The Building Code Council, as contained in Article 9 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of Insurance. (1971, c. 864, s. 11.)

§ 143A-79. State Volunteer Fire Department; transfer.

The State Volunteer Fire Department, as contained in Article 3 of Chapter 69 of the General Statutes and the laws of this State, is hereby transferred by a Type I transfer to the Department of Insurance. (1971, c. 864, s. 11.)

Editor's Note. — Article 3 of Chapter 69, referred to in this section, has been recodified as Article 80 of Chapter 58 under the authority of Session Laws 1987, c. 752, s. 9 and Session Laws 1987 (Reg. Sess., 1988), c. 975, s. 34.

§ 143A-79.1. Public Officers and Employees Liability Insurance Commission; transfer.

The Public Officers and Employees Liability Insurance Commission, as contained in Part 20 of Article 9 of General Statutes Chapter 143B, is transferred by a Type II transfer to the Department of Insurance. (1985, c. 666, s. 78.)

Editor's Note. — Part 20 of Article 9 of Chapter 143B, referred to in this section, was recodified as G.S. 58-27.20 through 58-27.26 by Session Laws 1985, c. 666, s. 79. See now G.S. 58-32-1 through 58-32-30.

§ 143A-79.2. State Fire Commission; transfer.

The State Fire Commission, described in Part 4 of Article 11 of Chapter 143B of the General Statutes, is transferred from the Department of Crime Control and Public Safety to the Department of Insurance. This transfer shall include all elements of a Type I transfer as defined in G.S. 143A-6. (1985, c. 757, s. 167(a).)

Editor's Note. — Part 4 of Article 11 of Chapter 143B, referred to in this section, was recodified as G.S. 58-27.30 through 58-27.34 by Session Laws 1985, c. 757, s. 167(b). See now G.S. 58-78-1 through 58-78-20.

ARTICLE 10.

Department of Administration.

§§ 143A-80 through 143A-96: Repealed by Session Laws 1975, c. 879, s. 46.

Cross References. — For present provisions as to the Department of Administration, see G.S. 143B-366 et seq.

§ 143A-96.1. Transfer of Department of Veterans Affairs.

The Division of Veterans Affairs of the Department of Military and Veterans Affairs as described in Article 5 of Chapter 143B is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Administration. The Secretary of Administration is hereby empowered and directed to employ within the Department of Administration an additional assistant secretary as Assistant Secretary for Veterans Affairs. (1977, c. 70, s. 26.)

Editor's Note. — The provisions of Article 5 of Chapter 143B relating to Veterans Affairs, referred to in this section, were repealed and transferred by Session Laws 1977, cc. 23 and 70. As to the Veterans' Affairs Commission, see now G.S. 143B-399, 143B-400.

ARTICLE 11.

Department of Transportation and Highway Safety.

§§ 143A-97 through 143A-108: Repealed by Session Laws 1975, c. 716, s. 5.

Cross References. — For present provisions as to the Department of Transportation, see G.S. 143B-345 et seq.

ARTICLE 12.

Department of Natural and Economic Resources.

§§ 143A-109 through 143A-129: Repealed by Session Laws 1973, c. 1262, s. 86.

Cross References. — For present provisions as to the Department of Environment and Natural Resources, see G.S. 143B-279.1 et seq.

ARTICLE 13.

Department of Human Resources.

§§ 143A-130 through 143A-162: Repealed by Session Laws 1973, c. 476, s. 183.

ARTICLE 14.

Department of Social Rehabilitation and Control.

§§ 143A-163 through 143A-170: Repealed by Session Laws 1973, c. 1262, s. 10.

Cross References. — As to transfer of the functions of the Department of Social Rehabilitation and Control to the Department of Correction, see G.S. 143B-262.

ARTICLE 15.

Department of Commerce.

§§ 143A-171 through 143A-180: Repealed by Session Laws 1977, c. 198, s. 25.

§§ 143A-180.1, 143A-180.2: Recodified as §§ 143B-448, 143B-449 by Session Laws 1977, c. 198, s. 26.

Cross References. — For statute prohibiting master electric and natural gas meters in residential buildings, enacted as G.S. 143A-180.4 by Session Laws 1977, c. 792, s. 9, see G.S. 143-151.42.

Editor's Note. — G.S. 143B-448, 143B-449 were repealed by Session Laws 2000-140, s. 76(k), effective September 30, 2000.

§ 143A-181: Recodified as § 143B-439 by Session Laws 1977, c. 198, s. 26.

§§ 143A-182 through 143A-185.1: Repealed by Session Laws 1977, c. 198, s. 25.

ARTICLE 16.

Department of Revenue.

§§ 143A-186 through 143A-190: Repealed by Session Laws 1973, c. 476, s. 193.

Cross References. — For present provisions as to the Department of Revenue, see G.S. 143B-217 et seq.

ARTICLE 17.

Department of Art, Culture and History.

§§ 143A-191 through 143A-230: Repealed by Session Laws 1973, c. 476, s. 16.

Cross References. — As to the Department of Cultural Resources, see G.S. 143B-49 et seq.

ARTICLE 18.

Department of Military and Veterans' Affairs.

§§ 143A-231 through 143A-238: Repealed by Session Laws 1973, c. 620, s. 9.

Cross References. — As to the transfer of the Division of Veterans Affairs of the Department of Military and Veterans Affairs to the Department of Administration, see G.S. 143A-96.1.

Article 19.

Transfers to Department of Crime Control and Public Safety.

§ 143A-239. North Carolina National Guard.

The North Carolina National Guard as provided for in Chapter 127A is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1; 2009-281, s. 1.)

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted “National Guard” for “national guard.”

§ 143A-240. North Carolina Civil Preparedness Agency.

The State Civil Preparedness Agency as provided for in Chapter 166 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

Editor's Note. — Chapter 166, referred to in this section, was repealed by Session Laws 1977, c. 848, s. 1. For present provisions as to civil preparedness, see now Chapter 166A.

§ 143A-241. State Civil Air Patrol.

The State Civil Air Patrol as provided for in G.S. 167-2 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

Editor's Note. — Section 167-2, referred to in this section, was repealed by Session Laws 1979, c. 516, s. 6. See G.S. 143B-490 through 143B-492.

§ 143A-242. State Highway Patrol.

The State Highway Patrol as provided for in Article 4 of Chapter 20 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

§ 143A-243. North Carolina Alcoholic Beverage Control Commission Enforcement Division.

The North Carolina Alcoholic Beverage Control Commission Enforcement Division as provided for in Part 2 of Article 2 of Chapter 18A is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1; 1981, c. 412, s. 4.)

Editor's Note. — Part 2 of Article 2 of Chapter 18A, referred to in this section, was repealed by Session Laws 1981, c. 412. See now Chapter 18B.

§ 143A-244. Governor's Crime Commission.

The Governor's Crime Commission as provided for in Part 23 of Article 7 of Chapter 143B and 1977 Session Laws, Chapter 11 is hereby transferred by a Type II transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

Editor's Note. — Part 23 of Article 7 of Chapter 143B, referred to in this section, has been recodified as G.S. 143B-478 through 143B-480.

§ 143A-245. Crime Control Division.

The Crime Control Division, Department of Natural and Economic Resources, as provided for in Part 23 of Article 7 of Chapter 143B and 1977 Session Laws, Chapter 11 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1977, c. 771, s. 4, which substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Part 23 of Article 7 of Chapter 143B, referred to in this section, has been recodified as G.S. 143B-478 through 143B-480.

Chapter 143B.
Executive Organization Act of 1973.

Article 1.
General Provisions.

Part 1. In General.

Sec.
143B-1. Short title.
143B-2. Interim applicability of the Executive Organization Act of 1973.
143B-3. Definitions.
143B-4. Policy-making authority and administrative powers of Governor; delegation.
143B-5. Governor; continuation of powers and duties.
143B-6. Principal departments.
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143B-9. Appointment of officers and employees.
143B-10. Powers and duties of heads of principal departments.
143B-11. Subunit nomenclature.
143B-12. Internal organization of departments; allocation and reallocation of duties and functions; limitations.
143B-13. Appointment, qualifications, terms, and removal of members of commissions.
143B-14. Administrative services to commissions.
143B-15. Compensation of members of commissions.
143B-16. Appointment and removal of members of boards, councils and committees.
143B-17. Commission investigations and orders.
143B-18. [Repealed.]
143B-19. Pending actions and proceedings.
143B-20. [Repealed.]
143B-21. Affirmation of prior acts of abolished agencies.
143B-22. Terms occurring in laws, contracts and other documents.
143B-23. Completion of unfinished business.
143B-24. Cooperative agreements.
143B-25. Agencies not enumerated.
143B-26. Constitutional references.
143B-27. [Repealed.]
143B-28. Goals of continuing reorganization.
143B-29. [Reserved.]

Part 2. Governor's Administrative Rules Review Commission.

143B-29.1 through 143B-29.5. [Repealed.]

Part 3. Rules Review Commission.

Sec.
143B-30. [Repealed.]
143B-30.1. Rules Review Commission created.
143B-30.2. Purpose of Commission.
143B-30.3. [Repealed.]
143B-30.4. Evidence.
143B-31 through 143B-48. [Reserved.]

Article 2.
Department of Cultural Resources.

Part 1. General Provisions.

143B-49. Department of Cultural Resources — creation, powers and duties.
143B-50. Duties of the Department.
143B-51. Functions of the Department.
143B-52. Head of the Department.
143B-53. Organization of the Department.
143B-53.1. Appropriation, allotment, and expenditure of funds for historic and archeological property.
143B-53.2. Salaries, promotions, and leave of employees of the North Carolina Department of Cultural Resources.

Part 2. Art Commission.

143B-54 through 143B-57. [Repealed.]

Part 3. Art Museum Building Commission.

143B-58 through 143B-61.1. [Repealed.]

Part 4. North Carolina Historical Commission.

143B-62. North Carolina Historical Commission — creation, powers and duties.
143B-63. Historical Commission — members; selection; quorum; compensation.
143B-64. Historical Commission — officers.
143B-65. Historical Commission — regular and special meetings.

Part 5. Archaeological Advisory Committee.

143B-66. [Repealed.]

Part 6. Public Librarian Certification Commission.

143B-67. Public Librarian Certification Commission — creation, powers and duties.

Sec.

143B-68. Public Librarian Certification Commission — members; selection; quorum; compensation.
143B-69. Public Librarian Certification Commission — officers.
143B-70. Public Librarian Certification Commission — regular and special meetings.

Part 7. Tryon Palace Commission.

143B-71. Tryon Palace Commission — creation, powers and duties.
143B-72. Tryon Palace Commission — members; selection; quorum; compensation.

Part 8. U.S.S. North Carolina Battleship Commission.

143B-73. U.S.S. North Carolina Battleship Commission — creation, powers and duties.
143B-73.1. U.S.S. North Carolina Battleship Commission — duties.
143B-74. U.S.S. North Carolina Battleship Commission — members; selection; quorum; compensation.
143B-74.1. U.S.S. North Carolina Battleship Commission — funds.
143B-74.2. U.S.S. North Carolina Battleship Commission — employees.
143B-74.3. U.S.S. North Carolina Battleship Commission — employees not to have interest.

Part 9. Sir Walter Raleigh Commission.

143B-75 through 143B-78. [Repealed.]

Part 10. Executive Mansion Fine Arts Committee.

143B-79. Executive Mansion Fine Arts Committee — creation, powers and duties.
143B-80. Executive Mansion Fine Arts Committee — members; selection; quorum; compensation.
143B-80.1. Regular and special meetings.
143B-80.2 through 143B-80.4. [Reserved.]

Part 10A. State Capitol Preservation Act.

143B-80.5 through 143B-80.14. [Repealed.]

Part 11. American Revolution Bicentennial Committee.

143B-81, 143B-82. [Repealed.]

Part 12. North Carolina Awards Committee.

143B-83. North Carolina Awards Committee — creation, powers and duties.
143B-84. North Carolina Awards Committee — members; selection; quorum; compensation.

Part 13. America's Four Hundredth Anniversary Committee.

143B-85. America's Four Hundredth Anniversary Committee — creation, powers and duties.
143B-86. America's Four Hundredth Anniversary Committee — members; selection; quorum; compensation.

Part 14. North Carolina Arts Council.

143B-87. North Carolina Arts Council — creation, powers and duties.
143B-88. North Carolina Arts Council — members; selection; quorum; compensation.

Part 15. North Carolina State Art Society, Incorporated.

143B-89. North Carolina State Art Society, Incorporated.

Part 16. State Library Commission.

143B-90. State Library Commission — creation, powers and duties.
143B-91. State Library Commission — members; selection; quorum; compensation.

Part 17. Roanoke Island Historical Association.

143B-92. Roanoke Island Historical Association — creation, powers and duties.
143B-93. Roanoke Island Historical Association — status.

Part 18. North Carolina Symphony Society.

143B-94. North Carolina Symphony Society, Inc.

Part 19. Edenton Historical Commission.

143B-95. Edenton Historical Commission — creation, purposes and powers.
143B-96. Edenton Historical Commission — status.
143B-97. Edenton Historical Commission — reports.
143B-98. Edenton Historical Commission — members; selection; compensation; quorum.

Part 20. Historic Bath Commission.

143B-99. Historic Bath Commission — creation, powers and duties.
143B-100. Historic Bath Commission — status.

Sec.

143B-101. Historic Bath Commission — reports.

143B-102. Historic Bath Commission — members; selection; quorum; compensation.

Part 21. Historic Hillsborough Commission.

143B-103. Historic Hillsborough Commission — creation, powers and duties.

143B-104. Historic Hillsborough Commission — status.

143B-105. Historic Hillsborough Commission — reports.

143B-106. Historic Hillsborough Commission — members; selection; quorum; compensation.

Part 22. Historic Murfreesboro Commission.

143B-107. Historic Murfreesboro Commission — creation, powers and duties.

143B-108. Historic Murfreesboro Commission — status.

143B-109. Historic Murfreesboro Commission — reports.

143B-110. Historic Murfreesboro Commission — members; selection; quorum; compensation.

Part 23. John Motley Morehead Memorial Commission.

143B-111. John Motley Morehead Memorial Commission — creation, powers and duties.

143B-112. John Motley Morehead Memorial Commission — status.

143B-113. John Motley Morehead Memorial Commission — authorization for counties to assist.

143B-114. John Motley Morehead Memorial Commission — reports.

143B-115. John Motley Morehead Memorial Commission — members; selection; quorum; compensation.

143B-116 through 143B-120. [Reserved.]

Part 24. Grassroots Arts Program.

143B-121. Program established.

143B-122. Distribution of funds.

143B-123. Rules and procedures; standards for qualification for funds.

143B-124. Designation of organization as official distributing agent; duties.

143B-125. Disposition of funds for counties without organizations meeting Department standards.

Part 25. Historical Military Reenactment Groups.

143B-126. Voluntary registration; designation of names; registration symbol.

Sec.

143B-127. Contracts with registered groups.

Part 26. Advisory Committee on Abandoned Cemeteries.

143B-128. Advisory Committee on Abandoned Cemeteries; members; selections; compensation; terms; vacancy; duties.

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Part 2D. North Carolina Rural Redevelopment Authority.

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143B-437.45. (This part has a delayed repeal date. See notes.) Definitions.
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143B-437.81. North Carolina SBIR/STTR Matching Funds Program.
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Part 4. Credit Union Commission.

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Part 5. North Carolina Board of Science and Technology.

143B-440, 143B-441. [Recodified.]

Part 6. North Carolina Science and Technology Research Center.

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143B-443. Administration by Department of Commerce.
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143B-445. Applicability of Executive Budget Act.

Part 7. North Carolina National Park, Parkway and Forests Development Council.

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Part 8. Energy Division.

143B-448 through 143B-450.1. [Repealed.]

Part 9. Navigation and Pilotage Commissions.

143B-451. Navigation and pilotage commissions.

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143B-468. [Reserved.]

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143B-469 through 143B-469.3. [Repealed.]

Part 11A. North Carolina Hazardous Waste Treatment Commission.

143B-470 through 143B-470.6. [Repealed.]

Part 12. North Carolina Technological Development Authority.

Sec.
143B-471 through 143B-471.5. [Repealed.]

Part 13. Mutual Burial Associations.

143B-472, 143B-472.1. [Repealed.]
143B-472.2 through 143B-472.29. [Recodified.]

Part 14. Business Energy Improvement Program.

143B-472.30 through 143B-472.34. [Repealed.]

Part 15. Main Street Solutions.

143B-472.35. Establishment of fund; use of funds; application for grants; disbursal; repayment; inspections; rules; reports.
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Part 16. Information Technology Related State Government Functions.

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143B-472.68, 143B-472.69. [Reserved.]

Part 17. Electronic Procurement in Government.

143B-472.70. [Repealed.]
143B-472.71 through 143B-472.79. [Reserved.]

Part 18. North Carolina Board of Science and Technology.

143B-472.80. North Carolina Board of Science and Technology; creation; powers and duties.
143B-472.81. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.
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Part 19. Small Business Contractor Act. (Expired).

143B-472.85 through 143B-472.97. [Expired.]
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Part 20. Small Business Contractor Act.

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143B-472.102. Authority creation; powers.
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143B-472.107. Bonding assistance authorized.
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143B-472.111. Premiums and fees.
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Part 21. North Carolina Energy Assistance Act for Low-Income Persons.

143B-472.121. Legislative findings and purpose.
143B-472.122. Definitions.
143B-472.123. The Office of Economic Opportunity designated agency; powers and duties.

Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

143B-473. Department of Crime Control and Public Safety — creation.
143B-474. Department of Crime Control and Public Safety — duties.
143B-475. Department of Crime Control and Public Safety — functions.
143B-475.1. [Recodified.]
143B-475.2. Fees for services.
143B-476. Department of Crime Control and Public Safety — head; powers and duties as to emergencies and disasters; other powers and duties.

Part 2. Crime Control Division.

143B-477. Crime Control Division of the Department of Crime Control and Public Safety.

Part 3. Governor's Crime Commission.

143B-478. Governor's Crime Commission — creation; composition; terms; meetings, etc.
143B-479. Governor's Crime Commission — powers and duties.
143B-480. Adjunct committees of the Governor's Crime Commission — creation; purpose; powers and duties.

Part 3A. Assistance Program for Victims of Rape and Sex Offenses.

143B-480.1. Assistance Program for Victims of Rape and Sex Offenses.
143B-480.2. [Repealed.]
143B-480.3. Restitution; actions.

Part 4. State Fire Commission.

143B-481 through 143B-485. [Recodified.]
143B-486 through 143B-489. [Reserved.]

Part 5. Civil Air Patrol.

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143B-490. Civil Air Patrol Division — powers and duties.
143B-491. Personnel and benefits.
143B-492. State liability.
143B-493, 143B-494. [Reserved.]

Part 5A. North Carolina Center for Missing Persons.

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143B-496. Definitions.
143B-497. Control of the Center.
143B-498. Secretary to adopt rules.
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143B-499.1. Dissemination of missing persons data by law-enforcement agencies.
143B-499.2. Responsibilities of Center.
143B-499.3. Duty of individuals to notify Center and law-enforcement agency when missing person has been located.
143B-499.4. Release of information by Center.
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143B-499.6. Improper release of information; penalty.
143B-499.7. North Carolina AMBER Alert System established.
143B-499.8. North Carolina Silver Alert System established.

Part 6. Community Penalties Program.

143B-500 through 143B-507. [Recodified.]

Part 7. Law Enforcement Support Services Division.

143B-508. Law Enforcement Support Services Division established.

Part 8. Emergency Management Division.

143B-509. Division of Emergency Management of the Department of Crime Control and Public Safety.

Part 9. State Capitol Police Division.

143B-509.1. State Capitol Police Division — powers and duties.
143B-510. [Repealed.]

Article 12.

Department of Juvenile Justice and Delinquency Prevention.

Part 1. Creation of Department.

143B-511. Creation of the Department of Juvenile Justice and Delinquency Prevention.

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143B-512. Transfer of Office of Juvenile Justice authority to the Department of Juvenile Justice and Delinquency Prevention.
143B-513, 143B-514. [Reserved.]

Part 2. General Provisions.

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143B-516. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.
143B-517. Authority to contract with other entities.
143B-518. Authority to assist private nonprofit foundations.
143B-519. [Repealed.]
143B-520. Teen court programs.
143B-521 through 143B-524. [Reserved.]

Part 3. Juvenile Facilities.

143B-525. Juvenile facilities.
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143B-527. Compensation to juveniles in care.
143B-528. Visits and community activities.
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143B-531. Authority for implementation.
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Part 4. Juvenile Court Services.

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143B-535. Duties and powers of chief court counselors.
143B-536. Duties and powers of juvenile court counselors.
143B-537 through 143B-539. [Reserved.]

Part 5. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

143B-540. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.
143B-541, 143B-542. [Reserved.]

Part 6. Juvenile Crime Prevention Councils.

143B-543. Legislative intent.
143B-544. Creation; method of appointment; membership; chair and vice-chair.
143B-545. Terms of appointment.
143B-546. Vacancies; removal.
143B-547. Meetings; quorum.
143B-548. Compensation of members.
143B-549. Powers and duties.
143B-550. Funding for programs.
143B-551 through 143B-555. [Reserved.]

Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

143B-556, 143B-557. [Repealed.]

ARTICLE 1.

General Provisions.

Part 1. In General.

§ 143B-1. Short title.

This Chapter shall be known and may be cited as the "Executive Organization Act of 1973." (1973, c. 476, s. 1.)

CASE NOTES

Cited in Tice v. DOT, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

§ 143B-2. Interim applicability of the Executive Organization Act of 1973.

The Executive Organization Act of 1973 shall be applicable only to the following named departments:

(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety

(5) Department of Correction
(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration
(9) Department of Commerce
(10) Department of Juvenile Justice and Delinquency Prevention. (1973, c. 476, s. 2; c. 620, s. 9; c. 1262, ss. 10, 86; 1975, c. 716, s. 5; c. 879, s. 46; 1977, c. 70, s. 22; c. 198, s. 21; c. 771, s. 4; 1989, c. 727, s. 218(121); c. 751, s. 7(18); 1991 (Reg. Sess., 1992), c. 959, s. 37; 1997-443, ss. 11A.118(a), 11A.119(a); 2000-137, s. 4(ll).)

Editor's Note. — Session Laws 2009-216, s. 3(i), provides: "Report. — The Department shall report annually to the Commission regarding the implementation of adaptive management programs to control nutrient loading from existing development in the Jordan watershed."

Session Laws 2009-484, s. 6(b) amends Session Laws 2009-216, s. 3(c) through (i), to provide for the expiration of those provisions on the date that rules adopted pursuant to Section 3(j) of Session Laws 2009-216 become effective.

§ 143B-3. Definitions.

As used in the Executive Organization Act of 1973, except where the context clearly requires otherwise, the words and expressions defined in this section shall be held to have the meanings here given to them.

(1) Agency: whenever the term "agency" is used it shall mean and include, as the context may require, an existing department, institution, commission, committee, board, division, bureau, officer or official.
(2) Board: a collective body which assists the head of a principal department or his designee in the development of major programs including the tender of advice on departmental priorities.
(3) Commission: a collective body which adopts rules and regulations in a quasi-legislative manner and which acts in a quasi-judicial capacity in rendering findings or decisions involving differing interests.
(4) Committee: a collective body which either advises the head of a principal department or his designee or advises a commission in detailed technical areas.
(5) Council: a collective body which advises the head of a principal department or his designee as representative of citizen advice in specific areas of interests.
(6) Division: the principal subunit of a principal State department.
(7) Head of department: head of one of the principal State departments.
(8) Higher education: State senior institutions of higher learning.
(9) Principal State department: one of the departments created by the General Assembly in compliance with Article III, Sec. 11, of the Constitution of North Carolina. (1973, c. 476, s. 3.)

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Division. — There was no evidence in the record to show that the Internal Audit Section of the Department of Transportation functioned as a "principal subunit" so as to qualify as a division under this section. North Carolina DOT v. Hodge, 124 N.C. App. 515, 478 S.E.2d 30 (1996), rev'd on other grounds, 347 N.C. 602, 499 S.E.2d 187 (1998).

The Highway Beautification Program did not function as a "subunit" of a principal state department, such as the Department of Transportation, as specified in the definition of "division" under subdivision (6). Powell v. North Carolina DOT, 124 N.C. App. 542, 478 S.E.2d 28 (1996), rev'd on other grounds, 347 N.C. 614, 499 S.E.2d 180 (1998).

§ 143B-4. Policy-making authority and administrative powers of Governor; delegation.

The Governor, in accordance with Article III of the Constitution of North Carolina, shall be the Chief Executive Officer of the State. The Governor shall be responsible for formulating and administering the policies of the executive branch of the State government. Where a conflict arises in connection with the administration of the policies of the executive branch of the State government with respect to the reorganization of State government, the conflict shall be resolved by the Governor, and the decision of the Governor shall be final. (1973, c. 476, s. 4.)

§ 143B-5. Governor; continuation of powers and duties.

All powers, duties, and functions vested by law in the Governor or in the Office of Governor are continued except as otherwise provided by the Executive Organization Act of 1973.

The immediate staff of the Governor shall not be subject to the State Personnel Act. (1973, c. 476, s. 5.)

§ 143B-6. Principal departments.

In addition to the principal departments enumerated in the Executive Organization Act of 1971, all executive and administrative powers, duties, and functions not including those of the General Assembly and its agencies, the General Court of Justice and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies, are vested in the following principal departments:

(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction
(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration
(9) Department of Commerce
(10) Community Colleges System Office
(11) Department of Juvenile Justice and Delinquency Prevention. (1973, c. 476, s. 6; c. 620, s. 9; c. 1262, ss. 10, 86; 1975, c. 716, s. 5; c. 879, s. 46; 1977, c. 70, s. 23; c. 198, s. 22; c. 771, s. 4; 1979, 2nd Sess., c. 1130, s. 3; 1989, c. 727, s. 218(122); c. 751, s. 7(19); 1991 (Reg. Sess., 1992), c. 959, s. 38; 1997-443, ss. 11A.118(a), 11A.119(a); 1999-84, s. 23; 2000-137, s. 4(mm).)

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Cited in Shell v. Wall, 808 F. Supp. 481 (W.D.N.C. 1992).

§ 143B-7. Continuation of functions.

Each principal State department shall be considered a continuation of the former agencies to whose power it has succeeded for the purpose of succession to all rights, powers, duties, and obligations of the former agency. Where a former agency is referred to by law, contract, or other document, that reference shall apply to the principal State department now exercising the functions of the former agency. (1973, c. 476, s. 7.)

§ 143B-8. Unassigned functions.

All functions, duties, and responsibilities established by law that are not specifically assigned to any principal State department may be assigned by the Governor to that department which, in accordance with the organization of State government, can most appropriately and effectively perform those functions, duties, and responsibilities. This provision shall not apply to professional and occupational licensing boards or to higher education. (1973, c. 476, s. 8.)

§ 143B-9. Appointment of officers and employees.

The head of each principal State department, except those departments headed by popularly elected officers, shall be appointed by the Governor and serve at his pleasure.

The salary of the head of each of the principal State departments and of elected officials shall be as provided by law.

The head of a principal State department shall appoint a chief deputy or chief assistant, and such chief deputy or chief assistant shall not be subject to the State Personnel Act. The salary of such chief deputy or chief assistant shall, upon the recommendation of the Governor, be set by the General Assembly. Unless otherwise provided for in the Executive Organization Act of 1973, and subject to the provisions of the Personnel Act, the head of each principal State department shall designate the administrative head of each transferred agency and all employees of each division, section, or other unit of the principal State department. (1973, c. 476, s. 9; 1977, c. 802, s. 42.20; 1983, c. 717, s. 51.)

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The provisions of § 126-5(b) control over the provisions of this section. See opinion of the Attorney General to Mr. G.C. Davis, Jr., Director, Position Analysis Division, Office of State Personnel, 46 N.C.A.G. 148 (1976).

§ 143B-10. Powers and duties of heads of principal departments.

(a) Assignment of Functions. — Except as otherwise provided by this Chapter, the head of each principal State department may assign or reassign any function vested in him or in his department to any subordinate officer or employee of his department.

(b) Reorganization by Department Heads. — With the approval of the Governor, each head of a principal State department may establish or abolish within his department any division. Each head of a principal State department may establish or abolish within his department any other administrative unit to achieve economy and efficiency and in accordance with sound administrative principles, practices, and procedures except as otherwise provided by law. When any such act of the head of the principal State department affects existing law the provisions of Article III, Sec. 5(10) of the Constitution of North Carolina shall be followed.

Each Department Head shall report all reorganizations under this subsection to the President of the Senate, the Speaker of the House of Representatives, the Chairmen of the Appropriations Committees in the Senate and the House of Representatives, and the Fiscal Research Division of the Legislative Services Office, within 30 days after the reorganization if the General Assembly is in session, otherwise to the Joint Legislative Committee on Governmental Operations and the Fiscal Research Division of the Legislative Services Office, within 30 days after the reorganization. The report shall include the rationale for the reorganization and any increased efficiency in operations expected from the reorganization.

(c) Department Staffs. — The head of each principal State department may establish necessary subordinate positions within his department, make appointments to those positions, and remove persons appointed to those positions, all within the limitations of appropriations and subject to the State Personnel Act. All employees within a principal State department shall be under the supervision, direction, and control of the head of that department. The head of each principal State department may establish or abolish positions, transfer officers and employees between positions, and change the duties, titles, and compensation of existing offices and positions as he deems necessary for the efficient functioning of the department, subject to the State Personnel Act and the limitations of available appropriations. For the purposes of the foregoing provisions, a member of a board, commission, council, committee, or other citizen group shall not be considered an "employee within a principal department."

(d) Appointment of Committees or Councils. — The head of each principal department may create and appoint committees or councils to consult with and advise the department. The General Assembly declares its policy that insofar as feasible, such committees or councils shall consist of no more than 12 members, with not more than one from each congressional district. If any department head desires to vary this policy, he must make a request in writing to the Governor, stating the reasons for the request. The Governor may approve the request, but may only do so in writing. Copies of the request and approval shall be transmitted to the Joint Legislative Commission on Governmental Operations. The members of any committee or council created by the head of a principal department shall serve at the pleasure of the head of the principal department and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with the provisions of G.S. 138-5, when approved in advance by the Director of the Budget. Per diem, travel, and subsistence payments to members of the committees or councils created in connection with federal programs shall be paid from federal funds unless otherwise provided by law.

An annual report listing these committees or councils, the total membership on each, the cost in the last 12 months and the source of funding, and the title of the person who made the appointments shall be made to the Joint Legislative Commission on Governmental Operations by March 31 of each year.

(e) Departmental Management Functions. — All management functions of a principal State department shall be performed by or under the direction and supervision of the head of that principal State department. Management functions shall include planning, organizing, staffing, directing, coordinating, reporting, and budgeting.

(f) Custody of Records. — The head of a principal State department shall have legal custody of all public records as defined in G.S. 132-1.

(g) Budget Preparation. — The head of a principal State department shall be responsible for the preparation of and the presentation of the department budget request which shall include all funds requested and all receipts expected for all elements of the department.

(h) Plans and Reports. — Each principal State department shall submit to the Governor an annual plan of work for the next fiscal year prior to the beginning of that fiscal year. Each principal State department shall submit to the Governor an annual report covering programs and activities for each fiscal year. These plans of work and annual reports shall be made available to the General Assembly. These documents will serve as the base for the development of budgets for each principal State department of State government to be submitted to the Governor.

(i) Reports to Governor; Public Hearings. — Each head of a principal State department shall develop and report to the Governor legislative, budgetary, and administrative programs to accomplish comprehensive, long-range coordinated planning and policy formulation in the work of his department. To this end, the head of the department may hold public hearings, consult with and use the services of other State agencies, employ staff and consultants, and appoint advisory and technical committees to assist in the work.

(j) Departmental Rules and Policies. — The head of each principal State department and the Director of the Office of State Personnel may adopt:

(1) Rules consistent with law for the custody, use, and preservation of any public records, as defined in G.S. 132-1, which pertain to department business;

(2) Rules, approved by the Governor, to govern the management of the department, which shall include the functions of planning, organizing, staffing, directing, coordinating, reporting, budgeting, and budget preparation which affect private rights or procedures available to the public;

(3) Policies, consistent with law and with rules established by the Governor and with rules of the State Personnel Commission, which reflect internal management procedures within the department. These may include policies governing the conduct of employees of the department, the distribution and performance of business and internal management procedures which do not affect private rights or procedures available to the public and which are listed in (e) of this section. Policies establishing qualifications for employment shall be adopted and filed pursuant to Chapter 150B of the General Statutes; all other policies under this subdivision shall not be adopted or filed pursuant to Chapter 150B of the General Statutes.

Rules adopted under (1) and (2) of this subsection shall be subject to the provisions of Chapter 150B of the General Statutes.

This subsection shall not be construed as a legislative grant of authority to an agency to make and promulgate rules concerning any policies and procedures other than as set forth herein. (1973, c. 476, s. 10; c. 1416, ss. 1, 2; 1977, 2nd Sess., c. 1219, s. 46; 1983, c. 76, ss. 1, 2; c. 641, s. 8; c. 717, s. 78; 1985 (Reg. Sess., 1986), c. 955, ss. 97, 98; 1987, c. 738, s. 147; c. 827, s. 1; 1991 (Reg. Sess., 1992), c. 1038, s. 15; 2006-203, s. 101.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 743, s. 25, provides: "References in the Session Laws to any division of the Department of Environment, Health, and Natural Resources [now the Department of Environment and Natural Resources] that is subdivided or renamed by this act shall be deemed to refer to the successor division. Every Session Law that refers to any division of the Department of Environment, Health, and Natural Resources [now the Department of Environment and Natural Resources] to which this act applies or that relates to any power, duty, function, or obligation of any of those divisions and that continues in effect after this act becomes effective shall be construed so as to be consistent with this act. The repeal by this act of language authorizing the Secretary of Environment, Health, and Natural Resources [now the Secretary of Environment and Natural Resources] to delegate any power, duty, or function is intended to repeal redundant language and does not alter the power of the Secretary of Environment, Health, and Natural Resources [now the Secretary of Environment and Natural Resources] to assign or reassign any function vested in the Secretary or the Department of Environment, Health, and Natural Resources [now the Secretary of Environment and Natural Resources] under G.S. 143B-10(a).

This act shall not be construed to affect any pending action by or obligation due to any division of the Department of Environment, Health, and Natural Resources [now the Department of Environment and Natural Resources] that is subdivided or renamed by this act."

Session Laws 1997-443, s. 11A.129, as amended by Session Laws 1998-76, s. 3, provides that the Secretary of Health and Human Services may reorganize the Department of Health and Human Services in accordance with this section and shall report as required, and that by February 1, 1999, the Department shall report to the Joint Legislative Commission on Governmental Operations or to the General Assembly on incorporating health functions and agencies into the Department, on additional changes, on proposed changes in boards and commissions, and on rule changes.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 101, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (d), deleted "to the Advisory Budget Commission and" following "shall be transmitted" in the fourth sentence of the first paragraph; deleted "the Advisory Budget Commission and" following "shall be made to" in the second paragraph; and deleted the last paragraph, which read: "Prior to taking any action under this subsection, the Director of the Budget may consult with the Advisory Budget Commission."

Legal Periodicals. — For note on the public's access to public records, see 60 N.C.L. Rev. 853 (1982).

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Cited in North Carolina Dep't of Justice v. Eaker, 90 N.C. App. 30, 367 S.E.2d 392 (1988).

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Delegation of Duties by State Council Members. — Those members of the Council of State who have statutory authority to delegate duties may, in conformity with such statutes, attend and vote at meetings of Boards of which they are ex officio members through delegates or designated subordinates. The remaining members of the Council of State may make similar delegations or designations where, in the member's judgment, other duties necessitate his absence and the statute creating his ex officio membership does not express or clearly imply an intent of the General Assembly that the powers of such membership be exercised personally. See opinion of Attorney General to the honorable James E. Long, Commissioner of Insurance, 55 N.C.A.G. 116 (1986).

Salary Schedules. — The Secretary of the Department of Human Resources and the Secretary of the Department of Correction have authority to set the salary schedules for persons employed by their departments in teaching and related educational positions exempt from the State Personnel Act by G.S. 126-5(c3). See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 57 N.C.A.G. 13 (1987).

The salary schedules established by the Department of Human Resources and the Department of Correction for educational personnel exempt from the State Personnel Act must correspond to the salary schedules established by the State Board of Education for public school employees except in cases where the duties of employees do not correspond to the duties of public school employee positions. In such cases the salary schedule should conform as closely as possible to the public school salary schedules. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 57 N.C.A.G. 13 (1987).

§ 143B-11. Subunit nomenclature.

(a) The principal subunit of a department is a division. Each division shall be headed by a director.

(b) The principal subunit of a division is a section. Each section shall be headed by a chief.

(c) If further subdivision is necessary, sections may be divided into subunits which shall be known as branches and which shall be headed by heads, and branches may be divided into subunits which shall be known as units and which shall be headed by supervisors. (1973, c. 476, s. 11.)

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The Securities Division is an "occupational licensing agency" within the meaning of G.S. 150B-2(4b). See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (1988).

§ 143B-12. Internal organization of departments; allocation and reallocation of duties and functions; limitations.

(a) The Governor shall cause the administrative organization of each department to be examined periodically with a view to promoting economy, efficiency, and effectiveness. The Governor may assign and reassign the duties and functions of the executive branch among the principal State departments except as otherwise expressly provided by statute. When the changes affect existing law, they must be submitted to the General Assembly in accordance with Article III, Sec. 5(10) of the Constitution of North Carolina.

(b) The Governor shall report all transfers of departmental functions under this section to the President of the Senate, the Speaker of the House of Representatives, the Chairmen of the Appropriations Committees in the Senate and the House of Representatives, and the Fiscal Research Division of the Legislative Services Office, within 30 days after the transfer if the General Assembly is in session, otherwise to the Joint Legislative Committee on Governmental Operations and the Fiscal Research Division of the Legislative Services Office, within 30 days after the transfer. The report shall include the rationale for the transfer and the increased efficiency in operations expected from the transfer. (1973, c. 476, s. 12; 1985, c. 479, s. 164.)

§ 143B-13. Appointment, qualifications, terms, and removal of members of commissions.

(a) Each member of a commission created by or under the authority of the Executive Organization Act of 1973 shall be a resident of the State of North Carolina, unless otherwise specifically authorized by law.

Unless more restrictive qualifications are provided in the Executive Organization Act of 1973, the Governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field for which appointed, and with a view to providing diversity of interest and points of view in the membership.

The balance of unexpired terms of existing commission members shall be served in accordance with their most recent appointment.

A vacancy occurring during a term of office is filled in the same manner as the original appointment is made and for the balance of the unexpired term, unless otherwise provided by law or by the Constitution of North Carolina.

(b) A commission membership becomes vacant on the happening of any of the following events before the expiration of the term: (i) the death of the incumbent, (ii) his incompetence as determined by final judgment or final order of a court of competent jurisdiction, (iii) his resignation, (iv) his removal from office, (v) his ceasing to be a resident of the State, (vi) his ceasing to discharge the duties of his office over a period of three consecutive months except when prevented by sickness, (vii) his conviction of a felony or of any offense involving a violation of his official duties, (viii) his refusal or neglect to take an oath within the time prescribed, (ix) the decision of a court of competent jurisdiction declaring void his appointment, and (x) his commitment as a substance abuser under Part 8 of Article 5 of Chapter 122C of the General Statutes; but in that event, the office shall not be considered vacant until the order of commitment has become final.

(c) No member of the State commission may use his position to influence any election or the political activity of any person, and any such member who violates this subsection may be removed from such office by the Governor, if such member was appointed by the Governor, or by the appointing authority, if such member was not appointed by the Governor. Nothing herein shall prohibit such member from publishing the fact of his membership in his own campaign for public office.

(d) In addition to the foregoing, any member of a commission may be removed from office by the Governor for misfeasance, malfeasance, and nonfeasance.

(e) Any appointment by the Governor to a commission, board, council or committee made subsequent to January 5, 1973, and prior to July 1, 1973, for a term that would extend for a period inconsistent with the staggered term provisions of the Executive Organization Act of 1973, may be reduced by the Governor to conform to those staggered term provisions.

(f) Whenever a statute requires that the Governor appoint at least one person from each congressional district to a board or commission, and due to congressional redistricting, two or more members of the board or commission shall reside in the same congressional district, then such members shall continue to serve as members of the board or commission for a period equal to the remainder of their unexpired terms, provided that upon the expiration of said term or terms the Governor shall fill such vacancy or vacancies in such a manner as to insure that as expeditiously as possible there is one member of the board or commission who is a resident of each congressional district in the State.

(f1) Whenever a statute requires that the Governor or any board, commission, council, person, or agency (whether or not that board, commission, council, or agency was established under this Chapter) appoint one or more persons from each congressional district to a board, commission, or council, and due to congressional redistricting, a person no longer resides in the district the member has been appointed to represent, such member or members shall, if otherwise qualified, continue to serve as members of the board or commission for the remainder of their unexpired terms, and shall be considered to meet the residency requirement.

(f2) Whenever a statute requires that the Governor or any board, commission, council, person, or agency (whether or not that board, commission, council, or agency was established under this Chapter) appoint one or more persons from each congressional district to a board, commission, or council, and the statute fails to provide for a procedure to fill the extra position due to the addition of an additional congressional district, then the appointing authority shall appoint a person for a term commencing on January 3rd of the year in which the addition of the additional congressional district becomes effective. Unless the statute provides for persons to serve at the pleasure of the appointing authority, the appointing authority shall set the length of the initial term of office. (1973, c. 476, s. 13; 1975, c. 879, s. 47; 1981, c. 520, s. 1; 1981 (Reg. Sess., 1982), c. 1191, s. 5; 1985, c. 589, ss. 45, 46; 1991 (Reg. Sess., 1992), c. 1038, s. 16.)

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

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Applicability of Administrative Procedure Act to Removals. — Subsection (d) of this section does not refer to the Administrative Procedure Act. Absent a specific legislative enactment requiring removal by the Governor to be subject to the Administrative Procedure Act, the act is not applicable to removals by the Governor. James v. Hunt, 43 N.C. App. 109, 258 S.E.2d 481 (1979), cert. denied, 299 N.C. 121, 262 S.E.2d 6 (1980).

§ 143B-14. Administrative services to commissions.

(a) The head of the principal State department to which a commission has been assigned is responsible for the provision of all administrative services to the commission.

(b) Except as otherwise provided by law, the powers, duties, and functions of a commission are not subject to the approval, review, or control of the head of the department or of the Governor.

(c) The Governor may assign to an appropriate commission created by the Executive Organization Act of 1973 duties of a quasi-legislative and quasi-judicial nature existing in the executive branch of State government which have not been assigned by this Chapter to any other commission. All such assignment of duties by the Governor to a commission shall be made in accordance with Article III, Sec. 5(10) of the Constitution of North Carolina.

(d) All management functions of a commission shall be performed by the head of the principal State department. Management functions shall include planning, organizing, staffing, directing, coordinating, reporting, and budgeting. (1973, c. 476, s. 14; c. 1416, s. 3; 1979, 2nd Sess., c. 1137, s. 41.2; 1981, c. 688, s. 20; 1983, c. 927, s. 11; 1987, c. 827, s. 221; 1991, c. 418, s. 9.)

§ 143B-15. Compensation of members of commissions.

The salary of members of full-time commissions shall be set by the General Assembly upon recommendation of the Governor to be submitted as a part of his budget requests. (1973, c. 476, s. 15.)

§ 143B-16. Appointment and removal of members of boards, councils and committees.

Unless more restrictive qualifications are provided in this Chapter, the Governor shall appoint each member of a board, council, or committee on the basis of his interest in public affairs, good judgment, knowledge and ability in the field for which appointed, and with a view to providing diversity of interest and points of view in the membership. Unless other conditions are provided in the Executive Organization Act of 1973, any member of a board, council, or committee may be removed from office by the Governor for misfeasance, malfeasance, or nonfeasance.

No member of a board, council, or committee may use his position to influence any election or the political activity of any person, and any such member who violates this paragraph may be removed from such office by the Governor, if such member was appointed by the Governor, or by the appointing authority, if such member was not appointed by the Governor. Nothing herein shall prohibit such member from publishing the fact of his membership in his own campaign for public office. (1973, c. 476, s. 16; 1981, c. 520, s. 2.)

§ 143B-17. Commission investigations and orders.

Unless otherwise provided for in the Executive Organization Act of 1973, any commission created by the Executive Organization Act of 1973 may order an investigation into areas of concern over which it has rule-making authority, and the head of the department required to give staff support to such commission shall render such reports and information as the commission may require. In default of the production of information by the head of the principal department or any employee or agent thereof, the commission may seek the aid of the Wake County Superior Court to require the production of information as hereinafter provided.

In proceedings before any commission or any hearing officer or member of the commission so authorized by the commission, if any person refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined or refuses to obey any lawful order of a commission contained in its decision rendered after hearing, the chairman of the commission may apply to the Superior Court of Wake County or to the superior court of the county where the proceedings are being held for an order directing that person to take the requisite action. Should any person willfully fail to comply with an order so issued, the court shall punish him as for contempt. (1973, c. 476, s. 17.)

§ 143B-18: Repealed by Session Laws 1991, c. 418, s. 10.

Cross References. — As to an agency's exercise of its authority to adopt rules, see Article 2A of Chapter 150B, G.S. 150B-18 et seq.

§ 143B-19. Pending actions and proceedings.

No action or proceeding pending at the time the Executive Organization Act of 1973 takes effect and brought by or against any State agency whose functions, powers, and duties are transferred by the Executive Organization Act of 1973 to a principal State department shall be affected by any provision of the Executive Organization Act of 1973, but the same may be prosecuted or defended in the name of the head of the principal State department. In all such actions and proceedings, the principal State department to which the functions, powers, and duties of a State agency have been transferred shall be substituted as a party upon appropriate application to the courts. (1973, c. 476, s. 19.)

§ 143B-20: Repealed by Session Laws 1991, c. 418, s. 10.

Cross References. — As to an agency's exercise of its authority to adopt rules, see Article 2A of Chapter 150B, G.S. 150B-18 et seq.

§ 143B-21. Affirmation of prior acts of abolished agencies.

The abolition of certain agencies by the Executive Organization Act of 1973 should not be construed as invalidating any lawful prior act of such agency. (1973, c. 476, s. 21.)

§ 143B-22. Terms occurring in laws, contracts and other documents.

Any reference or designation in any statute, contract, or other document pertaining to functions, powers, obligations, and duties of a State agency assigned by the Executive Organization Act of 1973 to a principal State department shall be deemed to refer to the principal State department or the head of the principal State department, as may be appropriate. (1973, c. 476, s. 22.)

§ 143B-23. Completion of unfinished business.

Any business or other matter undertaken or commenced by any State agency or the commissioners or directors thereof, pertaining to or connected with the functions, powers, obligations, and duties hereby transferred to a principal State department, and pending on July 1, 1973, may be conducted and completed by the principal State department in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the State agency or commissioners and directors thereof. (1973, c. 476, s. 23.)

§ 143B-24. Cooperative agreements.

Except as otherwise provided by law, each principal State department may, with the approval of the Department of Administration, enter into cooperative agreements with the federal government, any state government, any agency of the State government, any local government of the State, jointly with any two or more, or severally, in carrying out its functions. (1973, c. 476, s. 24.)

§ 143B-25. Agencies not enumerated.

Any agency not enumerated in the Executive Organization Act of 1973 but established or created by the General Assembly shall continue to exercise all its powers, duties, and functions subject to the provisions of Chapter 143A of the General Statutes of the State of North Carolina. (1973, c. 476, s. 25.)

§ 143B-26. Constitutional references.

All references to the Constitution of North Carolina in the Executive Organization Act of 1973 refer to the Constitution of North Carolina as effective July 1, 1973. (1973, c. 476, s. 26.)

§ 143B-27: Repealed by Session Laws 1983, c. 717, s. 79.

§ 143B-28. Goals of continuing reorganization.

Structural reorganization of State government should be a continuing process, accomplished through careful executive and legislative appraisal of the placement of proposed new programs and coordination of existing programs in response to changing emphases in public needs and should be consistent with the following goals:

(1) The organization of State government should assure its responsiveness to popular control. It is the goal of reorganization to improve the administrative capability of the executive to carry out these policies.

(2) The organization of State government should aid communication between citizens and government. It is the goal of reorganization through coordination of related programs in function-oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(3) The organization of State government should assure efficient and effective administration of the policies established by the General Assembly. It is the goal of reorganization to promote efficiency and effectiveness by improving the management and coordination of State services and by eliminating ineffective, overstaffed, obsolete or overlapping activities. (1973, c. 476, s. 28.)

§ 143B-29: Reserved for future codification purposes.

Part 2. Governor's Administrative Rules Review Commission.

§§ 143B-29.1 through 143B-29.5: Repealed by Session Laws 1985, c. 746, s. 7.

Part 3. Rules Review Commission.

§ 143B-30: Repealed by Session Laws 1991, c. 418, s. 5.

Cross References. — As to an agency's exercise of its authority to adopt rules, see Article 2A of Chapter 150B, G.S. 150B-18 et seq.

§ 143B-30.1. Rules Review Commission created.

(a) The Rules Review Commission is created. The Commission shall consist of 10 members to be appointed by the General Assembly, five upon the recommendation of the President Pro Tempore of the Senate, and five upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms.

(b) In 1990, two of the appointments made by the General Assembly upon the recommendation of the President of the Senate shall expire June 30, 1991, and two shall expire June 30, 1992. In 1990, two of the appointments made by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall expire June 30, 1992, and two shall expire June 30, 1993. Subsequent terms shall be for two years.

(c) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission, and he shall designate the times and places at which the Commission shall meet. The Commission shall meet at least once a month. A quorum of the Commission shall consist of six members of the Commission.

(d) Members of the Commission who are not officers or employees of the State shall receive compensation of two hundred dollars ($200.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

(e) The Chief Administrative Law Judge, Office of Administrative Hearings, shall assign the staff and designate the Director of the Commission in accordance with G.S. 7A-760.

(f) The Commission shall prescribe procedures and forms to be used in submitting rules to the Commission for review. The Commission may have computer access to the North Carolina Administrative Code to enable the Commission and its staff to view and copy rules in the Code. (1985 (Reg. Sess., 1986), c. 1028, s. 32; 1987 (Reg. Sess., 1988), c. 1111, s. 2; 1989, c. 35, s. 2; 1989 (Reg. Sess., 1990), c. 1038, s. 18; 1991, c. 418, s. 11; 1991 (Reg. Sess., 1992), c. 1030, s. 43; 1995, c. 490, s. 43; 1997-495, s. 90(a), (b); 2004-124, s. 22A.1(b); 2006-66, s. 18.2(f); 2006-221, s. 20; 2009-451, s. 21A.2; 2009-575, s. 19.)

Editor's Note. — Session Laws 2004-124, s. 22A.1.(a), provides: "All personnel and equipment presently assigned to the Rules Review Commission for the purpose of carrying out Article 2A of Chapter 150B of the General Statutes, are transferred to the Office of Administrative Hearings by a Type I transfer as defined by G.S. 143A-6(a). The Chief Administrative Law Judge shall be responsible for the hiring of the Director and other staff of the Rules Review Commission."

Session Laws 2009-451, s. 21A.2, as originally written, would have amended subsection (d) of G.S. 143B-30.1, by substituting "two hundred dollars ($200.00)" for "one hundred fifty dollars ($150.00)" in the first sentence of the subsection, effective July 1, 2009. However, Session Laws 2009-451, s. 21A.2 was subsequently amended by Session Laws 2009-575, s. 19, effective July 1, 2009, and now provides: "Notwithstanding G.S 143B-30.1(d), for fiscal year 2010-2011, members of the Rules Review Commission who are not officers or employees of the State shall receive compensation of one hundred fifty dollars ($150.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

OPINIONS OF ATTORNEY GENERAL

Power to Delay Effective Date of Agency Rules Probably Violates This Section. — An act vesting in the Administrative Rules Review Commission (ARRC), a commission appointed by the General Assembly, the power to delay indefinitely the effective date of duly-adopted agency rules which it deems in excess of statutory authority would likely be held to violate this section by vesting the ARRC with judicial powers reserved to the court and with supreme legislative powers reserved to the General Assembly. See opinion of Attorney General to Henson P. Barnes, President Pro Tempore, Senate, — N.C.A.G. — (February 25, 1991).

§ 143B-30.2. Purpose of Commission.

The Rules Review Commission reviews administrative rules in accordance with Chapter 150B of the General Statutes. (1985 (Reg. Sess., 1986), c. 1028, s. 32; 1987, c. 285, ss. 1-5; 1991, c. 418, s. 12.)

Cross References. — As to an agency's exercise of its authority to adopt rules, see Article 2A of Chapter 150B, G.S. 150B-18 et seq.

OPINIONS OF ATTORNEY GENERAL

Delegation of Power to Delay Effective Date of Agency Rules Probably Violates This Section. — An act vesting in the Administrative Rules Review Commission (ARRC), a commission appointed by the General Assembly, the power to delay indefinitely the effective date of duly adopted agency rules which it deems in excess of statutory authority would likely be held to violate this section by vesting the ARRC with judicial powers reserved to the court and with supreme legislative powers reserved to the General Assembly. See opinion of

Attorney General to Henson P. Barnes, President Pro Tempore, Senate, 60 N.C.A.G. 70 (1991).

§ 143B-30.3: Repealed by Session Laws 1991, c. 418, s. 5.

Cross References. — As to an agency's exercise of its authority to adopt rules, see Article 2A of Chapter 150B, G.S. 150B-18 et seq.

§ 143B-30.4. Evidence.

Evidence of the Commission's failure to object to and delay the filing of a rule or its part shall be inadmissible in all civil or criminal trials or other proceedings before courts, administrative agencies, or other tribunals. (1985 (Reg. Sess., 1986), c. 1028, s. 32.)

§§ 143B-31 through 143B-48: Reserved for future codification.

ARTICLE 2.

Department of Cultural Resources.

Part 1. General Provisions.

§ 143B-49. Department of Cultural Resources — creation, powers and duties.

There is hereby created a department to be known as the "Department of Cultural Resources," with the organization, duties, functions, and powers defined in the Executive Organization Act of 1973. (1973, c. 476, s. 29; 2002-180, s. 3.2.)

Editor's Note. — Session Laws 2000-138, s. 17.1, as amended by Session Laws 2002-180, ss. 3.1 to 3.3, Session Laws 2004-124, ss. 41.1 to 41.5, and Session Laws 2004-203, s. 66, provides: "(a) There is hereby established the 1898 Wilmington Race Riot Commission. The Commission shall be located within the Department of Cultural Resources.

"(b) The purpose of the Commission shall be to develop a historical record of the 1898 Wilmington Race Riot. In developing such a record, the Commission shall gather information, including oral testimony from descendants of those affected by the riot or others, examine documents and writings, and otherwise take such actions as may be necessary or proper inaccurately identifying information having historical significance to the 1898 Wilmington Race Riot, including the economic impact of the riot on African-Americans in this State.

"(c) The Commission shall consist of 13 members, each of whom shall serve a five-year term. Commission members shall be appointed on or before September 1, 2000, as follows:

"(1) The President Pro Tempore of the Senate shall appoint three members.

"(2) The Speaker of the House of Representatives shall appoint three members.

"(3) The Governor shall appoint three public members, one of whom shall be a historian.

"(4) The Mayor and City Council of the City of Wilmington shall appoint two members.

"(5) The New Hanover County Commissioners shall appoint two members.

"The Commission shall terminate on December 31, 2005.

"(d) A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms in seats appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

"(e) The Commission may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. Members serve at the pleasure of the appointing authority. A member subject to disciplinary proceedings shall be disqualified from participating in the official business of the Commission until the charges have been resolved.

"(f) Members of the Commission may receive per diem or reimbursement for travel or subsistence. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the per diem of the Commission.

"(g) The Commission's officers shall consist of two cochairs, a vice-chair, and other officers deemed necessary by the Commission to carry out the purposes of this Article. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall appoint the cochairs of the Commission. All other officers shall be elected by the Commission. All officers shall serve for five-year terms and shall serve until their successors are elected and qualified.

"(h) The Commission shall meet at least quarterly to conduct business as authorized in subsection (b) of this section. A majority of Commission members shall constitute a quorum.

"(i) The Department of Cultural Resources shall provide necessary clerical and administrative support services to the Commission.

"(j) The Commission may submit to the General Assembly an interim report of its findings and recommendations. The Commission shall submit to the General Assembly a final report of its findings and recommendations no later than December 31, 2005. The final report may include suggestions for a permanent marker or memorial of the riot and whether to designate the event with a historic site."

Session Laws 2000-138, s. 17.2 directs the Department of Cultural Resources to support the activities of the 1898 Wilmington Race Riot Commission.

§ 143B-50. Duties of the Department.

It shall be the duty of the Department to provide the necessary management, development of policy and establishment and enforcement of standards for the furtherance of resources, services and programs involving the arts and the historical and cultural aspects of the lives of the citizens of North Carolina. (1973, c. 476, s. 30.)

§ 143B-51. Functions of the Department.

(a) The functions of the Department of Cultural Resources shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all executive functions of the State in relation to the development and preservation of libraries, historical records, sites and property, and of an appreciation of art and music and further including those prescribed powers, duties, and functions enumerated in Article 17 of Chapter 143A of the General Statutes of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 17 of Chapter 143A of the General Statutes are hereby transferred to and vested in the Department of Cultural Resources except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

(1) The Secretary and Department of Art, Culture and History;
(2) The State Department of Archives and History;
(3) The North Carolina Advisory Council on Historic Preservation;
(4) The North Carolina State Library;
(5) The Interstate Library Compact;
(6) The North Carolina Museum of Art;
(7) The North Carolina State Art Society, Inc.;
(8) The North Carolina Symphony Society, Inc.;
(9) The State Art Museum Building Commission;
(10) The Library Certification Board;
(11) The Tryon Palace Commission;
(12) The North Carolina Arts Council;
(13) The U.S.S. North Carolina Battleship Commission;
(14) The Memorials Commission;
(15) The Commission to Promote Plans for the Celebration of the Four Hundredth Anniversary of the Landing of Sir Walter Raleigh's Colony on Roanoke Island;

(16) The Executive Mansion Fine Arts Commission;
(17) The North Carolina American Revolution Bicentennial Commission;
(18) The North Carolina Awards Commission;
(19) The Tobacco Museum Board;
(20) The Roanoke Island Historical Association, Inc.;
(21) The Sir Walter Raleigh Memorial Commission;
(22) The Governor Richard Caswell Memorial Commission;
(23) The Historic Swansboro Commission;
(24) The Edenton Historical Commission;
(25) The Historic Bath Commission;
(26) The Historic Hillsborough Commission;
(27) The John Motley Morehead Memorial Commission;
(28) The Historic Murfreesboro Commission;
(29) The Charles B. Aycock Memorial Commission;
(30) The Frying Pan Lightship Marine Museum Commission;
(31) The Guilford County Bicentennial Commission;
(32) The Daniel Boone Memorial Commission;
(33) The Bennett Place Memorial Commission;
(34) The Durham-Orange Historical Commission;
(35) The Pitt County Historical Commission;
(36) The Transylvania County Historical Commission;
(37) The Lenoir County Historical and Patriotic Commission;
(38) The Raleigh Historic Sites Commission; and
(39) The Stonewall Jackson Memorial Fund. (1973, c. 476, s. 31.)

Cross References. — As to allotments from the Contingency and Emergency Fund of the State to outdoor historical dramas, see G.S. 143-204.8.

Editor's Note. — Article 17 of Chapter 143A, referred to in this section, was repealed by Session Laws 1973, c. 476, which enacted this Chapter.

§ 143B-52. Head of the Department.

The Secretary of Cultural Resources shall be the head of the Department. (1973, c. 476, s. 32.)

§ 143B-53. Organization of the Department.

The Department of Cultural Resources shall be organized initially to include the Art Commission, the Art Museum Building Commission, the North Carolina Historical Commission, the Tryon Palace Commission, the U.S.S. North Carolina Battleship Commission, the Sir Walter Raleigh Commission, the Executive Mansion Fine Arts Committee, the American Revolution Bicentennial Committee, the North Carolina Awards Committee, the America's Four Hundredth Anniversary Committee, the North Carolina Arts Council, the Public Librarian Certification Commission, the State Library Commission, the North Carolina Symphony Society, Inc., the North Carolina State Art Society, and the Division of the State Library, the Division of Archives and History, the Division of the Arts, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1973, c. 476, s. 33; 1981, c. 918, s. 1; 2006-66, s. 22.22(e); 2006-221, s. 23.)

§ 143B-53.1. Appropriation, allotment, and expenditure of funds for historic and archeological property.

The Department of Cultural Resources may not expend any State funds for the acquisition, preservation, restoration, or operation of historic or archeological real and personal property, and the Director of the Budget may not allot any appropriations to the Department of Cultural Resources for a particular historic site until (i) the property or properties shall have been approved for such purpose by the Department of Cultural Resources according to criteria adopted by the North Carolina Historical Commission, (ii) the report and recommendation of the North Carolina Historical Commission has been received and considered by the Department of Cultural Resources, and (iii) the Department of Cultural Resources has found that there is a feasible and practical method of providing funds for the acquisition, restoration and/or operation of such property. (1963, c. 210, s. 3; 1973, c. 476, s. 48; 1985 (Reg. Sess; 1986), c. 1014, s. 171(e); 2006-203, s. 7.)

Editor's Note. — This section was formerly G.S. 143-31.2. It was recodified pursuant to Session Laws 2006-203, s. 7, effective July 1, 2007.

CASE NOTES

Cited in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143B-53.2. Salaries, promotions, and leave of employees of the North Carolina Department of Cultural Resources.

(a) and (b) Repealed by Session Laws 2007-484, s. 9(b), effective August 30, 2007.

(c) The exemptions to Chapter 126 of the General Statutes authorized by G.S. 126-5(c11) for the employees of the Department of Cultural Resources listed in that subsection shall be used to develop organizational classification and compensation innovations that will result in the enhanced efficiency of operations. The Office of State Personnel shall assist the Secretary of the Department of Cultural Resources in the development and implementation of an organizational structure and human resources programs that make the most appropriate use of the exemptions, including (i) a system of job categories or descriptions tailored to the agency's needs; (ii) policies regarding paid time off for agency personnel and the voluntary sharing of such time off; and (iii) a system of uniform performance assessments for agency personnel tailored to the agency's needs. The Secretary of the Department of Cultural Resources may, under the supervision of the Office of State Personnel, develop and implement organizational classification and compensation innovations having the potential to benefit all State agencies. (2006-204, s. 3; 2007-484, s. 9(b).)

Editor's Note. — Session Laws 2006-204, s. 3, enacted this section as G.S. 143B-54; it was recodified as G.S. 143B-53.2 at the direction of the Revisor of Statutes.

Part 2. Art Commission.

§§ 143B-54 through 143B-57: Repealed by Session Laws 1979, 2nd Session, c. 1306, s. 5.

Cross References. — For present provisions as to the administration of the North Carolina Museum of Art, see G.S. 140-5.12 et seq.

Part 3. Art Museum Building Commission.

§§ 143B-58 through 143B-61.1: Repealed by Session Laws 2000-140, s. 78, effective July 21, 2000.

Part 4. North Carolina Historical Commission.

§ 143B-62. North Carolina Historical Commission — creation, powers and duties.

There is hereby created the North Carolina Historical Commission of the Department of Cultural Resources to give advice and assistance to the Secretary of Cultural Resources and to promulgate rules and regulations to be followed in the acquisition, disposition, preservation, and use of records, artifacts, real and personal property, and other materials and properties of historical, archaeological, architectural, or other cultural value, and in the extension of State aid to other agencies, counties, municipalities, organizations, and individuals in the interest of historic preservation.

(1) The Historical Commission shall have the following powers and duties:

a. To advise the Secretary of Cultural Resources on the scholarly editing, writing, and publication of historical materials to be issued under the name of the Department.

b. To evaluate and approve proposed nominations of historic, archaeological, architectural, or cultural properties for entry on the National Register of Historic Places.

c. To evaluate and approve the State plan for historic preservation as provided for in Chapter 121.

d. To evaluate and approve historic, archaeological, architectural, or cultural properties proposed to be acquired and administered by the State.

e. To evaluate and prepare a report on its findings and recommendations concerning any property not owned by the State for which State aid or appropriations are requested from the Department of Cultural Resources, and to submit its findings and recommendations in accordance with Chapter 121.

f. To serve as an advisory and coordinative mechanism in and by which State undertakings of every kind that are potentially harmful to the cause of historic preservation within the State may be discussed, and where possible, resolved, particularly by evaluating and making recommendations concerning any State undertaking which may affect a property that has been entered on the National Register of Historic Places as provided for in Chapter 121 of the General Statutes of North Carolina.

g. To exercise any other powers granted to the Commission by provisions of Chapter 121 of the General Statutes of North Carolina.

h. To give its professional advice and assistance to the Secretary of Cultural Resources on any matter which the Secretary may refer to it in the performance of the Department's duties and responsibilities provided for in Chapter 121 of the General Statutes of North Carolina.

i. To serve as a search committee to seek out, interview, and recommend to the Secretary of Cultural Resources one or more experienced and professionally trained historian(s) for either the position of Deputy Secretary of Archives and History when a vacancy occurs, and to assist and cooperate with the Secretary in periodic reviews of the performance of the Deputy Secretary.

j. To assist and advise the Secretary of Cultural Resources and the Deputy Secretary of Archives and History in the development and implementation of plans and priorities for the State's historical programs.

(2) The Historical Commission shall have the power and duty to establish standards and provide rules and regulations as follows:

a. For the acquisition and use of historical materials suitable for acceptance in the North Carolina Office of Archives and History.

b. For the disposition of public records under provisions of Chapter 121 of the General Statutes of North Carolina.

c. For the certification of records in the North Carolina State Archives as provided in Chapter 121 of the General Statutes of North Carolina.

d. For the use by the public of historic, architectural, archaeological, or cultural properties as provided in Chapter 121 of the General Statutes of North Carolina.

e. For the acquisition of historic, archaeological, architectural, or cultural properties by the State.

f. For the extension of State aid or appropriations through the Department of Cultural Resources to counties, municipalities, organizations, or individuals for the purpose of historic preservation or restoration.

f1. For the extension of State aid or appropriations through the Department of Cultural Resources to nonstate-owned nonprofit history museums.

g. For qualification for grants-in-aid or other assistance from the federal government for historic preservation or restoration as provided in Chapter 121 of the General Statutes of North Carolina. This section shall be construed liberally in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this section. All current rules and regulations heretofore adopted by the Executive Board of the State Department of Archives and History, the Historic Sites Advisory Committee, the North Carolina Advisory Council on Historical Preservation, the Executive Mansion Fine Arts Commission, and the Memorials Commission shall remain in full force and effect unless and until repealed or superseded by action of the Historical Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Cultural Resources. (1973, c. 476, s. 44; 1977, c. 513, s. 2; 1979, c. 861, s. 6; 1985 (Reg. Sess., 1986), c. 1014, s. 171(f); 1997-411, ss. 1-3; 2002-159, s. 35(k).)

§ 143B-63. Historical Commission — members; selection; quorum; compensation.

The Historical Commission of the Department of Cultural Resources shall consist of 11 members appointed by the Governor.

The members of the North Carolina Historical Commission shall include the members of the existing North Carolina Historical Commission who shall serve for a period equal to the remainder of their current terms on the Commission, plus four additional appointees of the Governor, two of whose appointments shall expire March 31, 1979, and two of whose appointments shall expire March 31, 1981. At the end of the respective terms of office of the members, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Of the members, at least five shall have professional training or experience in the fields of archives, history, historic preservation, historic architecture, archaeology, or museum administration, including at least three currently involved in the teaching of history at the college or university level or in administering archives or historical collections or programs. Any appointment to fill a vacancy on the Commission created by resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 45; 1977, c. 513, s. 1.)

§ 143B-64. Historical Commission — officers.

The Historical Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 46.)

§ 143B-65. Historical Commission — regular and special meetings.

The Historical Commission shall meet at least twice per year and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1973, c. 476, s. 42.)

Part 5. Archaeological Advisory Committee.

§ 143B-66: Repealed by Session Laws 1985 (Regular Session, 1986), c. 1028, s. 10.

Part 6. Public Librarian Certification Commission.

§ 143B-67. Public Librarian Certification Commission — creation, powers and duties.

There is hereby created the Public Librarian Certification Commission of the Department of Cultural Resources with the power and duty to adopt rules and regulations to be followed in the certification of public librarians. The Commission is authorized to establish and require written examinations for certified public librarian applicants.

The Commission shall adopt such rules and regulations consistent with the provisions of this Chapter. All rules and regulations consistent with the provisions of this Chapter heretofore adopted by the Library Certification Board shall remain in full force and effect unless and until repealed or superseded by action of the Public Librarian Certification Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Cultural Resources. (1973, c. 476, s. 49; 1981 (Reg. Sess., 1982), c. 1359, s. 4.)

§ 143B-68. Public Librarian Certification Commission — members; selection; quorum; compensation.

The Public Librarian Certification Commission of the Department of Cultural Resources shall consist of five members as follows: (i) the chairman of the North Carolina Association of Library Trustees, (ii) the chairman of the public libraries section of the North Carolina Library Association, (iii) an individual named by the Governor upon the nomination of the North Carolina Library Association, (iv) the dean of a State or regionally accredited graduate school of librarianship in North Carolina appointed by the Governor and (v) one member at large appointed by the Governor.

The members shall serve four-year terms or while holding the appropriate chairmanships. Any appointment to fill a vacancy created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem, and necessary travel expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of the Department through the regular staff of the Department. (1973, c. 476, s. 50.)

§ 143B-69. Public Librarian Certification Commission — officers.

The Public Librarian Certification Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 51.)

§ 143B-70. Public Librarian Certification Commission — regular and special meetings.

The Public Librarian Certification Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least three members. (1973, c. 476, s. 52.)

Part 7. Tryon Palace Commission.

§ 143B-71. Tryon Palace Commission — creation, powers and duties.

There is hereby created the Tryon Palace Commission of the Department of Cultural Resources with the power and duty to adopt, amend and rescind rules and regulations concerning the restoration and maintenance of the Tryon Palace complex, and such other powers and duties as provided in Article 2 of Chapter 121 of the General Statutes of North Carolina. (1973, c. 476, s. 54.)

§ 143B-72. Tryon Palace Commission — members; selection; quorum; compensation.

The Tryon Palace Commission of the Department of Cultural Resources shall consist of the following members: 25 voting members appointed by the Governor, nonvoting members emeriti appointed by the Governor, and five voting ex officio members as provided in this section.

The Governor shall appoint 25 voting members. The terms of the initial members shall be staggered as follows: Nine of the members shall be appointed to serve four-year terms, eight of the members shall be appointed to serve three-year terms, and eight of the members shall be appointed to serve two-year terms. At the end of the respective terms of office of the initial appointed members of the Commission, the appointments of their successors, with the exception of ex officio members and members emeriti, shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission shall be for the balance of the unexpired term. The Governor shall designate the chair of the Tryon Palace Commission. The other officers of the Tryon Palace Commission shall be elected by the members of the Tryon Palace Commission.

The Governor may also appoint any person who has previously served on the Tryon Palace Commission with distinction to the Commission as a member emeritus. A person appointed as a member emeritus shall be deemed a lifetime member of the Commission and shall serve as a nonvoting member.

In addition to the members who are appointed by the Governor, the Attorney General, the Secretary of Cultural Resources or the Secretary's designee, the mayor of the City of New Bern, the Dean of the College of Arts and Sciences at East Carolina University, and the chairman of the Board of County Commissioners of Craven County shall serve as voting ex officio members of said Commission. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the Tryon Palace Commission.

A majority of the voting members of the Commission shall constitute a quorum for the transaction of business.

The members of the Commission shall serve without pay and without expense allowance. (1973, c. 476, s. 55; 1977, c. 771, s. 4; 1979, c. 151, s. 1; 1993, c. 109, s. 1.)

Part 8. U.S.S. North Carolina Battleship Commission.

§ 143B-73. U.S.S. North Carolina Battleship Commission — creation, powers and duties.

There is hereby created the U.S.S. North Carolina Battleship Commission of the Department of Cultural Resources with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of this State necessary in carrying out the provisions and purposes of this Part.

(1) The U.S.S. North Carolina Battleship Commission is authorized and empowered to adopt such rules and regulations not inconsistent with the management responsibilities of the Secretary of the Department provided by Chapter 143A of the General Statutes and laws of this State and this Chapter that may be necessary and desirable for the operation and maintenance of the U.S.S. North Carolina as a permanent memorial and exhibit commemorating the heroic participation of the men and women of North Carolina in the prosecution and victory of the Second World War and for the faithful performance and fulfillment of its duties and obligations.

(2) The U.S.S. North Carolina Battleship Commission shall have the power and duty to establish standards and adopt rules and regulations: (i) establishing and providing for a proper charge for admission to the ship; and (ii) for the maintenance and operation of the ship as a permanent memorial and exhibit.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. (1973, c. 476, s. 57; 1977, c. 741, s. 3.)

§ 143B-73.1. U.S.S. North Carolina Battleship Commission — duties.

The Commission shall have the further duty and authority to select an appropriate site for the permanent berthing of the Battleship U.S.S. North Carolina, taking into consideration factors including, but not limited to, the accessibility, location in relation to roads and highways, scenic attraction, protection from hazards of weather, fire and sea, cost of site and berthing, cooperation of local governmental authorities in securing, equipping, and maintaining appropriate areas surrounding the site, and others which may affect the suitability of such site for establishment of the ship as a permanent memorial and exhibit; to accept gifts, grants, and donations for the purposes of this Article; to transport to, and berth the ship at the site; to ready the ship for visitation by the public; to establish and provide for a proper charge for admission to the ship, and for safekeeping of funds; to maintain and operate the ship as a permanent memorial and exhibit; to acquire property, both real and personal, with the approval of the Governor and the Council of State, and to accept donations of property, both real and personal, from any source; to establish, supervise, manage and maintain in New Hanover County with the approval and assistance of the Department of Cultural Resources exhibits, dramas, cultural activities, museums, and records pertaining to the marine and naval history of the State of North Carolina and the United States of America; to identify, preserve and protect properties having historical, marine and naval significance to New Hanover County, the State, its communities and counties and the nation; to establish and provide for a proper charge for admission to all properties maintained and operated by the Commission in New Hanover County; to otherwise provide in carrying out its duties for the establishment of appropriate activities to encourage interest in the marine and naval history of North Carolina; to perpetuate the memory of North Carolinians who gave their lives in the course of World War II and in the events in which the battleship was a participant, and to allocate funds for the fulfillment of the duties and authority herein provided as may be necessary and appropriate for the purpose of this Article. (1961, c. 158; 1977, c. 741, ss. 1, 8.)

Editor's Note. — This section was formerly G.S. 143-366. It was amended and recodified as G.S. 143B-73.1 by Session Laws 1977, c. 741.

§ 143B-74. U.S.S. North Carolina Battleship Commission — members; selection; quorum; compensation.

The U.S.S. North Carolina Battleship Commission of the Department of Cultural Resources shall consist of 18 members including the Secretary of Cultural Resources and the Secretary of Commerce who shall serve as voting ex officio members. The members of the Commission appointed for terms to end in 1991 shall serve for an additional two-year period. At the end of the respective terms of office of the members of the Commission serving in 1991, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the U.S.S. North Carolina Battleship Commission.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business. The Governor shall designate from among the members of the Commission a chairman, vice-chairman and treasurer. The Secretary of Cultural Resources or his designee shall serve as Secretary of the Commission. The Commission shall meet at least twice annually upon the call of the chairman, the Secretary of Cultural Resources, or any seven members of the Commission. (1973, c. 476, s. 58; 1977, c. 741, s. 4; 1991, c. 73, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 39.)

§ 143B-74.1. U.S.S. North Carolina Battleship Commission — funds.

The Commission shall establish and maintain a "Battleship Fund" composed of the moneys which may come into its hands from admission or inspection fees, gifts, donations, grants, or bequests, which funds will be used by the Commission to pay all costs of maintaining and operating the ship for the purposes herein set forth. The Commission shall maintain books of accounting records concerning revenue derived and all expenses incurred in maintaining and operating the ship as a public memorial. The operations of the Commission shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. The Commission shall establish a reserve fund in an amount to be determined by the Secretary of Cultural Resources to be maintained and used for contingencies and emergencies beyond those occurring in the course of routine maintenance and operation, and may authorize the deposit of this reserve fund in a depository to be selected by the Treasurer of North Carolina. (1961, c. 158; 1977, c. 741, ss. 2, 8; 1983, c. 913, s. 40.)

Editor's Note. — This section was formerly G.S. 143-367. It was amended and recodified as G.S. 143B-74.1 by Session Laws 1977, c. 741.

§ 143B-74.2. U.S.S. North Carolina Battleship Commission — employees.

The Department of Cultural Resources is authorized to hire laborers, artisans, caretakers, stenographic and administrative employees, and other personnel, in accordance with the provisions of the State Personnel Act, as may be necessary in carrying out the purposes and provisions of this Article, and to maintain the ship in a clean, neat, and attractive condition satisfactory for exhibition to the public. The Commission shall appoint and fix the salary of an Executive Director and Assistant Director to serve at its pleasure. Employees shall be residents of the State of North Carolina except as may, in emergency conditions, be necessary for the procurement of specially trained or specially skilled employees. Any materials used for any purpose in maintaining and operating the ship for the purposes of this Article shall be, insofar as practicable, North Carolina materials. (1961, c. 158; 1975, c. 879, s. 46; 1977, c. 741, ss. 6, 8; 2006-204, s. 1.)

Editor's Note. — This section was formerly G.S. 143-368. It was amended and recodified as G.S. 143B-74.2 by Session Laws 1977, c. 741.

§ 143B-74.3. U.S.S. North Carolina Battleship Commission — employees not to have interest.

It shall be unlawful for any member of the Commission to charge, receive, or obtain, directly or indirectly, any fee, commission, retainer or brokerage other than established salaries to be fixed by the Commission, and no member of the Commission shall have any interest in any land, materials, commissions or contracts sold to or made with the Commission, or with any member thereof. Violation of any provisions of this section shall be a Class 2 misdemeanor. (1961, c. 158; 1977, c. 741, ss. 7, 8; 1993, c. 539, s. 1037; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — This section was formerly G.S. 143-369. It was amended and recodified as G.S. 143B-74.3 by Session Laws 1977, c. 741.

Part 9. Sir Walter Raleigh Commission.

§§ 143B-75 through 143B-78: Repealed by Session Laws 1979, c. 504, s. 1.

Part 10. Executive Mansion Fine Arts Committee.

§ 143B-79. Executive Mansion Fine Arts Committee — creation, powers and duties.

There is hereby created the Executive Mansion Fine Arts Committee. The Executive Mansion Fine Arts Committee shall have the following functions and duties:

(1) To advise the Secretary of Cultural Resources on the preservation and maintenance of the Executive Mansion located at 200 North Blount Street, Raleigh, North Carolina;

(2) To encourage gifts and objects of art, furniture and articles of historical value for furnishing the Executive Mansion, and advise the Secretary

of Cultural Resources on major changes in the furnishings of the Mansion;

(3) To make recommendations to the Secretary of Cultural Resources concerning major renovations necessary to preserve and maintain the structure;

(4) To aid the Secretary of Cultural Resources in keeping a complete list of all gifts and articles received together with their history and value;

(5) No gifts or articles shall be accepted for the Executive Mansion without the approval of the Committee; and

(6) The Committee shall advise the Secretary of Cultural Resources upon any matter the Secretary may refer to it.

(7) The Committee may dispose of property held in the Executive Mansion after consultation with a review committee comprised of one person from the Executive Mansion Fine Arts Committee, appointed by its chairman; one person from the Department of Administration appointed by the Secretary of Administration; and two qualified professionals from the Department of Cultural Resources, Division of Archives and History, appointed by the Secretary of Cultural Resources. Upon request of the Executive Mansion Fine Arts Committee, the review committee will view proposed items for disposition and make a recommendation to the North Carolina Historical Commission who will make a final decision. The Historical Commission must consider whether the disposition is in the best interest of the State of North Carolina. If such property is sold, (i) if the records with regard to the property reflect that it was acquired by the State by gift or devise the net proceeds of each such sale shall be deposited in the State Treasury to the credit of the Executive Mansion, Special Fund, and shall be used only for the purchase, conservation, restoration or repair of other property for use in the Executive Mansion and; (ii) if the records with regard to the property reflect that the property was acquired by the State by purchase with appropriated funds or do not show the manner of acquisition, the net proceeds of such sale shall be deposited in the General Fund. (1973, c. 476, s. 65; 1983, c. 632, s. 1; 1987, c. 251.)

§ 143B-80. Executive Mansion Fine Arts Committee — members; selection; quorum; compensation.

The Executive Mansion Fine Arts Committee shall consist of 16 members appointed by the Governor. The initial members of the Committee shall be the appointed members of the present Executive Mansion Fine Arts Commission who shall serve for a period equal to the remainder of their current terms on the Executive Mansion Fine Arts Commission, four of whose appointments expire June 30, 1973, four of whose appointments expire June 30, 1974, four of whose appointments expire June 30, 1975, and four of whose appointments expire June 30, 1976. At the end of the respective terms of office of the initial members, the appointments of their successors shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 66.)

§ 143B-80.1. Regular and special meetings.

The Executive Mansion Fine Arts Committee shall meet at least twice per year and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members.

Whenever a member shall fail, except for ill health or other valid reason, to be present for two successive regular meetings of the Board, his place as a member shall be deemed vacant. (1983, c. 632, s. 2.)

§§ 143B-80.2 through 143B-80.4: Reserved for future codification purposes.

Part 10A. State Capitol Preservation Act.

§§ 143B-80.5 through 143B-80.14: Repealed by Session Laws 1995, c. 507, s. 12(a).

Part 11. American Revolution Bicentennial Committee.

§§ 143B-81, 143B-82: Repealed by Session Laws 1979, c. 504, s. 2.

Part 12. North Carolina Awards Committee.

§ 143B-83. North Carolina Awards Committee — creation, powers and duties.

There is hereby created the North Carolina Awards Committee with the duty to advise the Secretary of Cultural Resources on the formulation and administration of the program governing North Carolina awards and on the selection of a committee in each award area to choose the recipients.

The Committee shall advise the Secretary of the Department upon any matter the Secretary may refer to it. (1973, c. 476, s. 71; 1979, c. 504, s. 2; 1983 (Reg. Sess., 1984), c. 995, s. 22.)

§ 143B-84. North Carolina Awards Committee — members; selection; quorum; compensation.

The North Carolina Awards Committee shall consist of five members appointed by the Governor to serve at the Governor's pleasure.

The Governor shall designate a member of the Committee as chairman to serve in such capacity at the pleasure of the Governor.

Members of the Committee shall serve without compensation or travel or per diem.

A majority of the Committee shall constitute a quorum for the transaction of business.

The Secretary of Cultural Resources is hereby authorized to request contingency and emergency funds for the administration of the North Carolina

Awards Committee, for the period between July 1, 1973, and ratification of the next general appropriations bill for the Department.

All clerical and other services required by the Committee shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 72.)

Part 13. America's Four Hundredth Anniversary Committee.

§ 143B-85. America's Four Hundredth Anniversary Committee — creation, powers and duties.

There is hereby created the America's Four Hundredth Anniversary Committee of the Department of Cultural Resources. The Committee shall have the following functions and duties:

(1) To advise the Secretary of the Department on the planning, conducting, and directing appropriate observances of, and on providing necessary physical facilities and other requirements for, the commemoration of the landing of Sir Walter Raleigh's colony on Roanoke Island; and

(2) To advise the Secretary of the Department upon any matter the Secretary might refer to it. (1973, c. 476, s. 74.)

§ 143B-86. America's Four Hundredth Anniversary Committee — members; selection; quorum; compensation.

The America's Four Hundredth Anniversary Committee shall consist of 14 members as follows: 10 members at large appointed by the Governor and four ex officio members as follows: the mayor of the Town of Manteo, the Secretary of Environment and Natural Resources, the chairman of the Roanoke Island Historical Association, and the chairman of the Dare County Board of Commissioners, or their designees. Of the initial members of the America's Four Hundredth Anniversary Committee appointed by the Governor five shall be appointed for terms expiring June 30, 1975, and five for terms expiring June 30, 1977. At the end of their respective terms of office, the appointments shall be for a term of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business. (1973, c. 476, s. 75; 1977, c. 771, s. 4; 1989, c. 727, s. 218(123); 1997-443, s. 11A.119(a).)

Part 14. North Carolina Arts Council.

§ 143B-87. North Carolina Arts Council — creation, powers and duties.

There is hereby created the North Carolina Arts Council with the following duties and functions:

(1) To advise the Secretary of Cultural Resources on the study, collection, maintenance and dissemination of factual data and pertinent information relative to the arts;
(2) To advise the Secretary concerning assistance to local organizations and the community at large in the area of the arts;
(3) To advise the Secretary on the exchange of information, promotion of programs and stimulation of joint endeavor between public and nonpublic organizations;
(4) To identify research needs in the arts area and to encourage such research;
(5) To advise the Secretary in regard to bringing the highest obtainable quality in the arts to the State and promoting the maximum opportunity for the people to experience and enjoy those arts;
(6) To advise the Secretary of the Department upon any matter the Secretary may refer to it; and
(7) To advise the Secretary concerning the promotion of theater arts in the State. (1973, c. 476, s. 77; 1985 (Reg. Sess., 1986), c. 1028, s. 14.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1028, s. 13 provides: "The Theater Arts Advisory Board, created in 7 North Carolina Administrative Code 3D .0008, is abolished. The North Carolina Arts Council is authorized to perform the functions of the Board."

§ 143B-88. North Carolina Arts Council — members; selection; quorum; compensation.

The North Carolina Arts Council shall consist of 24 members appointed by the Governor. The initial members of the Council shall be the appointed members of the present Arts Council who shall serve for a period equal to the remainder of their current terms on the Arts Council, eight of whose terms expire June 30, 1973, eight of whose terms expire June 30, 1974, and eight of whose terms expire June 30, 1975. At the end of the respective terms of office of the initial members, the appointments of their successors shall be for terms of three years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council as chairman to serve at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 78.)

Part 15. North Carolina State Art Society, Incorporated.

§ 143B-89. North Carolina State Art Society, Incorporated.

The North Carolina State Art Society, Incorporated, shall continue to be under the patronage of the State as provided in Article 3 of Chapter 140 of the General Statutes of North Carolina. The governing body of the North Carolina

State Art Society, Incorporated, shall be a board of directors consisting of a minimum of 22 members as follows: the Governor, the Superintendent of Public Instruction, the State Treasurer, Secretary of Cultural Resources, and the Director of the North Carolina Museum of Art, who shall be ex officio members; six members who shall be named by the Governor; and a minimum of 12 directors who shall be chosen by members of the North Carolina State Art Society, Incorporated, in such manner and for such terms as that body shall determine. The six directors named by the Governor shall serve for terms of three years each. (1973, c. 476, s. 80; 1975, c. 386; 1977, c. 702, s. 3; 1985, c. 316; 2006-66, s. 22.22(f); 2006-221, s. 23.)

Part 16. State Library Commission.

§ 143B-90. State Library Commission — creation, powers and duties.

There is hereby created the State Library Commission of the Department of Cultural Resources. The State Library Commission has the following functions and duties:

(1) To advise the Secretary of Cultural Resources on matters relating to the operation and services of the State Library;
(2) Repealed by Session Laws 1991, c. 757, s. 2.
(2a) To work for the financial support of statewide and local public library services;
(3) To advise the Secretary upon any matter the Secretary might refer to it;
(4) Repealed by Session Laws 1991, c. 757, s. 2.
(4a) To work for the financial support of statewide interlibrary services;
(5) Repealed by Session Laws 1991, c. 757, s. 2.
(5a) To aid and advise the Secretary of Cultural Resources in the development of information services for the promotion of cultural, educational, and economic well-being of the State.
(6) through (8) Repealed by Session Laws 1991, c. 757, s. 2.
(8a) To aid and advise the Secretary of Cultural Resources on the recruitment and appointment of the State Librarian. (1973, c. 476, s. 82; 1981, c. 918, s. 2; 1991, c. 757, s. 2.)

§ 143B-91. State Library Commission — members; selection; quorum; compensation.

(a) The State Library Commission shall consist of 15 members. All members shall have an interest in the development of library and information services in North Carolina. Eight members shall be appointed by the Governor. One member shall be appointed by the President Pro Tempore of the Senate. One member shall be appointed by the Speaker of the North Carolina House of Representatives. Three members shall be appointed by the North Carolina Public Library Directors Association. Two members shall be the President and the President-elect of the North Carolina Library Association or two appointees as determined by the North Carolina Library Association's Board of Directors. The State Librarian shall be an ex officio member and act as secretary to the Commission.

All appointments shall be for four-year terms with eight of the commissioners taking office on the first four-year cycle and seven commissioners taking office on the second four-year cycle. Any appointment to fill a vacancy in one of the positions appointed by the Governor, President Pro Tempore or Speaker of the House of Representatives shall be for the remainder of the unexpired term. Appointees shall not serve more than two successive four-year terms.

The Governor shall choose a chairperson from among the gubernatorial appointees. The chairperson shall serve not more than two successive two-year terms as chair.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses as provided in G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources.

The Commission shall meet at least twice a year.

(b) There shall be standing committees established to advise the Secretary of Cultural Resources, the Commission, and the State Librarian. These committees shall be: Public Library Development; Interlibrary Cooperation; State Government Information Services; State Library Development; and any other committee deemed appropriate. Each committee shall be composed of a committee chairperson and at least six persons appointed annually by the Secretary of Cultural Resources with the approval of the Commission. At least one of the members of each committee shall be a member of the Commission. Each committee shall report to the Commission at least once a year. (1973, c. 476, s. 83; 1981, c. 918, s. 3; 1991, c. 757, s. 3; 1995, c. 490, s. 53.)

Part 17. Roanoke Island Historical Association.

§ 143B-92. Roanoke Island Historical Association — creation, powers and duties.

There is hereby recreated the Roanoke Island Historical Association with the powers and duties delineated in Article 19 of Chapter 143 of the General Statutes of North Carolina. (1973, c. 476, s. 85.)

Legal Periodicals. — For article, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

§ 143B-93. Roanoke Island Historical Association — status.

The Roanoke Island Historical Association is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-92 and G.S. 143B-93. (1973, c. 476, s. 86.)

Part 18. North Carolina Symphony Society.

§ 143B-94. North Carolina Symphony Society, Inc.

The North Carolina Symphony Society, Incorporated, shall continue to be under the patronage of the State as provided in Article 2 of Chapter 140 of the General Statutes of North Carolina. The governing body of the North Carolina Symphony Society, Incorporated, shall be a board of trustees consisting of not less than 16 members of which the Governor of the State and the Superintendent of Public Instruction shall be ex officio members and four other members shall be named by the Governor. The remaining trustees shall be chosen by members of the North Carolina Symphony Society, Incorporated, in such manner and for such terms as that body shall determine. The initial members named by the Governor shall be appointed from the members of the existing board of trustees of the North Carolina State Symphony Society, Incorporated, for the balance of their existing terms. Subsequent appointments shall be made for terms of four years each. (1973, c. 476, s. 88.)

Part 19. Edenton Historical Commission.

§ 143B-95. Edenton Historical Commission — creation, purposes and powers.

There is hereby recreated the Edenton Historical Commission. The purposes of the Commission are to effect and encourage preservation, restoration, and appropriate presentation of the Town of Edenton and Chowan County, as a historic, educational, and aesthetic place, to the benefit of the citizens of the place and the State and of visitors. To accomplish its purposes, the Commission has the following powers and responsibilities:

(1) To acquire, hold, and dispose of title to or interests in historic properties in the Town of Edenton and County of Chowan and to repair, restore, and otherwise improve the properties, and to maintain them;
(2) To acquire, hold, and dispose of title to or interests in other land there, upon which historic structures have been or shall be relocated, and to improve the land and maintain it;
(3) To acquire, hold, and dispose of suitable furnishings for the historic properties, and to provide and maintain suitable gardens for them;
(4) To develop and maintain one or more collections of historic objects and things pertinent to the history of the town and county, to acquire, hold, and dispose of the items, and to preserve and display them;
(5) To develop and conduct appropriate programs, under the name "Historic Edenton" or otherwise, for the convenient presentation and interpretation of the properties and collections to citizens and visitors, as places and things of historic, educational, and aesthetic value;
(6) To conduct programs for the fostering of research, for the encouragement of preservation, and for the increase of knowledge available to the local citizens and the visitors in matters pertaining to the history of the town and county;
(7) To cooperate with the Secretary and Department of Cultural Resources and with appropriate associations, governments, governmental agencies, persons, and other entities, and to assist and advise them, toward the furtherance of the Commission's purposes;
(8) To solicit gifts and grants toward the furtherance of these purposes and the exercise of these powers;
(9) To conduct other programs and do other things appropriate and reasonably necessary to the accomplishment of the purposes and the exercise of the powers; and
(10) To adopt and enforce any bylaws and rules that the Commission deems beneficial and proper. (1973, c. 476, s. 90; 1979, c. 733, s. 1.)

§ 143B-96. Edenton Historical Commission — status.

The Edenton Historical Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-95 through G.S. 143B-98. (1973, c. 476, s. 91.)

§ 143B-97. Edenton Historical Commission — reports.

The Edenton Historical Commission shall submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not received by the Secretary, or if such report does not indicate the need for the continuation of the Commission, the Secretary of Cultural Resources is authorized to recommend to the next General Assembly the abolition of the Commission. (1973, c. 476, s. 92.)

§ 143B-98. Edenton Historical Commission — members; selection; compensation; quorum.

The Edenton Historical Commission shall consist of 33 members, 22 appointed by the Governor to serve at his pleasure, four appointed by the President Pro Tempore of the Senate, four appointed by the Speaker of the House of Representatives, and, ex officio, the Mayor of the Town of Edenton, the Chairman of the Board of Commissioners of Chowan County, and the Secretary of Cultural Resources or his designee.

All the present members of the Commission may continue to serve, at the pleasure of the Governor, until the end of his present term of office. The Commission shall elect its own officers, and the members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 93; 1979, c. 733, s. 2; 2005-421, s. 3.1(a).)

Part 20. Historic Bath Commission.

§ 143B-99. Historic Bath Commission — creation, powers and duties.

There is hereby created the Historic Bath Commission. The Historic Bath Commission shall have the following powers:

(1) To acquire and dispose of title to or interests in historic properties in and near the Town of Bath in Beaufort County, and to repair, restore, or otherwise improve such properties, and to maintain them;
(2) To offer such historic properties to the State of North Carolina, subject to the acceptance of such properties by the State;
(3) To cooperate with, assist, and advise the Secretary of Cultural Resources upon any matter pertaining to the administration of Bath State Historic Site, which the Secretary of the Department may refer to it; and
(4) To carry out other programs reasonably related to these purposes. (1973, c. 476, s. 95.)

§ 143B-100. Historic Bath Commission — status.

The Historic Bath Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-99 through G.S. 143B-102. (1973, c. 476, s. 96.)

§ 143B-101. Historic Bath Commission — reports.

The Historic Bath Commission shall submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not received by the Secretary, or if such report does not indicate the need for the continuation of the Commission, the Secretary of Cultural Resources is authorized to recommend the abolition of the Commission to the next General Assembly. (1973, c. 476, s. 97.)

§ 143B-102. Historic Bath Commission — members; selection; quorum; compensation.

The Historic Bath Commission shall consist of 25 members appointed by the Governor plus, ex officio, the mayor of the Town of Bath, the Chairman of the Board of Commissioners of Beaufort County, and the Secretary of Cultural Resources or designee. The initial members of the Commission shall be the members of the present Historic Bath Commission who shall serve for a period equal to the remainder of their current terms on the Historic Bath Commission. At the end of the respective terms of office of the initial members of the Commission, the appointments of their successors, with the exception of the ex officio members, shall be for terms of five years and until their successors are appointed and qualify. Any appointments to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Commission shall elect its own officers. Members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 98.)

Part 21. Historic Hillsborough Commission.

§ 143B-103. Historic Hillsborough Commission — creation, powers and duties.

There is hereby recreated the Historic Hillsborough Commission. The Historic Hillsborough Commission shall have the following powers:

(1) In cooperation with the Hillsborough Historical Society, the elected officials of Hillsborough and Orange County, and appropriate public agencies, to use every legal aid and method to preserve and restore the Town of Hillsborough, and its immediately adjacent area, as a living, functioning, educational, and historical exhibit of North Carolina's early life and times;

(2) To acquire and to dispose of property, real and personal; to repair, restore, or otherwise improve such properties; to have prepared a history of the town and area; and to write, compile, publish, or sponsor such historical works as may pertain to the town and area; and

(3) To carry on other programs reasonably related to these purposes. (1973, c. 476, s. 100.)

§ 143B-104. Historic Hillsborough Commission — status.

The Historic Hillsborough Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-103 through G.S. 143B-106. (1973, c. 476, s. 101.)

§ 143B-105. Historic Hillsborough Commission — reports.

The Historic Hillsborough Commission shall submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not received by the Secretary, or if such report does not indicate the need for the continuation of the Commission, the Secretary of Cultural Resources is authorized to recommend to the next General Assembly the abolition of the Commission. (1973, c. 476, s. 102.)

§ 143B-106. Historic Hillsborough Commission — members; selection; quorum; compensation.

The Historic Hillsborough Commission shall consist of not fewer than 25 members appointed by the Governor plus, ex officio, the mayor of the Town of Hillsborough, the Chairman of the Board of Commissioners of Orange County, the Orange County Register of Deeds, the Orange County Clerk of Superior Court, and the Secretary of Cultural Resources or designee. The initial appointed members of the Commission shall be the members of the present Historic Hillsborough Commission who shall serve for a period equal to the remainder of their current terms on the Historic Hillsborough Commission. At the end of the respective terms of office of the present members, the appointments of members, excepting the ex officio members, shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Commission shall elect its own officers. Members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 103.)

Part 22. Historic Murfreesboro Commission.

§ 143B-107. Historic Murfreesboro Commission — creation, powers and duties.

There is hereby recreated the Historic Murfreesboro Commission. The Historic Murfreesboro Commission shall have the following powers:

(1) To acquire and dispose of title to or interests in historic properties in and near the Town of Murfreesboro, and to repair, restore, or otherwise improve and maintain such properties;

(2) To conduct research and planning to carry out a program for the preservation of historic sites, buildings, or objects in and near the Town of Murfreesboro;

(3) To carry out other programs reasonably related to these purposes. (1973, c. 476, s. 105.)

§ 143B-108. Historic Murfreesboro Commission — status.

The Historic Murfreesboro Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-107 through G.S. 143B-110. (1973, c. 476, s. 106.)

§ 143B-109. Historic Murfreesboro Commission — reports.

The Historic Murfreesboro Commission shall submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not received by the Secretary, or if such report does not indicate the need for the continuation of the Commission, the Secretary of Cultural Resources is authorized to recommend to the next General Assembly the abolition of the Commission. (1973, c. 476, s. 107.)

§ 143B-110. Historic Murfreesboro Commission — members; selection; quorum; compensation.

The Historic Murfreesboro Commission shall consist of 30 members appointed by the Governor plus, ex officio, the mayor of the Town of Murfreesboro, the Chairman of the Board of Commissioners of the County of Hertford, the President of Chowan College, and the Secretary of Cultural Resources or designee. The initial appointed members of the Commission shall be the members of the present Historic Murfreesboro Commission who shall serve for a period equal to the remainder of their current terms on the Historic Murfreesboro Commission. At the end of the respective terms of office of the initial members of the Commission, the appointments of their successors, with the exception of ex officio members, shall be for terms of five years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Commission shall elect its own officers. Members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 108.)

Part 23. John Motley Morehead Memorial Commission.

§ 143B-111. John Motley Morehead Memorial Commission — creation, powers and duties.

There is hereby recreated the John Motley Morehead Memorial Commission. The John Motley Morehead Memorial Commission shall have the following powers:

(1) To acquire title to or interests in property, both real and personal, and to solicit, collect, and expend funds for the acquisition, restoration, maintenance, and operation of a memorial to John Motley Morehead in the City of Greensboro; and to carry on other activities, including research and publications, reasonably related to this purpose;

(2) To convey, lease, mortgage, and otherwise dispose of real and personal property and interests therein, as well as to accept deeds, bills of sale, and other instruments conveying and investing title in it; and

(3) To offer such memorial to the State of North Carolina, which memorial, if accepted by the Department of Cultural Resources and Council of State, may be administered as a State historic site subject to existing covenants and agreements. (1973, c. 476, s. 110.)

§ 143B-112. John Motley Morehead Memorial Commission — status.

The John Motley Morehead Memorial Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-111 through G.S. 143B-115. (1973, c. 476, s. 111.)

§ 143B-113. John Motley Morehead Memorial Commission — authorization for counties to assist.

The special approval of the General Assembly is hereby given to all appropriations of surplus or non-ad valorem tax funds that should be made and paid over to said Commission by all counties and municipalities and the same are declared to be for a public purpose and the special approval of the General Assembly is given for such appropriations. Upon the request of the Commission hereby created, the governing body of Guilford County or of the City of Greensboro may, in its discretion, make appropriations from non-ad valorem tax revenues to the Commission. (1973, c. 476, s. 112.)

§ 143B-114. John Motley Morehead Memorial Commission — reports.

The John Motley Morehead Commission shall submit to the Secretary of Cultural Resources an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant. In the event such annual report is not received by the Secretary, or if the report indicates that there is no further need for the Commission, the Secretary of Cultural Resources is authorized to recommend to the next General Assembly the abolition of the Commission. (1973, c. 476, s. 113.)

§ 143B-115. John Motley Morehead Memorial Commission — members; selection; quorum; compensation.

The John Motley Morehead Memorial Commission shall consist of 19 members as follows: nine members appointed by the Governor; three members appointed by the Board of Commissioners of Guilford County; three members appointed by the City Council of Greensboro; and four ex officio members, as follows: the Secretary of Environment and Natural Resources or designee, the Superintendent of Public Instruction or designee, the State Treasurer or designee and the Secretary of Cultural Resources or designee. The initial members of the Commission shall be the members of the present John Motley Morehead Memorial Commission who shall serve for a period equal to the remainder of their current terms on the John Motley Morehead Memorial Commission. At the end of the respective terms of office of the initial members, the appointments of their successors, with the exception of the ex officio members, shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Commission shall elect its own officers. Members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 114; 1977, c. 711, s. 4; 1989, c. 727, s. 218(124); 1997-443, s. 11A.119(a).)

§§ 143B-116 through 143B-120: Reserved for future codification purposes.

Part 24. Grassroots Arts Program.

§ 143B-121. Program established.

The Department of Cultural Resources shall establish a program to be known as the Grassroots Arts Program, by which funds shall be distributed among the counties of this State for the purpose of assisting the counties in the development of community arts programs. The Grassroots Arts Program shall be established within the "Community Art Development Section" (North Carolina Arts Council) of the Division of the Arts. (1977, c. 1008, s. 1.)

§ 143B-122. Distribution of funds.

Of the funds available under the Grassroots Arts Program, twenty percent (20%) of the total shall be distributed among the counties equally, and the remaining eighty percent (80%) shall be distributed among the counties on a per capita basis. (1977, c. 1008, s. 2; 2007-323, s. 21.1(a).)

Editor's Note. — Session Laws 2007-323, s. 21.1(b), provides: "(b) Any funds distributed by the Department of Cultural Resources under the Grassroots Arts Program for the 2000-2001 through 2006-2007 fiscal years are hereby ratified, validated, and confirmed."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 143B-123. Rules and procedures; standards for qualification for funds.

The Department of Cultural Resources shall be authorized to adopt rules and procedures necessary to implement this program and shall adopt standards which must be met by organizations within the counties in order to qualify for funds under the Grassroots Arts Program. The standards adopted shall include, but not be limited to the following:

(1) The organization must show that it exists primarily to aid the arts and that it aids the arts in all its forms including the performing, visual and literary.

(2) The organization must show that its programs are open to the entire community.

(3) The organization must show that it is a nonprofit, tax-exempt corporation, governed by a citizen board which is not self-perpetuating, and that it has been in existence and active for at least one full year.

(4) The organization must show that it can match funds available under the Grassroots Arts Program with public or private funds from within the county in which it is located at a ratio of one-to-one. (1977, c. 1008, s. 3.)

§ 143B-124. Designation of organization as official distributing agent; duties.

Guided by the standards set out in G.S. 143B-123, the board of county commissioners of each county shall designate to the Department of Cultural Resources an organization to serve as its distributing agent for Grassroots Arts Program funds. Upon the approval of the Department of Cultural Resources, the designated organization shall become the official distributing agent for that county and shall remain so until such time as it no longer meets the necessary standards. To receive its per capita funds, the official distributing agent must annually submit to the Department of Cultural Resources for its approval a plan for the expenditure of the funds allotted to that county and must account for the funds after they have been expended. Funds may be used for programming, administrative and operating expenses, and should assist in the total development of the arts within that county. (1977, c. 1008, s. 4.)

§ 143B-125. Disposition of funds for counties without organizations meeting Department standards.

Funds for counties without organizations which meet the necessary standards set by the Department of Cultural Resources shall be retained by the department and used for arts programming within these counties. Where feasible, the department shall maintain the same per capita rate for the distribution of funds to these counties and shall require the same matching ratio. (1977, c. 1008, s. 5; 1993, c. 321, s. 33.)

Part 25. Historical Military Reenactment Groups.

§ 143B-126. Voluntary registration; designation of names; registration symbol.

The Department of Cultural Resources shall establish a program for the voluntary registration of historical military reenactment groups. The Department shall require, as part of the registration procedure, the filing of a copy of the various bylaws governing the groups. The Department shall designate the names to be used by the groups to ensure a lack of duplication or confusion between the groups and shall, in the case of duplicate name requests, decide the use of a particular name based on the longest period of existence as shown by the dates of the bylaws or other evidence of creation. The Department shall create a seal or other logo which shall indicate registration with the Department and shall be authorized for use only by groups properly registered pursuant to this part. (1981, c. 523, s. 1.)

§ 143B-127. Contracts with registered groups.

The Department of Cultural Resources, Office of Archives and History shall sign contracts for the performance of military historical dramas on State-owned property only with historical military reenactment groups properly registered pursuant to this Part. (1981, c. 523, s. 2; 2002-159, s. 35(j).)

Part 26. Advisory Committee on Abandoned Cemeteries.

§ 143B-128. Advisory Committee on Abandoned Cemeteries; members; selections; compensation; terms; vacancy; duties.

(a) There is created the Advisory Committee on Abandoned Cemeteries to be composed of 17 members appointed as follows:

(1) Two by the Governor;
(2) One by the President Pro Tempore of the Senate;
(3) One by the Speaker of the House;
(4) One by the Secretary of the Department of Cultural Resources;
(5) One by the Executive Director of the North Carolina Commission of Indian Affairs, Department of Administration;
(6) One each by the chief executive of the following organizations, from the membership of the organization:
  a. North Carolina Archaeological Council;

b. North Carolina Association of County Commissioners;
c. North Carolina Chapter of the Daughters of the American Revolution;
d. North Carolina Chapter of the Society of the Cincinnati;
e. North Carolina Chapter of the Sons of the American Revolution;
f. North Carolina Genealogical Society;
g. North Carolina Historical Commission;
h. North Carolina League of Municipalities;
i. Society of the Colonial Dames of America in the State of North Carolina;
j. Sons of Confederate Veterans;
k. United Daughters of the Confederacy.

(b) Members shall be appointed for staggered four-year terms beginning July 1 of odd-numbered years and shall serve until their successors are appointed and qualified. To create and maintain staggered terms, one member appointed by the Governor and the members appointed by the Speaker of the House, North Carolina Archaeological Council, North Carolina Chapter of the Daughters of the American Revolution, North Carolina Chapter of the Sons of the American Revolution, North Carolina Genealogical Society, North Carolina League of Municipalities, and the Sons of Confederate Veterans shall be appointed for two-year terms to expire June 30, 1983, at which time their successor shall be appointed pursuant to this section for four-year terms. The remaining committee members shall be appointed for four-year terms.

(c) Members shall serve without salary or compensation for their actual expenses resulting from the performance of their official duties.

(d) An appointment to fill a vacancy on the committee shall be made according to the procedures for appointment for regular terms, pursuant to this section. Any appointment to fill a vacancy on the committee for any reason shall be for the balance of the unexpired term.

(e) Upon its appointment the committee shall organize by electing from its membership a chairman and a vice-chairman. It shall be the duty of the committee to review existing statutes relating to cemeteries, make recommendations to the General Assembly concerning new statutes, and to assist the department in its efforts to collect information on abandoned cemeteries. (1981, c. 1016, s. 1; 1995, c. 490, s. 1.)

Part 27. Roanoke Voyages and Elizabeth II Commission.

§§ 143B-129 through 143B-131: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(c).

Cross References. — As to the Roanoke Island Commission, see now G.S. 143B-131.1 et seq.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(d), provides that effective October 1, 1994, the statutory authority, powers, duties, functions, records, personnel, property, and funds of the Roanoke Voyages and Elizabeth II Commission are transferred to the Roanoke Island Commission, and that all its prescribed powers are transferred as well.

Part 27A. Roanoke Island Commission.

§ 143B-131.1. Commission established.

There is established the Roanoke Island Commission. The Commission shall be an independent commission, but shall be located within the Department of Cultural Resources for historic resource management, organizational, and budgetary purposes. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a); 1995, c. 507, s. 12.6(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(d), provides that effective October 1, 1994, the statutory authority, powers, duties, functions, records, personnel, property, and funds of the Roanoke Voyages and Elizabeth II Commission are transferred to the Roanoke Island Commission, and that all its prescribed powers are transferred as well.

Session Laws 1995, c. 507, s. 12.6(d) provides: "The personnel, personal property, and unexpended balances of appropriations, allocations, or other funds for the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, and the Roanoke Island Commission are transferred from the Department of Cultural Resources to the Roanoke Island Commission."

§ 143B-131.2. Roanoke Island Commission — Purpose, powers, and duties.

(a) The Commission is created to combine various existing entities in the spirit of cooperation for a cohesive body to protect, preserve, develop, and interpret the historical and cultural assets of Roanoke Island. The Commission is further created to operate and administer the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, Ice Plant Island, and all other properties under the administration of the Department of Cultural Resources located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo, except as otherwise determined by the Commission.

(b) The Commission shall have the following powers and duties:

(1) To advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the appearance, maintenance, and aesthetic quality of U.S. Highway 64/264 and the U.S. 64/264 Bypass travel corridor on Roanoke Island and the grounds on Roanoke Island Festival Park.

(2) To operate the Elizabeth II State Historic Site and Visitor Center and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587.

(3) To supervise the development of Ice Plant Island and to manage future facilities.

(4) To advise the Secretary of the Department of Cultural Resources on matters pertinent to historical and cultural events on Roanoke Island.

(5) With the assistance of the Department of Cultural Resources, to identify, preserve, and protect properties located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo consistent with applicable State laws and rules.

(6) To establish and collect a charge for admission to any property or event operated by the Commission.

(7) To solicit and accept gifts, grants, and donations.

(8) To cooperate with the Secretary and Department of Cultural Resources, the Secretary and Department of Transportation, the Secretary and Department of Environment and Natural Resources, and other governmental agencies, officials, and entities, and provide them with assistance and advice.

(9) To adopt and enforce such bylaws, rules, and guidelines that the Commission deems to be reasonably necessary in order to carry out its powers and duties. Chapter 150B of the General Statutes does not apply to the adoption of rules by the Commission.

(10) To establish and maintain a separate fund composed of moneys which may come into its hands from gifts, donations, grants, or bequests,

which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may also establish a reserve fund to be maintained and used for contingencies and emergencies. Funds appropriated to the Commission may be transferred to the Friends of Elizabeth II, Inc., a private, nonprofit corporation. The Friends of Elizabeth II, Inc., shall use the funds transferred to it to carry out the purposes of this Part.

(11) By cooperative arrangement with other agencies, groups, individuals, and other entities, to coordinate and schedule historical and cultural events on Roanoke Island.

(12) Make recommendations to the Secretary of Cultural Resources concerning personnel and budgetary matters.

(13) To acquire real and personal property by purchase, gift, bequest, devise, and exchange.

(14) To administer the Roanoke Island Commission Fund and the Roanoke Island Commission Endowment Fund as provided in G.S. 143B-131.8.

(15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements to carry out the purposes of this Part and duties of the Commission. The provisions of G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to purchases by the Roanoke Island Commission of equipment, supplies, and services. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a); 1995, c. 507, s. 12.6(b); 1997-443, ss. 11A.119(a), 30.1; 1998-212, ss. 21.1(a), 21.1(b); 2006-259, s. 25.)

§ 143B-131.3. Assignment of property; offices.

Upon request of the Commission, the head of any State agency may assign property, equipment, and personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Part. Assignments under this section shall be without reimbursement by the Commission to the agency from which the assignment was made. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.4. Commission reports.

Before July 1, 1995, the Commission shall submit to the General Assembly a comprehensive report incorporating specific recommendations of the Commission for development and promotion of the Elizabeth II State Historic Site and Visitor Center. After the initial report, the Commission shall submit a report to the General Assembly within 30 days of the convening of each Regular Session of the General Assembly. The report shall include:

(1) A summary of actions taken by the Commission consistent with the powers and duties of the Commission set forth in G.S. 143B-131.2.

(2) Recommendations for legislation and administrative action to promote and develop the Elizabeth II State Historic Site and Visitor Center.

(3) An accounting of funds received and expended. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.5. Roanoke Island Commission — Additional powers and duties; transfer of assets and liabilities.

(a) The Commission shall also have the powers and duties established by Chapter 1194, Session Laws of 1981, as amended.

(b) Effective October 1, 1994, all lawful standards, rules, regulations, guidelines, contracts, agreements, permits, bylaws, and certificates of appropriateness of or issued by the Roanoke Voyages Corridor Commission or the Roanoke Voyages and Elizabeth II Commission shall remain in effect until modified, amended, revoked, repealed, or changed (as appropriate) by the Roanoke Island Commission in accordance with law.

(c) Effective October 1, 1994, all the assets and liabilities of the Roanoke Voyages and Elizabeth II Commission are vested in the Roanoke Island Commission. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

Editor's Note. — Session Laws 1985, c. 730, ss. 1 to 3, provide:

"Sec. 1. Notwithstanding Article III of Chapter 111 of General Statutes, with the approval of the Department of Cultural Resources, the Friends of Elizabeth II, Incorporated may operate vending machines on the site grounds of the Elizabeth II.

"Sec. 2. Eighty percent (80%) of the profits from activities authorized by Section 1 of this act shall be used to support the Elizabeth II, the ship's boat, and related activities. The remainder of the profits shall be used for the activities of the Roanoke Voyages and Elizabeth II Commission.

"Sec. 3. This act is effective upon ratification."

§ 143B-131.6. Roanoke Island Commission — Members; terms; vacancies; expenses; officers.

(a) The Commission shall consist of 24 voting members appointed as follows:

(1) Six members appointed by the Governor;
(2) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, at least two of whom reside in Dare County;
(3) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, at least two of whom reside in Dare County; and
(4) The following persons, or their designees, ex officio:
  a. The Governor;
  b. The Attorney General;
  c. The Secretary of the Department of Cultural Resources;
  d. The Secretary of the Department of Transportation;
  e. The Chair of the Dare County Board of Commissioners; and
  f. The Mayor of Manteo.

(b) Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The Governor shall initially appoint three members for a term of two years and three members for a term of three years.
(2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall initially appoint three members for a term of two years and three members for a term of three years.
(3) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall initially appoint three members for a term of two years and three members for a term of three years.

Initial terms shall commence on October 1, 1994.

(c) The Governor shall appoint a chair biennially from among the membership of the Commission. The initial term of the chair shall commence on October 1, 1994. The Commission shall elect from its membership a vice-chair, a secretary, and treasurer to serve two-year terms. The Commission in its discretion may appoint a historian to serve at its pleasure. Initial terms shall commence on October 1, 1994.

(d) A vacancy in the Commission resulting from the resignation of a member or otherwise, shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(f) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Part.

(g) The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than two times a year.

(h) A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(i) The Commission shall make its recommendations by March 15 of each year that terms expire for appointments for terms commencing July 1 of that year; provided the initial appointments for terms commencing October 1, 1994, shall be made upon recommendation of the Roanoke Island Historical Association. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a); 2000-181, s. 2.4.)

§ 143B-131.7. Roanoke Island Commission — Counsel.

The Attorney General shall assign legal counsel to the Commission. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.8. Roanoke Island Commission Fund; Roanoke Island Commission Endowment Fund.

(a) The Roanoke Island Commission Fund is established as a nonreverting Fund and shall be administered by the Roanoke Island Commission. Seventy-five percent (75%) of the revenues collected from any property operated by the Roanoke Island Commission shall be credited to the Fund. In addition, gifts, donations, grants, or bequests received by the Commission for the purpose of carrying out its duties and purposes may also be deposited in the Fund.

The funds in the Roanoke Island Commission Fund shall be used for the expenses of the Roanoke Island Commission and the operation and maintenance of properties operated by the Commission.

(b) The Roanoke Island Commission Endowment Fund is established as a nonreverting Fund and shall be administered by the Commission. Twenty-five percent (25%) of the revenue collected from any property operated by the Roanoke Island Commission shall be credited to the Fund. Until July 1, 2000, the revenues credited to the Roanoke Island Commission Endowment Fund and the interest earned on the revenue shall be held in reserve to create the principal for the Fund.

On and after July 1, 2000, eighty percent (80%) of the interest generated by the principal in the Roanoke Island Commission Endowment Fund shall be used by the Roanoke Island Commission to carry out its duties and purposes as set out by this Part. The Roanoke Island Commission may also use those interest funds for capital expenditures for the properties operated by the Commission. (1995, c. 507, s. 12.6(c).)

§ 143B-131.9. Roanoke Island Commission staff.

The Commission shall appoint and fix the salary of an Executive Director to serve at its pleasure and may hire other employees. Employees of the

Commission who were transferred from the Department of Cultural Resources as of July 1, 1995, and who were subject to the State Personnel Act, Chapter 126 of the General Statutes, at the time of the transfer shall continue to be subject to that act. Employees of the Commission who were transferred but were not subject to the State Personnel Act at the time of transfer are not subject to the State Personnel Act. Employees of the Commission who were not transferred are not subject to the State Personnel Act unless the Commission designates the employee's position as subject to the State Personnel Act when the employee is hired. Once designated, a position remains subject to the State Personnel Act unless exempted in accordance with that act. (1995, c. 507, s. 12.6(c).)

§ 143B-131.10. Exceptions.

Notwithstanding G.S. 143C-1-1, the following provisions do not apply to this Part: G.S. 143C-6-4, 143C-6-5, and 143C-6-9. (1995, c. 507, s. 12.6(c); 2006-203, s. 102.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 102, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-1-1" for "G.S. 143-28" near the beginning, and "G.S. 143C-6-4, 143C-6-5, and 143C-6-9" for "G.S. 143-16.3 and G.S. 143-23" at the end.

Part 28. Andrew Jackson Historic Memorial Committee.

§ 143B-132. Andrew Jackson Historic Memorial Committee.

(a) The State of North Carolina and its citizens have long noted and recognized the origins and early life of Andrew Jackson, the nation's seventh president, in the Waxhaw region along the North Carolina-South Carolina border. It is important that this State recognize the origins and early life of this outstanding national leader in Western North Carolina. It is necessary to plan an appropriate memorial in Union County, North Carolina, to commemorate and display for all Americans the origins and early life of Andrew Jackson.

(b) There is created an Andrew Jackson Historic Memorial Committee to consist of 12 members, six appointed by the Speaker of the House of Representatives and six appointed by the President Pro Tempore of the Senate. Members shall serve four-year terms. Vacancies shall be filled by the appointing officer for the unexpired term.

(c) The primary duties and responsibilities of the Committee are:

(1) To assist the Office of Archives and History, Department of Cultural Resources in determining the need for a permanent memorial to honor Andrew Jackson and to commemorate and display the origins and early life of Jackson in the Waxhaw region.

(2) To assist the Office of Archives and History, Department of Cultural Resources in determining the location, design, content, and form of a memorial, if the Committee determines that one is needed, at one of the sites associated with the early life of Andrew Jackson.

(3) To assist the Office of Archives and History, Department of Cultural Resources in determining the most appropriate methods for proceeding with the establishment and operation of the memorial, including

methods for obtaining the necessary financial resources for property acquisition, capital expenditures, and operational expenses.

(4) To select appropriate qualified researchers and research institutions to assist the Committee in undertaking any required studies to complete the Committee's duties and responsibilities.

(d) Members of this Committee may not receive per diem, travel reimbursement, or subsistence allowances.

(e) Administrative and staff services for the Committee shall be provided by the Office of Archives and History, Department of Cultural Resources, which shall also provide the Committee with information in its possession relating to past research concerning the origins and early life of Andrew Jackson. In addition, the Office of Archives and History, Department of Cultural Resources shall assist the Committee in preparing a report for submission to the General Assembly.

(f) Funds for the operation of the Committee shall be provided by the Department of Cultural Resources. (1985, c. 757, s. 180; 1995, c. 490, s. 7; 2002-159, s. 35(*l*).)

Part 29. Veterans' Memorial Commission.

§ 143B-133. Commission established.

(a) There is created within the Department of Cultural Resources the Veterans' Memorial Commission.

(b) The Veterans' Memorial Commission shall consist of 15 members, none of whom shall be members of the North Carolina General Assembly. The appointments shall be made as follows:

(1) Five persons shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(2) Five persons shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) Five persons shall be appointed by the Governor.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies in appointive terms shall be filled by appointment by the Governor.

(c) The members of the Commission shall serve for the life of the Commission.

(d) The members of the Commission shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) The majority of the Commission shall constitute a quorum for the transaction of business.

(f) The members of the Commission shall select a chairman and vice-chairman.

(g) The Commission shall meet at least once during each calendar quarter upon the call of the chairman. The initial meeting shall be called by the Secretary of Cultural Resources to be held no later than August 31, 1987.

(h) The Department of Cultural Resources shall provide administrative and support staff to the Commission to assist it in performing its duties.

(i) The Commission shall terminate and this Part expire upon dedication of the monument. (1987, c. 779, s. 1; 1995, c. 490, s. 62.)

§ 143B-133.1. Powers of Commission.

(a) The Commission shall cause to be erected on the Capitol Grounds a monument to the veterans of World War I, World War II, and the Korean War.

(b) The Commission may, in its discretion, hire any person or persons to design, construct, and erect the monument, and shall choose its location on the Capitol Grounds, in accordance with the review procedures of the North Carolina Historical Commission as set forth in Chapter 100 of the General Statutes, and without regard to Article 8 of Chapter 143 of the General Statutes, G.S. 143B-373, or G.S. 147-12(12).

(c) Further, when a designer is selected and awarded a contract by the Commission to construct and erect the memorial, the Commission shall so advise, in writing, the Office of State Budget and Management of the total amount of the contract, a schedule of payments to be executed, if required, including any particular conditions upon which final acceptance of the Memorial and payment to the designer shall be made. Upon receipt of this document, the Office of State Budget and Management shall cause disbursements to be made from the Reserve established by Section 3 of Chapter 971, Session Laws of 1983, in accordance with the Commission's contractual obligations. (1987, c. 779, s. 1; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

§ 143B-134: Reserved for future codification purposes.

Part 30. African-American Heritage Commission.

§ 143B-135. Commission established.

(a) Creation and Duties. — There is created the African-American Heritage Commission in the Department of Cultural Resources to advise and assist the Secretary of Cultural Resources in the preservation, interpretation, and promotion of African-American history, arts, and culture. The Commission shall have the following powers and duties:

(1) To advise the Secretary of Cultural Resources on methods and means of preserving African-American history, arts, and culture.
(2) To promote public awareness of historic buildings, sites, structures, artwork, and culture associated with North Carolina's African-American heritage through special programs, exhibits, and publications.
(3) To support African-American heritage education in elementary and secondary schools in coordination with North Carolina Public Schools.
(4) To build a statewide network of individuals and groups interested in the preservation of African-American history, arts, and culture.
(5) To develop a program to catalog, preserve, assess, and interpret all aspects of African-American history, arts, and culture.
(6) To advise the Secretary of Cultural Resources upon any matter the Secretary may refer to it.

(b) Composition and Terms. — The Commission shall consist of 10 members who shall serve staggered terms. The initial board shall be selected on or before October 1, 2008, as follows:

(1) Four appointed by the Governor, two of whom shall serve terms of three years, one of whom shall serve a term of two years, and one of whom shall serve a term of one year. At least one appointee shall be a member of the North Carolina Historical Commission.
(2) Three appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall serve a term of three years, one of whom shall serve a term of two years, and one of whom shall serve a term of one year.
(3) Three appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall serve a term of three years, one of whom shall serve a term of two years, and one of whom shall serve a term of one year.

Upon the expiration of the terms of the initial Commission members, each member shall be appointed for a three-year term and shall serve until a successor is appointed.

(c) Vacancies. — A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. — The Commission may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from participating in the official business of the Commission until the charges have been resolved.

(e) Officers. — The chair shall be designated by the Governor from among the members of the Commission to serve as chair at the pleasure of the Governor. The Commission shall elect annually from its membership a vice-chair and other officers deemed necessary by the Commission to carry out the purposes of this Article.

(f) Meetings; Quorum. — The Commission shall meet at least semiannually to conduct business. The Board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Commission members shall constitute a quorum.

(g) Compensation. — The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. (2008-107, s. 19A.2.)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this part effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

ARTICLE 3.

Department of Health and Human Services.

Part 1. General Provisions.

§ 143B-136: Repealed by Session Laws 1997-443, s. 11A.2.

§ 143B-136.1. Department of Health and Human Services — creation.

There is created a department to be known as the "Department of Health and Human Services," with the organization, duties, functions, and powers defined in this Article and other applicable provisions of law. (1997-443, s. 11A.3.)

Transfer of Health Services. — Session Laws 1997-443, s. 11A.120, provides that references in the Session Laws to any department, division, or other agency that is transferred by Part XIA of the act shall be considered to refer to the successor department, division, or other agency. Every Session Law that refers to any department, division, or other agency to which that Part applies that relates to any power, duty, function, or obligation of any department, division, or agency and that continues in effect after that Part shall be construed so as to be consistent with that Part.

Session Laws 1997-443, s. 11A.124 provides all statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of any agency which are transferred pursuant to this Part shall be transferred in their entirety.

Session Laws 1997-443, s. 11A.125 provides unless specifically provided to the contrary or unless a contrary intent is clear from the context, any official designation of any agency transferred by this Part as the State agency for any function, including specifically purposes of federal programs, shall be considered to be a designation of the successor agency.

Session Laws 1997-443, s. 11A.126 provides no later than 30 days after the effective date of this part, the Department of Health and Human Services and the Department of Environment and Natural Resources shall enter into a Memorandum of Agreement that provides for coordination between the departments as to any functions shared by the departments as a result of the passage of this Part. This Memorandum shall require that the Department of Environment and Natural Resources provide staff to the Commission for Health Services [now the Commission for Public Health] for the Commission's duties under Articles 8, 9, 10, and 12 of Chapter 130A of the General Statutes. Until a Memorandum of Agreement has been entered into by the departments, the Department of Health and Human Services shall provide all clerical and other services required by the Commission for Health Services [now the Commission for Public Health].

Session Laws 1997-443, s. 11A.130, provides in part that Part XIA of that act becomes effective when the act becomes law (August 28, 1997).

Prescription Drug System. — Session Laws 2001-424, ss. 21.6(a) to (d), as amended by Session Laws 2001-513, s. 20, and by Session Laws 2002-126, s. 10.6, provides: "(a) Of the funds appropriated in this act [Session Laws 2001-424] to the Department of Health and Human Services, the sum of two hundred thousand dollars ($200,000) for the 2001-2002 fiscal year shall be used to initiate the development of a system to assist eligible individuals in obtaining prescription drugs at no cost through pharmaceutical company programs. The system will be designed to minimize the efforts of patients and their health care providers in securing needed drugs. The required patient and health care provider data will be maintained and orders tracked in order to initiate timely reorders of needed drugs to assure continuity of medication intake. The Department may contract with a private nonprofit organization to assist in the development of the system as provided under this section.

"(b) The development of the system shall be jointly managed by the Office of Research, Demonstrations and Rural Health Development and the Office of Pharmacy Services, Division of Public Health.

"(c) The Department shall work with pharmaceutical companies in obtaining access to company applications for assistance and making those applications available to the general public. The Department shall ensure that pharmaceutical company programs are registered with the Department and shall obtain the application forms of each pharmaceutical program.

"(d) The Department shall report on the implementation of this section [s. 21.6 of Session Laws 2001-424] on January 1, 2002, April 1, 2002, and October 1, 2002, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division."

Acute Care and Long-Term Care Expenditures. — Session Laws 2001-424, s. 21.19(q), as amended by Session Laws 2002-126, s. 10.11(a), provides: "The Department of Health and Human Services shall submit a quarterly status report on expenditures for acute care and long-term care services to the Fiscal Research Division and to the Office of State Budget and Management. This report shall include an analysis of budgeted versus actual expenditures for eligibles by category and for long-term care beds. In addition, the Department shall revise the program's projected spending for the current fiscal year and the estimated spending for the subsequent fiscal year on a quarterly basis. The quarterly expenditure report and the revised forecast shall be forwarded to the Fiscal Research Division and to the Office of State Budget and Management no later than the third Thursday of the month following the end of each quarter."

Division of Early Intervention and Education. — Session Laws 2001-424, ss. 21.80(b) to (f), provide: "(b) The Division of Early Intervention and Education is dissolved and an Office of Education Services is created within the Department of Health and Human Services. The purpose of this office is to manage the Schools for the Deaf, the Governor Morehead School for the Blind, and their preschool components. The Office shall have a Superintendent and appropriate staff to manage these schools. The purpose of the Office is to improve student academic and postsecondary outcomes and to strengthen collaborative relationships with local education agencies and with the State Board of Education.

"(c) The Early Intervention program, including all positions and the corresponding State appropriations, federal funds, and other funds that were in the Early Intervention program as of January 1, 2001, are transferred from the Division of Early Intervention and Education to the Division of Public Health, Women's and Children's Health Section.

"(d) The Developmental Evaluation Centers, including all positions and the corresponding State appropriations, federal funds, and other funds, are transferred from the Division of Early Intervention and Education to the Division of Public Health, Women's and Children's Health Section.

"(e) The Governor Morehead School preschool program, including all positions and the corresponding State appropriations, federal funds, and other funds, is transferred from the Division of Early Intervention and Education to the Governor Morehead School.

"(f) The Department of Health and Human Services shall make the necessary organization changes effective immediately and the budget adjustments by October 1, 2001."

Public Health Improvement Plan — Session Laws 2009-451, s. 10.26(a)-(j), provides: "(a) The Department of Health and Human Services (DHHS) shall develop a five-year Public Health Improvement Plan (Plan) by March 31, 2010. In developing the Plan the Secretary shall:

"(1) Adopt a list of services and activities performed by local health departments that qualify as core public health functions of statewide significance.

"(2) Adopt a list of performance measures with the intent of improving health status indicators applicable to core public health functions of statewide significance that local health departments (LHDs) must provide.

"(3) Identify a set of health status indicators to be given priority by LHDs.

"Under the Plan, all priorities and health status indicators must incorporate as an essential activity the disparity of diseases amongst populations and locales.

"(b) In order for measurable benefits to be realized through the implementation of the Plan, the Plan shall include the adoption of levels of performance necessary to promote:

"(1) Uniformity across local health departments,

"(2) Best evidence-based services,

"(3) National standards of performance,

"(4) Innovations in public health practice, and

"(5) Reduction of geographic and racial health disparities.

"LHDs shall have the flexibility and opportunity to use the resources available to achieve the required performance measures in a manner that best suits the LHD.

"(c) The Plan will address the need to provide county health departments with financial incentives to encourage and increase local investment in public health functions. County governments shall not supplant existing local funding with State incentive resources. The Secretary may revise the list of activities and performance measures as appropriate, but before doing so, the Secretary shall provide a written explanation of the rationale for the addition, deletion, or revision.

"(d) In developing the Plan the Secretary shall establish and chair the Public Health Improvement Plan Task Force (Task Force), the members and expertise of which shall include:

"(1) Local health departments,

"(2) Department staff,

"(3) Individuals and entities with expertise in the development of performance measures, accountability, and systems management,

"(4) Experts in development of evidence-based medical guidelines or public health practice guidelines, and

"(5) Individuals and entities that will be affected by the performance measures.

"(e) The implementation schedule for the Plan shall be as follows:

"(1) July 1, 2009, establish the Task Force to develop the Plan,

"(2) March 31, 2010, submit the Plan to the 2010 Regular Session of the 2009 General Assembly,

"(3) July 1, 2010, implement the Plan, and

"(4) November 15, 2011, and annually thereafter, report on Plan implementation.

"(f) The Department will identify the programmatic activities and funding in the Division of Public Health associated with the core functions and activities in the Plan. Funds associated with these activities shall be subject to a flexible spending formula adopted by the Department, as follows:

"(1) Beginning in SFY 2010-2011, the flexible spending formula will begin to replace the current spending with a more effective method of funding public health activities at the local level and achieving the results expected.

"(2) The Task Force shall identify a reliable and consistent source of State revenue to fund the flexible spending formula.

"(3) If sufficient additional revenue is available to implement the Plan, a separate set-aside of available funds would be created. This set-aside would be available to contiguous LHDs that seek to address a specific women's health, child health, or adult health disease or chronic condition, and in doing so, choose to merge into a single Local Health District, thus saving administrative dollars to be focused on public health issues.

"(g) Funds appropriated to the Department for flexible spending shall be distributed to county health departments as follows:

"(1) Each of the county health departments will receive a base amount to be determined by the DHHS.

"(2) The balance of funds in the Flexible Spending Account is to be distributed to the counties on the basis of a formula that takes into consideration the following elements:

"a. Population,

"b. Per capita income,
"c. Rates of:
"1. Infant mortality,
"2. Teenage pregnancy,
"3. Tobacco use,
"4. Cancer,
"5. Heart disease,
"6. Diabetes, and
"7. Stroke.
"d. Percent of minorities in the county,
"e. Body Mass Index (BMI) of public school students, and
"f. Other factors as the Secretary may find necessary to achieve the goals of the Plan.

"(3) The use of the funds by the LHD would reflect the core public health functions. It will be incumbent upon the LHD to use the funds in a manner that assures its achievement of the performance measures adopted by the Secretary.

"(h) To ensure compliance with Department directives, the Task Force shall consider requiring each county health department to submit to the Secretary such data as the Secretary determines is necessary to allow the Secretary to assess whether the county health department has used the funds in a manner consistent with achieving the performance measures associated with this Plan.

"(i) Beginning November 15, 2011, and biannually thereafter, the Secretary shall report to the Governor and the General Assembly on:
"(1) The distribution of funds to LHDs,
"(2) The use of these funds by LHDs,
"(3) The specific effect the funding from this Plan has had on:
"a. LHDs' performance,
"b. Health status indicators, and
"c. Health disparities.

"The Secretary's initial report will focus on implementation. Subsequent reports will evaluate trends in performance and expenditures."

Editor's Note. — Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Acts of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2004-124, s. 10.1, provides: "The Department of Health and Human Services shall centralize all activities throughout the Department relating to the coordination and processing of criminal record checks required by law. The centralization shall include the transfer of positions, corresponding State appropriations, federal funds, and other funds. The Department shall implement the centralization beginning January 1, 2005, and shall report on the details of the centralization and implementation to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than January 1, 2005."

Session Laws 2004-124, s. 10.2C.(a)-(d), provides for the consolidation and implementation of all IT operations, services, and functions that are common to and necessary in all divisions, offices, and programs of the Department of Health and Human Services. Emphasis shall be placed on improving successful and timely implementation of IT projects and ongoing maintenance within the Department while eliminating duplication of efforts and equipment, controlling the use of personal service contracts, establishing continuity in process and systems development, strengthening systems security, coordinating and overseeing all IT efforts within the Department, and identifying other efficiencies. The plan for consolidation of these IT functions shall be implemented in a manner that will allow for the maintenance of a complete accounting of IT efforts within the Department and the costs related to those efforts, including identification of funding needs. The plan should set forth the management and operational structure of the consolidated IT function, including how the structure will enhance IT operations and efficiency within the Department. Finally, the Department shall restrict the future creation or filling of any IT-related position within any departmental division, office, or program when the function of the position is determined under the consolidation plan to be properly placed or managed within the consolidated IT function.

"(d) The consolidation plan, including time lines for implementation, shall be submitted to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division upon completion, but not later than October 1, 2004. The Department shall provide a report on the progress of implementation of the consolidation plan to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2005."

Session Laws 2004-124, s. 10.28B.(a)-(g), provides: "(a) The Department of Health and Human Services shall expand the pilot accreditation process for local health departments to include additional counties.

"(b) The Pilot Accreditation Advisory Board (hereafter 'Advisory Board') is established within the North Carolina Institute for Public Health. The Advisory Board shall be composed of 15 members appointed by the Secretary of Health and Human Services as follows:

"(1) Four shall be county commissioners recommended by the North Carolina Association of County Commissioners, and four shall be members of a local board of health as recommended by the North Carolina Association of Local Boards of Health.

"(2) Two local health directors.

"(3) One staff member from the Department of Health and Human Services, Division of Public Health.

"(4) Three members at large.

"(5) One recommended by the Secretary of Environment and Natural Resources, from the Division of Environmental Health.

"(c) Members of the Advisory Board who are not officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Advisory Board who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

"(e) Of the funds appropriated in this act to the Department of Health and Human Services the sum of fifty thousand dollars ($50,000) for the 2004-2005 fiscal year shall be allocated for administrative costs and for activities of the Pilot Accreditation Advisory Board for the accreditation of additional local health departments. The Department shall contract with the Institute for Public Health, which shall be responsible for implementation of the pilot accreditation process.

"(f) Not later than April 1, 2005, the Pilot Accreditation Advisory Board shall report its findings to the Director of the Institute for Public Health, the Secretary of the Department of Health and Human Services, and the co-chairs of the House and Senate Appropriations Committees for Health and Human Services.

"(g) The North Carolina Public Health Task Force 2004 shall continue its work on the Public Health Improvement Plan and in its final report to the General Assembly shall include comparisons of the recommendations of the Task Force with the Model State Public Health Act, Public Health Statute Modernization National Excellence Collaborative, September 2003.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143B-137: Repealed by Session Laws 1997-443, s. 11A.2.

§ 143B-137.1. Department of Health and Human Services — duties.

It shall be the duty of the Department to provide the necessary management, development of policy, and establishment and enforcement of standards for the provisions of services in the fields of public and mental health and rehabilitation with the intent to assist all citizens — as individuals, families, and communities — to achieve and maintain an adequate level of health, social and economic well-being, and dignity. Whenever possible, the Department shall emphasize preventive measures to avoid or to reduce the need for costly emergency treatments that often result from lack of forethought. The Department shall establish priorities to eliminate those excessive expenses incurred by the State for lack of adequate funding or careful planning of preventive measures. (1997-443, s. 11A.3.)

Cross References. — As to establishment of a Spay/Neuter Program in the Department of Health and Human Services, see G.S. 19A-60 et seq. As to report by the Division of Social Services on the activities of the State Child Fatality Review Team, see G.S. 143B-150.20(h).

Child Residential Treatment Services Program. — Session Laws 2000-67, ss. 11.19(a)-(d), provide: "(a) The Department of Health and Human Services shall establish the Child Residential Treatment Services Program. The Program shall be implemented by the Department in consultation with the Office of Juvenile Justice (now the Department of Juvenile Justice and Delinquency Prevention) and other affected State agencies. The purpose of the Program is to provide appropriate and medically necessary residential treatment alternatives for children at risk of institutionalization or other out-of-home placement. Program funds shall be targeted for non-Medicaid eligible children and may also be used for Medicaid-eligible children. Program funds may also be used to expand the Child Mental Health Systems of Care Project. The Program shall include the following:

"(1) Behavioral health screenings for all children at risk of institutionalization or other out-of-home placement.

"(2) Appropriate and medically necessary residential treatment placements, including placements for youths needing substance abuse treatment services and for specialized populations such as deaf children, children with serious emotional disturbances, and sexually aggressive youth.

"(3) Multidisciplinary case management services, as needed.

"(4) A system of utilization review specific to the nature and design of the Program.

"(5) Mechanisms to ensure that children are not placed in department of social services custody for the purpose of obtaining mental health residential treatment services.

"(6) Mechanisms to maximize current State and local funds and to expand use of Medicaid funds to accomplish the intent of this Program.

"(7) Other appropriate components to accomplish the Program's purpose.

"(8) The Secretary of the Department of Health and Human Services may enter into contracts with residential service providers.

"(b) The Department shall not allocate funds appropriated for Program services until a Memorandum of Agreement has been executed between the Department and other affected State agencies. The Memorandum of Agreement shall address specifically the roles and responsibilities of the various departmental divisions and affected State agencies involved in the administration, financing, care, and placement of children at risk of institutionalization or other out-of-home placement. The Department shall not allocate funds appropriated in this act for the Program until Memoranda of Agreement between local departments of social services and area mental health programs, and the Administrative Office of the Courts, and the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention), as appropriate, are executed to effectuate the purpose of the Program. The Memoranda of Agreement shall address issues pertinent to local implementation of the Program.

"(c) Notwithstanding any other provision of law to the contrary, services under the Child Residential Treatment Services Program are not an entitlement for non-Medicaid eligible children served by the Program.

"(d) The Department of Health and Human Services, in conjunction with the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention) and other affected agencies, shall report on the following:

"(1) The number and other demographic information of children served.

"(2) The amount and source of funds expended to implement the Program.

"(3) Information regarding the number of children screened, specific placement of children, and treatment needs of children served.

"(4) The average length of stay in residential treatment, transition, and return to home.

"(5) The number of children diverted from institutions or other out-of-home placements such as training schools and State psychiatric hospitals.

"(6) Recommendations on other areas of the Program that need to be improved.

"(7) Other information relevant to successful implementation of the Program.

"The Department shall submit a progress report on implementation of the Program not later than February 1, 2001, and a final report not later than May 1, 2002, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division."

Services to Children at Risk for Institutionalization or Other Out-of-Home Placement. — Session Laws 2000-67, ss. 11.21(a), (b), provide: "(a) In order to ensure that children at risk for institutionalization or other out-of-home placement are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these children:

"(1) Provide only those treatment services that are medically necessary.

"(2) Implement utilization review of services provided.

"(3) Effective immediately:

"a. Eliminate formerly court-mandated Willie M. or Eligible Violent and Assaultive Children Program administration, infrastructure, categorical funding designation, and eligibility determination process at the State and local level;

"b. Identify savings realized from elimination of Program administration and infrastructure at the State and local level;

"c. Adopt the following guiding principles for the provision of services:

"1. Service delivery system must be outcome-oriented and evaluation-based.

"2. Services should be delivered as close as possible to the consumer's home.

"3. Services selected should be those that are most efficient in terms of cost and effectiveness.

"4. Services should not be provided solely for the convenience of the provider or the client.

"5. Families and consumers should be involved in decision making throughout treatment planning and delivery.

"d. Implement all of the following cost reduction strategies:

"1. Preauthorization for all services except emergency services.

"2. Levels of care to assist in the development of treatment plans.

"3. Clinically appropriate services.

"4. State review of individualized service plans for all children served to ensure that service plans focus on delivery of appropriate services rather than optimal treatment and habilitation plans.

"(4) Collaborate with other affected State agencies such as the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention) and the Administrative Office of the Courts, and with local departments of social services and area mental health programs to eliminate cost-shifting and facilitate cost-sharing among these governmental agencies with respect to the treatment and placement services.

"(b) The Department shall submit a progress report on implementation of this section not later than February 1, 2001, and a final report not later than May 1, 2002, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division."

Services to Multiply-Diagnosed Adults. — Session Laws 2005-276, s. 10.26(a), provides: "In order to ensure that multiply diagnosed adults are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these adults:

"(1) Implement the following guiding principles for the provision of services:

"a. Service delivery system must be outcome-oriented and evaluation-based.

"b. Services should be delivered as close as possible to the consumer's home.

"c. Services selected should be those that are most efficient in terms of cost and effectiveness.

"d. Services should not be provided solely for the convenience of the provider or the client.

"e. Families and consumers should be involved in decision making throughout treatment planning and delivery.

"(2) Provide those treatment services that are medically necessary.

"(3) Implement utilization review of services provided."

Ruth M. Easterling Trust Fund for Children with Special Needs. — Session Laws 2002-126, s. 6.13, provides: "Whereas, Representative Ruth M. Easterling has served as an advocate for the children of the State for over 25 years as a member of the General Assembly, there is established the 'Ruth M. Easterling Trust Fund for Children With Special Needs'. The purpose of the Trust Fund is to fund services for children with special needs that are not currently provided with State funds. The Trust Fund shall be used to:

"(1) Provide respite services for adoptive children, for children in foster care, and for other children with special needs at risk of out-of-home placement.

"(2) Pay for special services to, and special equipment for, children with special needs when there is no other source for payment, including, but not limited to, surgical repair of congenital anomalies and the purchase of mobility equipment.

"(3) Provide training to parents and caregivers in the unique care needs of children with special needs.

"The Secretary of Health and Human Services shall adopt rules to implement this section. By March 1, 2003, the Secretary shall report to the Chairs of the House of Representatives Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Health and Human Services on the use of the Trust Fund."

Pilot Program to Evaluate Use of Telemonitoring Equipment in Home Care Services. — Session Laws 2006-66, s. 10.9C, provides: "The Department of Health and Human Services, Division of Medical Assistance, may implement a pilot program to evaluate the use of telemonitoring equipment in home care services and community-based long-term care services. The pilot program may be implemented by October 1, 2006, and shall evaluate the use of telemonitoring equipment as a tool to improve the health of homecare clients and community-based long-term care clients through increased monitoring and responsiveness, and resulting in increased stabilization rates. The evaluation shall include a representative number of older adults. Not later than July 1, 2007, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Fiscal Research Division, and the North Carolina Study Commission on Aging on the implementation of the pilot program and its findings and recommendations on the cost-effectiveness of telemonitoring and the benefits to individuals and health care providers." See also Session Laws 2006-194, s. 1, noted below, for similar provisions.

Session Laws 2006-194, s. 1, provides: "The Department of Health and Human Services, Division of Medical Assistance, shall implement a pilot program to evaluate the use of telemonitoring equipment in home and community based services. As determined by the Division, the Department shall provide remuneration to home care agencies and other providers for participation in the pilot program. The pilot program shall be implemented by October 1, 2006, and shall evaluate the use of telemonitoring equipment as a tool to improve the health of home and community based recipients through increased monitoring and responsiveness, and resulting in increased stabilization rates and decreased hospitalization rates. The evaluation must include a representative number of older adults. The Department shall report to the Study Commission on Aging by August 1, 2007. The report shall include findings and recommendations on the cost-effectiveness of telemonitoring and the benefits to individuals and health care providers." Session Laws 2006-66, s. 10.9C authorized a similar study.

Session Laws 2006-194, s. 2, as amended by Session Laws 2007-125, s. 1, provides: "Beginning January 1, 2007, and for a period of two years thereafter, the Department of Health and Human Services shall not issue any licenses for new home care agencies that intend to offer in-home aide services. This shall not restrict the Department from issuing licenses to certified home health agencies that intend to offer in-home aide services or to agencies that need a new license for an existing home care agency being acquired. This will allow the Department more time to work with existing home care agencies to assure compliance with the newly adopted home care rules."

Study on Appropriate Care and Housing of Individuals with Mental Illness. — Session Laws 2007-156, s. 1.(a)-(c), provides: "(a) The Department of Health and Human Services, Division of Facility Services, Division of Aging and Adult Services, and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall study rules and regulations in North Carolina and other states regarding the provision of appropriate care and housing of individuals with mental illness in the same facility vicinity with individuals without mental illness and shall make recommendations relating to the housing of these individuals.

"(b) The Department of Health and Human Services, Division of Facility Services, Division of Aging and Adult Services, and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall study the need for training direct care workers in adult care homes to provide appropriate care to facility residents with mental illness and facility residents without mental illness and shall make recommendations for appropriate training of these workers. The study shall address the fiscal impact that the implementation of training requirements would have on these facilities and the amount of funding needed to support a successful training model.

"(c) The Department of Health and Human Services shall present its findings and recommendations in response to the studies authorized in subsections (a) and (b) of this section, along with any required statutory or rule changes, to the Study Commission on Aging and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before March 1, 2008."

Establishment of Special Needs Plan. — Session Laws 2007-323, s. 10.40F(a)-(c), provides: "(a) The Department of Health and Human Services, Division of Medical Assistance, shall evaluate and establish a pilot program in at least two but not more than four regions of the State to offer nursing facility certifiable (NFC) dual eligible Medicaid recipients services through a Special Needs Plan (SNP). The SNP will work with the Department's Community Care Networks. The SNP must be currently licensed in the State, have expertise in managing NFC dually eligible Medicaid recipients, have expertise or a relationship with experts in geriatrics and be capable and willing to work directly with Community Care North Carolina (CCNC). The SNP must also have no citations or ongoing investigations from the State, the Centers for Medicaid and Medicare Services, or other regulatory agency.

"(b) In establishing the pilot program, the Department shall select up to four regions (county clusters) based on the number of NFC dual eligible Medicaid recipients, number of skilled nursing facilities, and other factors. These regions and their respective CCNC will work with the SNP to promote enhanced care, greater efficiency, and cost savings.

"(c) The Department shall report on the evaluation, selection, and implementation of the pilot program to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than May 1, 2008. The Department shall include in its report information on increased primary care visits, hospital admission and readmission rates, mortality rates, results of pharmacy management, measurable quality outcomes, and associated cost savings for NFC managed through this pilot. The Department shall also include in its report the feasibility of expansion of the pilot to other regions of the State or expansion into the assisted living and home-based populations."

Health Information Technology Reporting. — Session Laws 2009-451, s. 10.27(c), provides: "Beginning October 1, 2009, the Department of Health and Human Services shall provide quarterly written reports on the status of HIT efforts to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The report shall include the following:

"(1) Current status of federal HIT initiatives.

"(2) Current status of State HIT efforts and initiatives among both public and private entities.

"(3) A breakdown of current public and private funding sources and dollar amounts for State HIT initiatives.

"(4) Department efforts to coordinate HIT initiatives within the State and any obstacles or impediments to coordination.

"(5) HIT research efforts being conducted within the State and sources of funding for research efforts.

"(6) Opportunities for stakeholders to participate in HIT funding and other efforts and initiatives during the next quarter.

"(7) Issues associated with the implementation of HIT in North Carolina and recommended solutions to these issues."

Editor's Note. — For the creation of the Office of Education Services, see Editor's note at G.S. 143B-136.1 under the heading of "Division of Early Intervention and Education."

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-107, s. 4.2(a), provides: "(a) The Department of Crime Control and Public Safety and the Department of Health and Human Services shall jointly identify and evaluate sources of permanent funding for State Medical Assistance Teams in light of the uncertain future availability of federal and local funding. The Department shall jointly report its findings and recommendations, including any legislative proposals, to the Fiscal Research Division on or before 1 January 2008."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

CASE NOTES

Funding for Medically Necessary Abortions. — Under prior G.S. 143B-137, the action of the General Assembly in placing severe restrictions on the funding of medically necessary abortions for indigent women was valid and did not violate Article I, Section 1; Article 1, Section 19; or Article XI, Section 4 of the Constitution of North Carolina. Rosie J. v. North Carolina Dep't of Human Resources, 347 N.C. 247, 491 S.E.2d 535 (1997).

§ 143B-138: Repealed by Session Laws 1997-443, s. 11A.2.

§ 143B-138.1. Department of Health and Human Services — functions and organization.

(a) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6:

(1) Division of Aging.
(2) Division of Services for the Blind.
(3) Division of Medical Assistance.
(4) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
(5) Division of Social Services.
(6) Division of Health Service Regulation.
(7) Division of Vocational Rehabilitation.
(8) Repealed by Session Laws 1998-202, s. 4(v), effective January 1, 1999.
(9) Division of Services for the Deaf and the Blind.
(10) Office of Economic Opportunity.
(11) Division of Child Development.
(12) Office of Rural Health.

(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type II transfer, as defined in G.S. 143A-6:

(1) Respite Care Program.

(2) Governor's Advisory Council on Aging.
(3) Commission for the Blind.
(4) Professional Advisory Committee.
(5) Consumer and Advocacy Advisory Committee for the Blind.
(6) Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.
(7) Social Services Commission.
(8) Child Day Care Commission.
(9) Medical Care Commission.
(10) Emergency Medical Services Advisory Council.
(11) Board of Directors of the Governor Morehead School.
(12) Board of Directors for the North Carolina Schools for the Deaf.
(13) North Carolina Council for the Hearing Impaired.
(14) Repealed by Session Laws 2002, ch. 126, s. 10.10D(c), effective October 1, 2002.
(15) Council on Developmental Disabilities.

(c) The functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Environment, Health, and Natural Resources are transferred to and vested in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6:

(1) Division of Dental Health.
(2) State Center for Health Statistics.
(3) Division of Epidemiology.
(4) Division of Health Promotion.
(5) Division of Maternal and Child Health.
(6) Office of Minority Health.
(7) Office of Public Health Nursing.
(8) Division of Laboratory Services.
(9) Office of Local Health Services.
(10) Division of Postmortem Medicolegal Examinations.
(11) Office of Women's Health.

(d) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Environment, Health, and Natural Resources are transferred to and vested in the Department of Health and Human Services by a Type II transfer, as defined in G.S. 143A-6:

(1) Commission for Public Health.
(2) Council on Sickle Cell Syndrome.
(3) Governor's Council on Physical Fitness and Health.
(4) Commission of Anatomy.
(5) Minority Health Advisory Council.
(6) Advisory Committee on Cancer Coordination and Control.

(e) The Department of Health and Human Services is vested with all other functions, powers, duties, and obligations as are conferred by the Constitution and laws of this State. (1997-443, s. 11A.3; 1998-202, s. 4(v); 2002-126, s. 10.10D(c); 2007-182, ss. 1, 2.)

Cross References. — For policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events, see G.S. 115D-20.1.

Bingo Program Transferred to Department of Crime Control and Public Safety. — Session Laws 1999-237, s. 11.18, provides that the Bingo Program in the Department of Health and Human Services, Division of Facility Services, and all functions, powers, duties, and obligations vested in the Department of Health and Human Services for the Bingo Program, are transferred to and vested in the Department of Crime Control and Public Safety by a Type I transfer, as defined in G.S. 143A-6.

Session Laws 1999-237, s. 1.1, provides:

"This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 1999'."

Session Laws 1999-237, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium."

Session Laws 1999-237, s. 30.4, contains a severability clause.

State Energy Efficiency Program. — Session Laws 2000-67, s. 14.18(a)-(e), renames the State Energy Conservation Plan as the State Energy Efficiency Program. Effective September 30, 2000, the statutory authority, powers, duties and functions, records, property, funds, etc., of the Residential Energy Conservation Assistance Program in the Energy Division of the Department of Commerce are transferred from the Department of Commerce to the Department of Health and Human Services. Similarly, effective September 30, 2000, the statutory authority, powers, duties and functions, records, property, funds, etc., of the Energy Policy Council and State Energy Efficiency Program in the Energy Division of the Department of Commerce are transferred from the Department of Commerce to the Department of Administration. Effective July 1, 2000, all vacant positions in the Energy Division of the Department of Commerce are abolished.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Intervention Services Unit. — Session Laws 2001-424, s. 21.18A, provides: "There is created in the Department of Health and Human Services the Intervention Services Unit in the Office of the Secretary. The Unit shall be responsible for planning, research, monitoring, and data analysis for the purpose of enhancing coordination among programs and activities related to intervention services. Services to be coordinated include mental health, developmental disabilities, and substance abuse services, social services, public health, preschool education services, and Smart Start services. The Unit shall work closely and collaboratively with the divisions through which such programs and activities operate."

Section of Financial Management and Support. — Session Laws 2001-424, ss. 21.91(a) to (c), provide: "(a) The Department of Health and Human Services shall reduce layers of management and streamline operations by creating a Section of Financial Management and Support. The Department shall consolidate all budgeting, purchasing, contract oversight, and computer networking personnel into this section. The Department shall transfer all positions, corresponding State appropriations, federal funds, and other related funds into this section. At no time shall the Department allow the Division of Public Health to maintain nonprogram positions within the other sections of the Division.

"(b) The Department shall establish a new permanent full-time position in the Division of Public Health for Local Health Services section chief. The Department shall not contract for this position.

"(c) Not later than December 1, 2001, the Department shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the reorganization activities required under this section [s. 21.91 of Session Laws 2001-424]."

Pilot Program for Automatic External Defibrillators in Public Buildings. — Session Laws 2005-276, s. 10.57(a)-(c), provides: "The Department of Health and Human Services, Division of Public Health, shall develop a pilot program to place Automated External Defibrillators (AED) in public buildings, including public gymnasiums, that do not have an operational AED in place. In selecting pilot sites, the Department shall ensure geographic representation of the State.

"Of the funds appropriated in this act to the Department of Health and Human Services, the sum of seventeen thousand dollars ($17,000) for the 2005-2006 fiscal year, and the sum of six thousand dollars ($6,000) for the 2006-2007 fiscal year shall be used to purchase AED units, conduct on-site training at the pilot sites, and conduct ongoing education and awareness campaigns to the general public in the piloted sites. The Department shall ensure that training in the use of an AED shall be conducted in accordance with G.S. 90-21.15(b)(3). The Heart Disease and Stroke Prevention Branch of the Division of Public Health shall be responsible for the purchase of AEDs, the training of pilot program participants, and evaluation of the pilot program.

"The Department of Health and Human Services shall report on the location, establishment, and implementation of the pilot sites to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2006."

Study on Availability and Delivery of Respite Care. — Session Laws 2007-39, s. 1.(a) and (b), provides: "(a) The Department of Health and Human Services, Division of Facility Services, Division of Medical Assistance, and the Division of Aging and Adult Services, shall study the availability and delivery of respite care which provides temporary relief for family members and others who care for individuals with disabilities, chronic or terminal illnesses, dementia, or the elderly. The study shall examine the following:

"(1) The need and availability of respite care in North Carolina.

"(2) The delivery and licensing of respite care in other states and possible models for North Carolina.

"(3) The application process for a grant under the Lifespan Respite Care Act of 2006, 42 U.S.C.

"(4) The need for separate statutory language pertaining to respite care.

"(5) The need, proposed structure, and development timeline for a separate licensure category for respite care.

"(6) The development of a Medicaid waiver covering a proposed new licensure category for respite care.

"(b) In response to the study authorized in this section, the Department of Health and Human Services shall present findings and recommendations, including any proposed statutory changes and new licensure categories, to the Study Commission on Aging on or before March 1, 2008."

Task Force on the Consolidation of Early Childhood Education and Care. — Session Laws 2009-451, s. 10.7A(a)-(k), provides: "(a) Intent. — It is the intent of the General Assembly that not later than July 1, 2010, certain agencies and programs relating to early childhood education and care shall be consolidated.

"(b) Task Force Established. — There is established the Joint Legislative Task Force on the Consolidation of Early Childhood Education and Care (Task Force). The Department of Health and Human Services and the Department of Public Instruction shall work with the Task Force to develop a Consolidation Plan (Plan) to implement the Plan as approved by the 2010 Regular Session of the 2009 General Assembly.

"(c) Task Force Membership. — Appointments to the Task Force shall be as follows:

"a. Three members of the House of Representatives appointed by the Speaker of the House of Representatives.

"b. Three members of the Senate appointed by the President Pro Tempore of the Senate.

"c. Three members appointed by the Governor.

"d. Any additional ad hoc members the Governor deems beneficial to achieve the goals of the Task Force.

"Appointments to the Task Force shall be made no later than September 1, 2009.

"Vacancies in the Task Force or a vacancy as chair of the Task Force resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made.

"(d) Duties of the Task Force.—

"(1) In consultation with the Department of Health and Human Services and the Department of Public Instruction, develop a Plan for a highly coordinated and efficient system of early childhood education and care.

"(2) Not later than January 15, 2010, establish and appoint a transition team to implement the Plan approved by the General Assembly. The transition team shall be responsible for guiding the transition from the multiagency/multiprogram system now in place to a consolidated system and to ensure continuity and quality of existing services to young children, families, and early childhood programs and personnel.

"(3) Adhere to the following principles in the development and implementation of the Plan approved by the General Assembly:

"a. Ensuring high quality programs.

"b. Ensuring core functions remain intact.

"c. Maintaining the strengths and effectiveness of each program.

"d. Identifying and proposing efficiencies.

"e. Identifying needed improvements.

"f. Streamlining administrative savings.

"g. Promoting a seamless delivery of services from birth through kindergarten.

"h. Any other principles the Task Force deems relevant.

"(4) Consider the following agencies and functions for consolidation:

"a. The North Carolina Partnership for Children, Inc.

"b. The More at Four program.

"c. Title I Prekindergarten programs.

"d. Preschool Exceptional Children.

"e. Early Intervention programs.

"f. Head Start Collaboration.

"g. Child Care Regulatory and Subsidy.

"h. Licensing and Regulatory Functions.

"i. Workforce Professional Development and Recognition.

"j. Quality Initiatives.

"(5) Consult with appropriate State departments, agencies, and board representatives on issues related to early childhood education and care.

"(6) In developing the Plan, review and consider the proposal included in *Ensuring School Readiness for North Carolina's Children:*

Bringing the Parts Together to Create an Integrated Early Care and Education System, November 2004.

"(e) Chair; Meetings. — The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate one member to serve as cochair of the Task Force.

"The cochairs shall call the initial meeting of the Task Force on or before October 1, 2009. The Task Force shall subsequently meet upon such notice and in such manner as its members determine. A majority of the members of the Task Force shall constitute a quorum.

"(f) Expenses of Members. — Members of the Task Force shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"(g) Cooperation by Government Agencies. — The Task Force may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

"(h) Report. — The Task Force shall report its findings and recommendations by March 15, 2010, to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Subcommittee on Education, the Senate Appropriations Committee on Education, and the Fiscal Research Division. The Task Force shall terminate upon filing its final report.

"(i) Proposal. — After reviewing the report submitted by the Task Force, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Education, and the Senate Appropriations Committee on Education shall develop language and a budget proposal by May 30, 2010, to present to the 2010 Regular Session of the 2009 General Assembly to implement the consolidation of early childhood education and care programs, which consolidation shall become effective July 1, 2010.

"(j) Funding. — The Legislative Services Officer shall allocate funds to carry out the duties of the Task Force.

"(k) Effective Date. — This section becomes effective July 1, 2009. Effective July 1, 2010, the Consolidation, as contained in the Plan approved by the 2010 Regular Session of the 2009 General Assembly, shall be implemented."

Editor's Note. — Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Acts of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 10.10D(d), provides: "The North Carolina Council on the Holocaust, as created by Part 28 of Article 3 of Chapter 143B of the General Statutes, and recodified as G.S. 143A-48.1 by this section, is transferred to the Department of Public Instruction by a Type II transfer, as defined in G.S. 143A-6."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-108, s. 1, provides: "(a) The Department of Health and Human Services, Division of Aging and Adult Services and the Division of Medical Assistance, shall provide education, and training if necessary, to ensure that Community Alternatives Program (CAP) case managers are aware of adult day health services and that this option is being considered in all situations appropriate for the client.

"(b) The Department of Health and Human Services, Division of Aging and Adult Services, shall report on the status of the Partners in Caregiving Study recommendations.

"(c) The Department shall report the status of its activities under this section to the North Carolina Study Commission on Aging not later than July 30, 2006."

Session Laws 2006-194, s. 1, provides: "The Department of Health and Human Services, Division of medical Assistance, shall implement a pilot program to evaluate the use of telemonitoring equipment in home and community based services. As determined by the Division, the Department shall provide remuneration to home care agencies and other providers for participation in the pilot program. The pilot program shall be implemented by October 1, 2006, and shall evaluate the use of telemonitoring equipment as a tool to improve the health of home and community based recipients through increased monitoring and responsiveness, and resulting in increased stabilization rates and decreased hospitalization rates. The evaluation must include a representative number of older adults. The Department shall report to the Study commission on Aging by August 1, 2007. The report shall include findings and recommendations on the cost-effectiveness of telemonitoring and the benefits to individuals and health care providers.

Session Laws 2006-194, s. 2, as amended by Session Laws 2007-125, s. 1, provides: "Beginning January 1, 2007, and for a period of two years thereafter, the Department of Health and Human Services shall not issue any licenses for new home care agencies that intend to offer in-home aide services. This shall not restrict the Department from issuing licenses to certified home health agencies that intend to offer in-home aide services or to agencies that need a new license for an existing home care agency being acquired. This will allow the Department more time to work with existing home care agencies to assure compliance with the newly adopted home care rules."

Session Laws 2007-355, ss. 1 and 2, makes provisions for a study of programs and services for older adults in Brunswick, Buncombe, Gaston, Henderson, Moore, and New Hanover Counties, which currently have, or are projected by 2030 to have, the largest numbers of individuals age 60+ when compared to individuals age 17 and younger. The study shall include the following for each county studied: (1) A profile of the current older adult population. (2) A profile of the projected growth for the older adult population. (3) An assessment of the anticipated impact on programs and services that address the needs of the older adult population. (4) Identification of programs and services that are currently in place. (5) Identification of programs and services that are needed to meet the growth projections. (6) Current funding sources for programs and services serving the older adult population. (7) Anticipated funding needs for programs and services serving the older adult population. (8) A delineation of the programs and services that are shared or offered jointly with another county.

Session Laws 2009-446, s. 1(i), provides: "The Residential Energy Conservation Assistance Program is transferred from the Department of Health and Human Services to the Energy Office of the Department of Commerce, which was transferred to that Department by Section 1 of this act. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6."

Session Laws 2009-451, s. 10.62, provides: "Full implementation for the Community Alternatives Programs reimbursement system shall be not later than 12 months after the date on which the replacement Medicaid Management Information System becomes operational and stabilized." For prior similar provisions, see Session Laws 2007-323, s. 10.44.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

CASE NOTES

Funding for Medically Necessary Abortions. — Under prior G.S. 143B-137, the action of the General Assembly in placing severe restrictions on the funding of medically necessary abortions for indigent women was valid and did not violate Article I, Section 1; Article 1, Section 19; or Article XI, Section 4 of the Constitution of North Carolina. Rosie J. v. North Carolina Dep't of Human Resources, 347 N.C. 247, 491 S.E.2d 535 (1997).

Cited in Dialysis Care of N.C., LLC v. Department of Health & Human Servs., 137 N.C. App. 638, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000).

§ 143B-139. Department of Health and Human Services — head.

The Secretary of Health and Human Services shall be the head of the Department. (1973, c. 476, s. 120; 1997-443, s. 11A.122.)

School-Based Child and Family Team Initiative. — Session Laws 2005-276, s. 6.24, provides for the development and implementation of a School-Based Child and Family Team Initiative. See note at G.S. 115C-105.20.

§ 143B-139.1. Secretary of Health and Human Services to adopt rules applicable to local health and human services agencies.

The Secretary of the Department of Health and Human Services may adopt rules applicable to local health and human services agencies for the purpose of program evaluation, fiscal audits, and collection of third-party payments. The Secretary may adopt and enforce rules governing:

(1) The placement of individuals in licensable facilities located outside the individual's community and ability of the providers to return the individual to the individual's community as soon as possible without detriment to the individual or the community.

(2) The monitoring of mental health, developmental disability, and substance abuse services.

(3) The communication procedures between the area authority or county program, the local department of social services, the local education authority, and the criminal justice agency, if involved with the individual, regarding the placement of the individual outside the individual's community and the transfer of the individual's records in accordance with law.

(4) The enrollment and revocation of enrollment of Medicaid providers who have been previously sanctioned by the Department and want to provide services under this Article. (1975, c. 875, s. 45; 1997-443, s. 11A.101; 2002-164, s. 4.5.)

§ 143B-139.2. Secretary of Health and Human Services requests for grants-in-aid from non-State agencies.

It is the intent of this General Assembly that non-State health and human services agencies submit their appropriation requests for grants-in-aid through the Secretary of the Department of Health and Human Services for recommendations to the Governor and the General Assembly, and that agencies receiving these grants, at the request of the Secretary of the Department of Health and Human Services, provide a postaudit of their operations that has been done by a certified public accountant. (1975, c. 875, s. 16; 1989, c. 727, s. 173; 1997-443, s. 11A.102; 2006-203, s. 103.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 103, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "and the Advisory Budget Commission" following "to the Governor."

§ 143B-139.3. Department of Health and Human Services — authority to contract with other entities.

(a) The Department of Health and Human Services is authorized to contract with any governmental agency, person, association, or corporation for the accomplishment of its duties and responsibilities provided that the expenditure of funds pursuant to such contracts shall be for the purposes for which the funds were appropriated and is not otherwise prohibited by law.

(b) The Department is authorized to enter into contracts with and to act as intermediary between any federal government agency and any county of this State for the purpose of assisting the county to recover monies expended by a county-funded financial assistance program; and, as a condition of such assistance, the county shall agree to hold and save harmless the Department against any claims, loss, or expense which the Department might incur under the contracts by reason of any erroneous, unlawful, or tortious act or omission of the county or its officials, agents, or employees. (1979, 2nd Sess., c. 1094, s. 1; 1983, c. 13; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1094, which enacted present subsection (a) of this section, provided in s. 6: "This act is effective upon ratification. All contracts which would be permissible under this act which were entered into on or after April 20, 1979, are hereby validated." The act was ratified June 17, 1980.

The preamble to Session Laws 1979, 2nd Sess., c. 1094, cited as the reason for the enactment the case of Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979), requiring statutory authority for third party contracts.

Session Laws 1998-212, s. 1.1 provides: "This act shall be known as the 'Current Operations Appropriations and Capital Improvement Appropriations Act of 1998'."

Session Laws 1998-212, s. 30.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1998-99 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1998-99 fiscal year."

Session Laws 1998-212, s. 30.5 contains a severability clause.

Session Laws 1998-212, s. 12.51, provides: "(a) The Department of Health and Human Services, Division of Epidemiology, shall continue the practice of contracting with community-based organizations, local health departments, and other entities to provide services to high-risk individuals. Contracts shall require quarterly reports to the Department on the entity's use of funds, number of clients served under the contract, details on program expenditures, and any other information needed by the Department to enable it to evaluate the efficiency and effectiveness of the entity's use of funds and provision of services. Effective January 1, 1999, entities under contract with the Department shall provide to the Department, at least annually, a copy of the entity's financial statement and most recent audit report.

"(a1) If the entity with which the Department of Health and Human Services contracts in accordance with subsection (a) of this section is a nonprofit organization, then the entity shall also provide the same quarterly report to the appropriate local health department.

"(b) The Department of Health and Human Services shall adopt standards for the annual evaluation and certification of entities with which the Department contracts under this section. The evaluation and certification standards shall provide sanctions, including discontinuing of funding, for an entity's failure to comply with DHHS standards and State law. The Department shall adopt the standards not later than April 1, 1999, and the standards shall apply to contracts entered into on and after January 1, 2000.

"(c) The Department of Health and Human Services shall report to the House Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources no later than May 1, 1999, on the standards adopted, on entities currently under contract with DHHS, and on those entities' experience in providing effective and efficient services under contract with the Department.

"(d) Effective January 1, 2000, the Department of Health and Human Services shall not allocate HIV Prevention Funds to any entity unless the entity has met the certification standards adopted by the Department."

§ 143B-139.4. Department of Health and Human Services; authority to assist private nonprofit organizations.

(a) The Secretary of the Department of Health and Human Services may allow employees of the Department or provide other appropriate services to assist any private nonprofit organization which works directly with services or programs of the Department and whose sole purpose is to support the services and programs of the Department. Except as provided in G.S. 143B-164.18, a Department employee shall be allowed to work with an organization no more than 20 hours in any one month. These services are not subject to the provisions of Chapter 150B of the General Statutes.

(b) A private, nonprofit organization that receives employee assistance or other appropriate services in accordance with subsection (a) of this section, shall document all contributions received, including employee time, supplies, materials, equipment, and physical space. The documentation shall also provide an estimated value of all contributions received as well as any compensation paid to or bonuses received by State employees. This documentation shall be submitted annually to the Secretary of the Department of Health and Human Services in a format approved by the Secretary. Nonprofit organizations with less than five hundred thousand dollars ($500,000) in annual income shall submit an affidavit or annual audit from the chief officer of the organization providing and attesting to the financial condition of the organization and the expenditure of funds or use of State employee services or other State services, within six months from the nonprofit's fiscal year end. The board of directors of each private, nonprofit organization with an annual income of five hundred thousand dollars ($500,000) or more shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct an annual audit of the financial accounts of the organization. The board of directors shall transmit to the Secretary of the Department a copy of the annual financial audit report of the private nonprofit organization. Nothing in this subsection shall be construed to relieve the private, nonprofit organization from other applicable reporting requirements established by law.

(c) Notwithstanding the limitations of subsection (a) of this section, the Secretary of the Department of Health and Human Services may assign employees of the Office of Rural Health and Resource Development to serve as in-kind match to nonprofit organizations working to establish health care programs that will improve health care access while controlling costs. (1987, c. 634, s. 1; 1997-443, s. 11A.118(a); 1999-237, s. 11.3; 2001-412, s. 3; 2006-66, s. 10.19.)

Editor's Note. — Session Laws 1997-443, s. 11.13, provides: "Notwithstanding the limitations of G.S. 143B-139.4, the Secretary of the Department of Human Resources may assign employees of the Office of Rural Health and Resource Development to serve as in-kind match to nonprofit corporations working to establish health care programs that will improve health care access while controlling costs." For similar prior provisions, see Session Laws 1995, c. 324, s. 23.1.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143B-139.5. Department of Health and Human Services; adult care State/county share of costs.

State funds available to the Department of Health and Human Services shall pay fifty percent (50%), and the counties shall pay fifty percent (50%) of the authorized rates for care in adult care homes including area mental health agency-operated or contracted-group homes. (1991, c. 689, s. 128; 1995, c. 535, s. 31; 1997-443, s. 11A.118(a).)

§ 143B-139.5A. Collaboration between Division of Social Services and Commission of Indian Affairs on Indian Child Welfare Issues.

The Division of Social Services, Department of Health and Human Services, shall work in collaboration with the Commission of Indian Affairs, Department of Administration, and the North Carolina Directors of Social Services Association to develop, in a manner consistent with federal law, an effective process through which the following can be accomplished:

(1) Establishment of a relationship between the Division of Social Services and the Indian tribes set forth in G.S. 143B-407(a), either separately or through a central entity, that will enable these tribes, in general, and tribal councils or other tribal organizations, in particular, to receive reasonable notice of identified Indian children who are being placed in foster care or adoption or who otherwise enter the child protective services system, and to be consulted on policies and other matters pertinent to placement of Indian children in foster care or adoption.

(2) Agreement on a process by which North Carolina Indians might be identified and recruited for purposes of becoming foster care and adoptive parents.

(3) Agreement on a process by which the cultural, social, and historical perspective and significance associated with Indian life may be taught to appropriate child welfare workers and to foster and adoptive parents.

(4) Identification or formation of Indian child welfare advocacy, placement and training entities with which the Department of Health and Human Services might contract or otherwise form partnerships for the purpose of implementing the provisions of this act.

(5) Development of a valid and reliable process through which Indian children within the child welfare system can be identified.

(6) Identify the appropriate roles of the State and of Indian tribes, organizations and agencies to ensure successful means for securing the best interests of Indian children. (2001-309, s. 1.)

Editor's Note. — This section was codified as G.S. 143B-139.5A at the direction of the Revisor of Statutes.

§ 143B-139.5B. Department of Health and Human Services — provision for joint training.

The Department of Health and Human Services shall offer joint training of Division of Health Service Regulation consultants, county DSS adult home specialists, and adult care home providers. The training shall be offered no fewer than two times per year, and subject matter of the training should be based on one or more of the 10 deficiencies cited most frequently in the State during the immediately preceding calendar year. The joint training shall be designed to reduce inconsistencies experienced by providers in the survey process, to increase objectivity by DHSR consultants and DSS specialists in conducting surveys, and to promote a higher degree of understanding between facility staff and DHSR consultants and DSS specialists in what is expected during the survey process. (2001-385, s. 1(c); 2007-182, s. 1; 2008-187, s. 25.)

Editor's Note. — This section was codified as G.S. 143B-139.5B at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-187, s. 25, effective August 7, 2008, substituted "DHSR" for "DFS" twice.

§ 143B-139.6. Confidentiality of records.

All privileged patient medical records in the possession of the Department of Health and Human Services shall be confidential and shall not be public records pursuant to G.S. 132-1. (1991 (Reg. Sess., 1992), c. 890, s. 20; 1997-443, s. 11A.118(a).)

§ 143B-139.6A. Secretary's responsibilities regarding availability of early intervention services.

The Secretary of the Department of Health and Human Services shall ensure, in cooperation with other appropriate agencies, that all types of early intervention services specified in the "Individuals with Disabilities Education Act" (IDEA), P.L. 102-119, the federal early intervention legislation, are available to all eligible infants and toddlers and their families to the extent funded by the General Assembly.

The Secretary shall coordinate and facilitate the development and administration of the early intervention system for eligible infants and toddlers and shall assign among the cooperating agencies the responsibility, including financial responsibility, for services. The Secretary shall be advised by the Interagency Coordinating Council for Children from Birth to Five with Disabilities and Their Families, established by G.S. 143B-179.5, and may enter into formal interagency agreements to establish the collaborative relationships with the Department of Public Instruction, other appropriate agencies, and other public and private service providers necessary to administer the system and deliver the services.

The Secretary shall adopt rules to implement the early intervention system, in consultation with all other appropriate agencies. (2001-437, s. 1.20(b).)

§ 143B-139.6B. Department of Health and Human Services; authority to deduct payroll for child care services.

Notwithstanding G.S. 143-3.3 and pursuant to rules adopted by the State Controller, an employee of the Department of Health and Human Services may, in writing, authorize the Department to periodically deduct from the employee's salary or wages paid for employment by the State, a designated lump sum to be paid to satisfy the cost of services received for child care provided by the Department. (2005-276, s. 10.8.)

Medicaid - Rules, reports, and Other Matters — Session Laws 2009-451, s. 10.58(e), provides: "Provider Performance Bonds and Visits. -

"(1) Subject to the provisions of this subdivision, the Department may require Medicaid-enrolled providers to purchase a performance bond in an amount not to exceed one hundred thousand dollars ($100,000) naming as beneficiary the Department of Health and

Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may require the purchase of a performance bond or the submission of an executed letter of credit or financial instrument as a condition of initial enrollment, reenrollment, or reinstatement if:

"a. The provider fails to demonstrate financial viability,

"b. The Department determines there is significant potential for fraud and abuse,

"c.The Department otherwise finds it is in the best interest of the Medicaid program to do so.

"The Department shall specify the circumstances under which a performance bond or executed letter of credit will be required.

"(1a) The Department may waive or limit the requirements of this paragraph for individual Medicaid-enrolled providers or for one or more classes of Medicaid-enrolled providers based on the following:

"a. The provider's or provider class's dollar amount of monthly billings to Medicaid.

"b. The length of time an individual provider has been licensed, endorsed, certified, or accredited in this State to provide services.

"c. The length of time an individual provider has been enrolled to provide Medicaid services in this State.

"d. The provider's demonstrated ability to ensure adequate record keeping, staffing, and services.

"e. The need to ensure adequate access to care.

"In waiving or limiting requirements of this paragraph, the Department shall take into consideration the potential fiscal impact of the waiver or limitation on the State Medicaid Program. The Department shall provide to the affected provider written notice of the findings upon which its action is based and shall include the performance bond requirements and the conditions under which a waiver or limitation apply. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.

"(2) Reimbursement is available for up to 30 visits per recipient per fiscal year for the following professional services: hospital outpatient providers, physicians, nurse practitioners, nurse midwives, clinics, health departments, optometrists, chiropractors, and podiatrists. The Department of Health and Human Services shall adopt medical policies in accordance with G.S. 108A-54.2 to distribute the allowable number of visits for each service or each group of services consistent with federal law. In addition, the Department shall establish a threshold of some number of visits for these services. The Department shall ensure that primary care providers or the appropriate CCNC network are notified when a patient is nearing the established threshold to facilitate care coordination and intervention as needed.

"Prenatal services, all EPSDT children, emergency room visits, and mental health visits subject to independent utilization review are exempt from the visit limitations contained in this subdivision. Subject to appropriate medical review, the Department may authorize exceptions when additional care is medically necessary. Routine or maintenance visits above the established visit limit will not be covered unless necessary to actively manage a life threatening disorder or as an alternative to more costly care options."

Session Laws 2009-451, s. 10.40, provides: "Subject to rules adopted by the State Controller, an employee of the Department of Health and Human Services may authorize, in writing, the periodic deduction from the employee's salary or wages for employment by the State, a designated lump sum to be paid to satisfy the cost of services received for child care provided by the Department." For prior similar provisions, see Session Laws 2004-124, s. 10.2D.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Part 1A. Consolidated County Human Services.

§ 143B-139.7. Consolidated county human services funding.

(a) The Secretary of the Department of Health and Human Services shall adopt rules and policies to provide that:

(1) Any dedicated funding streams for local public health services, for social services, and for mental health, developmental disabilities, and

substance abuse services may flow to a consolidated county human services agency and the consolidated human services board in the same manner as that for funding nonconsolidated county human services, unless a different manner of allocation is otherwise required by law.

(2) The fiscal accountability and reporting requirements pertaining to local health boards, social services boards, and area mental health authority boards apply to a consolidated human services board.

(b) The Secretary of the Department of Health and Human Services may adopt any other rule or policy required to facilitate the provision of human services by a consolidated county human services agency or a consolidated human services board.

(c) For the purposes of this section, "consolidated county human services agency" means a county human services agency created pursuant to G.S. 153A-77(b). "Consolidated human services board" means a county human services board established pursuant to G.S. 153A-77(b). (1995 (Reg. Sess., 1996), c. 690, s. 1; 1997-443, s. 11A.118(a).)

§ 143B-140: Repealed by Session Laws 1989, c. 727, s. 174.

Part 2. Board of Human Resources.

§ 143B-141: Repealed by Session Laws 1983, c. 494.

Part 3. Commission for Public Health.

§§ 143B-142 through 143B-146: Recodified as §§ 130A-29 through 130A-33 by Session Laws 1989, c. 727, s. 175.

Part 3A. Education Programs in Residential Schools.

§ 143B-146.1. Mission of schools; definitions.

(a) It is the intent of the General Assembly that the mission of the residential school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential.

(b) The following definitions apply in this Part:

(1) ABC's Program or Program. — The School-Based Management and Accountability Program developed by the State Board.

(2) Department. — The Department of Health and Human Services.

(3) Instructional personnel. — Assistant principals, teachers, instructional personnel, instructional support personnel, and teacher assistants employed in a residential school.

(4) Participating school. — A residential school that is required to participate in the ABC's Program.

(5) Residential school personnel. — The individuals included in G.S. 143B-146.16(a)(2).

(6) Schools. — The residential schools under the control of the Secretary.

(7) Secretary. — The Secretary of Health and Human Services.

(8) State Board. — The State Board of Education.

(9) Superintendent. — The Superintendent of the Office of Education Services of the Department of Health and Human Services. (1998-131, s. 5; 2005-195, s. 1.)

Editor's Note. — For the creation of the Office of Education Services, see Editor's note at G.S. 143B-136.1 under the heading of "Division of Early Intervention and Education."

§ 143B-146.2. ABC's Program in residential schools.

(a) The Governor Morehead School and the schools for the deaf shall participate in the ABC's Program. The Secretary, in consultation with the General Assembly and the State Board, may designate other residential schools that must participate in the ABC's Program. The primary goal of the ABC's Program is to improve student performance. The Program is based upon an accountability, recognition, assistance, and intervention process in order to hold each participating school, its principal, and the instructional personnel accountable for improved student performance in that school.

(b) In order to support the participating schools in the implementation of this Program, the State Board, in consultation with the Secretary, shall adopt guidelines, including guidelines to:

(1) Assist the Secretary and the participating schools in the development and implementation of the ABC's Program.

(2) Recognize the participating schools that meet or exceed their goals.

(3) Identify participating schools that are low-performing and assign assistance teams to those schools. The assistance teams should include individuals with expertise in residential schools, individuals with experience in the education of children with disabilities, and others the State Board, in consultation with the Secretary, considers appropriate.

(4) Enable assistance teams to make appropriate recommendations.

(c) The ABC's Program shall provide increased decision making and parental involvement at the school level with the goal of improving student performance.

(d) Consistent with improving student performance, the Secretary shall provide maximum flexibility to participating schools in the use of funds to enable those schools to accomplish their goals. (1998-131, s. 5; 2001-424, s. 21.81(c); 2005-195, s. 2.)

§ 143B-146.3. Annual performance goals.

The ABC's Program shall (i) focus on student performance in the basics of reading, mathematics, and communications skills in elementary and middle schools, (ii) focus on student performance in courses required for graduation and on other measures required by the State Board in the high schools, and (iii) hold participating schools accountable for the educational growth of their students. To those ends, the State Board shall design and implement an accountability system that sets annual performance standards for each participating school in order to measure the growth in performance of the students in each individual school. (1998-131, s. 5.)

§ 143B-146.4. Performance recognition.

(a) The personnel in participating schools that achieve a level of expected growth greater than one hundred percent (100%) at a level to be determined by the State Board of Education are eligible for financial awards in amounts set by the State Board. Schools and personnel shall not be required to apply for these awards. For the purpose of this section, "personnel" includes the principal and the instructional personnel (i) serving students in one or more of the grades kindergarten through 12 or (ii) assigned to a prekindergarten program that is located within the participating school and is designed to prepare students for kindergarten at that school.

(b) The State Board shall establish a procedure to allocate the funds for these awards. Funds shall become available for expenditure July 1 of each fiscal year. Funds shall remain available until November 30 of the subsequent fiscal year for expenditure for awards to personnel.

The Secretary is encouraged to make these awards to each eligible person no later than the first regular teacher payroll following receipt of the funds, and shall make these awards to each eligible person no later than the second regular teacher payroll following the receipt of the funds. (1998-131, s. 5; 2005-195, s. 3.)

§ 143B-146.5. Identification of low-performing schools.

(a) The State Board shall design and implement a procedure to identify low-performing schools on an annual basis. Low-performing schools are those participating schools in which there is a failure to meet the minimum growth standards, as defined by the State Board, and a majority of students are performing below grade level.

(b) By July 10 of each year, the Secretary shall do a preliminary analysis of test results to determine which participating schools the State Board may identify as low-performing under this section. The Secretary then shall proceed under G.S. 143B-146.7. In addition, within 30 days of the initial identification of a school as low-performing by the Secretary or the State Board, whichever occurs first, the Secretary shall develop a preliminary plan for addressing the needs of that school. Before the Secretary adopts this plan, the Secretary shall make the plan available to the residential school personnel and the parents and guardians of the students of the school, and shall allow for written comments. Within five days of adopting the plan, the Secretary shall submit the plan to the State Board. The State Board shall review the plan expeditiously and, if appropriate, may offer recommendations to modify the plan. The Secretary shall consider any recommendations made by the State Board.

(c) Each identified low-performing school shall provide written notification to the parents of students attending that school. The written notification shall include a statement that the State Board of Education has found that the school has "failed to meet the minimum growth standards, as defined by the State Board, and a majority of students in the school are performing below grade level." This notification also shall include a description of the steps the school is taking to improve student performance. (1998-131, s. 5.)

Editor's Note. — Subsections (b) and (c) had been enacted as (a1) and (b), respectively, and were redesignated at the direction of the Revisor of Statutes.

§ 143B-146.6. Assistance teams; review by State Board.

(a) The State Board may assign an assistance team to any school identified as low-performing under this Part or to any other school that the State Board determines would benefit from an assistance team. The State Board shall give priority to low-performing schools in which the educational performance of the students is declining. The Department shall, with the approval of the Secretary, provide staff as needed and requested by an assistance team.

(b) When assigned to an identified low-performing school, an assistance team shall:

(1) Review and investigate all facets of school operations, including instructional and residential, and assist in developing recommendations for improving student performance at that school.

(2) Evaluate at least semiannually the principal and instructional personnel assigned to the school and make findings and recommendations concerning their performance.
(3) Collaborate with school staff, the Department, and the Secretary in the design, implementation, and monitoring of a plan that, if fully implemented, can reasonably be expected to alleviate problems and improve student performance at that school.
(4) Make recommendations as the school develops and implements this plan.
(5) Review the school's progress.
(6) Report, as appropriate, to the Secretary, the State Board, and the parents on the school's progress. If an assistance team determines that an accepted school improvement plan developed under G.S. 143B-146.12 is impeding student performance at a school, the team may recommend to the Secretary that he vacate the relevant portions of that plan and direct the school to revise those portions.

(c) If a participating school fails to improve student performance after assistance is provided under this section, the assistance team may recommend that the assistance continue or that the Secretary take further action under G.S. 143B-146.7.

(d) The Secretary, in consultation with the State Board, shall annually review the progress made in identified low-performing schools. (1998-131, s. 5; 2005-195, s. 4.)

§ 143B-146.7. Consequences for personnel at low-performing schools.

(a) Within 30 days of the initial identification of a school as low-performing, whether by the Secretary under G.S. 143B-146.5(b) or by the State Board under G.S. 143B-146.5(a), the Secretary shall take one of the following actions concerning the school's principal: (i) decide whether the principal should be retained in the same position, (ii) decide whether the principal should be retained in the same position and a plan of remediation should be developed, (iii) decide whether the principal should be transferred, or (iv) proceed under the State Personnel Act to dismiss or demote the principal. The principal may be retained in the same position without a plan for remediation only if the principal was in that position for no more than two years before the school is identified as low-performing. The principal shall not be transferred to another position unless (i) it is in a principal position in which the principal previously demonstrated at least two years of success, (ii) there is a plan to evaluate and provide remediation to the principal for at least one year following the transfer to assure the principal does not impede student performance at the school to which the principal is being transferred; and (iii) the parents of the students at the school to which the principal is being transferred are notified. The principal shall not be transferred to another low-performing school. The Secretary may, at any time, proceed under the State Personnel Act for the dismissal of any principal who is assigned to a low-performing school to which an assistance team has been assigned. The Secretary shall proceed under the State Personnel Act for the dismissal of any principal when the Secretary receives from the assistance team assigned to that school two consecutive evaluations that include written findings and recommendations regarding the principal's inadequate performance. The Secretary shall order the dismissal of the principal if the Secretary determines from available information, including the findings of the assistance team, that the low performance of the school is due to the principal's inadequate performance. The Secretary may order the dismissal of the principal if (i) the Secretary determines that the school has not made satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the principal. The Secretary may order the dismissal of a principal before the assistance team assigned to the principal's school has evaluated that principal if the Secretary determines from other available information that the low performance of the school is due to the principal's inadequate performance. The burden of proof is on the principal to establish that the factors leading to the school's low performance were not due to the principal's inadequate performance. The burden of proof is on the Secretary to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school. Two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the principal. Within 15 days of the Secretary's decision concerning the principal, but no later than September 30, the Secretary shall submit to the State Board a written notice of the action taken and the basis for that action.

(b) At any time after the State Board identifies a school as low-performing under this Part, the Secretary shall proceed under G.S. 115C-325(p1) for the dismissal of certificated instructional personnel assigned to that school.

(c) At any time after the State Board identifies a school as low-performing under this Part, the Secretary shall proceed under the State Personnel Act for the dismissal of instructional personnel who are not certificated when the Secretary receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the instructional personnel. The Secretary may proceed under the State Personnel Act for the dismissal of instructional personnel who are not certificated when: (i) the Secretary determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) that the assistance team makes the recommendation to dismiss that person for a reason that constitutes just cause for dismissal under the State Personnel Act.

(d) The certificated instructional personnel working in a participating school at the time the school is identified by the State Board as low-performing are subject to G.S. 115C-105.38A.

(e) The Secretary may terminate the contract of a school administrator dismissed under this section. Nothing in this section shall prevent the Secretary from refusing to renew the contract of any person employed in a school identified as low-performing under this Part. (1998-131, s. 5; 2005-195, s. 5.)

Editor's Note. — In subsection (a), the reference to "G.S. 143B-146.5(b)" was substituted for "G.S. 143B-146.5(a1)" at the direction of the Revisor of Statutes.

§ 143B-146.8. Evaluation of certificated personnel and principals; action plans; State Board notification.

(a) Annual Evaluations; Low-Performing Schools. — The principal shall evaluate at least once each year all certificated personnel assigned to a participating school that has been identified as low-performing but has not received an assistance team. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of an action plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under G.S. 115C-325(a)(6), either the principal or an assessment team assigned under G.S. 143B-146.9 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), the Superintendent shall conduct the evaluation.

Notwithstanding this subsection or any other law, the principal shall observe at least three times annually, a teacher shall observe at least once annually, and the principal shall evaluate at least once annually, all teachers who have not attained career status. All other employees defined as teachers under G.S. 115C-325(a)(6) who are assigned to participating schools that are not designated as low-performing shall be evaluated annually unless the Secretary adopts rules that allow specified categories of teachers with career status to be evaluated more or less frequently. The Secretary also may adopt rules requiring the annual evaluation of noncertificated personnel. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school.

The Secretary shall use the State Board's performance standards and criteria unless the Secretary develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if an evaluation is used other than one adopted by the State Board.

(b) Action Plans. — If a certificated employee in a participating school that has been identified as low-performing receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the principal that: (i) the employee receive an action plan designed to improve the employee's performance; or (ii) the principal recommend to the Secretary that the employee be dismissed or demoted. The principal shall determine whether to develop an action plan or to recommend a dismissal proceeding. The person who evaluated the employee or the employee's supervisor shall develop the action plan unless an assistance team or assessment team conducted the evaluation. If an assistance team or assessment team conducted the evaluation, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board, in consultation with the Secretary, shall develop guidelines that include strategies to assist in evaluating certificated personnel and developing effective action plans within the time allotted under this section. The Secretary may adopt policies for the development and implementation of action plans or professional development plans for personnel who do not require action plans under this section.

(c) Reevaluation. — Upon completion of an action plan under subsection (b) of this section, the principal or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the principal shall recommend that the employee be dismissed or demoted under G.S. 115C-325. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. — If the Secretary dismisses an employee for any reason except a reduction in force under G.S. 115C-325(e)(1)l., the Secretary shall notify the State Board of the action, and the State Board annually shall provide to all local boards of education the names of those individuals. If a local board hires one of these individuals, that local board shall proceed under G.S. 115C-333(d).

(e) Civil Immunity. — There shall be no liability for negligence on the part of the Secretary or the State Board, or their employees, arising from any action taken or omission by any of them in carrying out this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection is waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(f) Evaluation of Principals. — Each year the Secretary or the Superintendent shall evaluate the principals. (1998-131, s. 5; 2005-195, s. 6.)

§ 143B-146.9. Assessment teams.

The State Board shall develop guidelines for the Secretary to use to create assessment teams. The Secretary shall assign an assessment team to every low-performing school that has not received an assistance team. The Secretary shall ensure that assessment team members are trained in the proper administration of the employee evaluation used in the participating schools. If service on an assessment team is an additional duty for an employee of a local school administrative unit or an employee of a residential school, the Secretary may pay the employee for that additional work.

Assessment teams shall:

(1) Conduct evaluations of certificated personnel in low-performing schools;
(2) Provide technical assistance and training to principals who conduct evaluations of certificated personnel;
(3) Develop action plans for certificated personnel; and
(4) Assist principals in the development and implementation of action plans. (1998-131, s. 5; 2005-195, s. 7.)

§ 143B-146.10. Development of performance standards and criteria for certificated personnel.

The State Board, in consultation with the Secretary, shall revise and develop uniform performance standards and criteria to be used in evaluating certificated personnel, including school administrators. These standards and criteria shall include improving student achievement, employee skills, and employee knowledge. The standards and criteria for school administrators also shall include building-level gains in student learning and effectiveness in providing for school safety and enforcing student discipline. The Secretary shall develop guidelines for evaluating principals. The guidelines shall include criteria for evaluating a principal's effectiveness in providing safe schools and enforcing student discipline. (1998-131, s. 5; 2005-195, s. 8.)

§ 143B-146.11. School calendar.

Each school shall adopt a school calendar that includes a minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. In the development of its school calendar, each school shall consult with parents, the residential school personnel, and the local school administrative unit in which that school is located. (1998-131, s. 5.)

§ 143B-146.12. Development and approval of school improvement plans.

(a) In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 143B-146.3. The principal of each school, instructional personnel, and residential life personnel assigned to that school, and a minimum of five parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance.

(a1) Representatives of the instructional and residential life personnel shall be elected by their respective groups by secret ballot.

(b) Parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. To the extent possible, parents serving on school improvement teams shall reflect the composition of the students enrolled in that school. No more than two parents may be employees of the school. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with instructional and residential life personnel, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. Parents who are elected to serve on school improvement teams and who are not employees of the school shall receive travel and subsistence expenses in accordance with G.S. 138-5 and, if appropriate, may receive a stipend.

(c) The strategies for improving student performance shall include the following:

(1) A plan for the use of staff development funds that may be made available to the school to implement the school improvement plan. The plan may provide that a portion of these funds is used for mentor training and for release time and substitute teachers while teachers are meeting with mentors;

(1a) A plan for preparing students to read at grade level by the time they enter second grade. The plan shall require kindergarten and first grade teachers to notify parents or guardians when a child is not reading at grade level and is at risk of not reading at grade level by the time the child enters second grade. The plan may include the use of assessments to monitor students' progress in learning to read, strategies for teachers and parents to implement that will help students improve and expand their reading ability, and provide for the recognition of teachers and strategies that appear to be effective at preparing students to read at grade level.

(2) A comprehensive plan to encourage parent involvement.

(3) A safe school plan designed to provide that the school is safe, secure, and orderly, that there is a climate of respect in the school, and that appropriate personal conduct is a priority for all students and all residential school personnel. This plan shall include components similar to those listed in G.S. 115C-105.47(b).

(4) A plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school.

(d) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed school improvement plan to all of the instructional personnel assigned to the school for their review and vote. The vote shall be by secret ballot. The principal shall submit the school improvement plan to the Superintendent for presentation to the Secretary only if the proposed school improvement plan has the approval of a majority of the instructional personnel who voted on the plan.

(e) The Secretary shall accept or reject the school improvement plan. The Secretary shall not make any substantive changes in any school improvement plan that the Secretary accepts. If the Secretary rejects a school improvement plan, the Secretary shall state with specificity the reasons for rejecting the plan to the Superintendent to share with the principal; the school improvement team may then prepare another plan, present it to the instructional personnel assigned to the school for a vote, and submit it to the Superintendent for presentation to the Secretary to accept or reject. Within 60 days after the initial submission of the school improvement plan to the Secretary, the Secretary shall accept the plan or shall direct that the Superintendent work with the school improvement team to resolve the disagreements. If there is no resolution within 30 days, then the Secretary may develop a school improvement plan for the school; however, the General Assembly urges the Secretary to utilize the school's proposed school improvement plan to the maximum extent possible when developing this plan.

(f) A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the Secretary finds that a school improvement plan is impeding student performance at a school, the Secretary may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this section shall apply to amendments and revisions to school improvement plans.

(g) Any funds the Secretary makes available to a school to meet the goals for that school under the ABC's Program and to implement the school improvement plan at that school shall be used in accordance with those goals and the school improvement plan.

(h) The Superintendent, in consultation with the State Board, shall develop a list of recommended strategies that it determines to be effective which building level committees may use to establish parent involvement programs designed to meet the specific needs of their schools.

(i) Once developed, the principal shall ensure the plan is available and accessible to parents and the school community. (1998-131, s. 5; 2005-195, s. 9.)

§ 143B-146.13. School technology plan.

(a) No later than December 15, 1998, the Secretary shall develop a school technology plan for the residential schools that meets the requirements of the State school technology plan. In developing a school technology plan, the Secretary is encouraged to coordinate its planning with other agencies of State and local government, including local school administrative units.

The Office of Information Technology Services shall assist the Secretary in developing the parts of the plan related to its technological aspects, to the extent that resources are available to do so. The Department of Public Instruction shall assist the Secretary in developing the instructional and technological aspects of the plan.

The Secretary shall submit the plan that is developed to the Office of Information Technology Services for its evaluation of the parts of the plan related to its technological aspects and to the Department of Public Instruction for its evaluation of the instructional aspects of the plan. The State Board of Education, after consideration of the evaluations of the Office of Information Technology Services and the Department of Public Instruction, shall approve all plans that comply with the requirements of the State school technology plan.

(b) After a plan is approved by the State Board of Education, all funds spent for technology in the residential schools shall be used to implement the school technology plan. (1998-131, s. 5; 2004-129, s. 45.)

§ 143B-146.14. Dispute resolution; appeals to Secretary.

The Secretary shall establish a procedure for the resolution of disputes between the residential schools and the parents or guardians of students who attend the schools.

An appeal shall lie from the decision of all residential school personnel to the Secretary or the Secretary's designee. In all of these appeals it is the duty of the Secretary to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records. (1998-131, s. 5.)

§ 143B-146.15. Duty to report certain acts to law enforcement.

When the principal has personal knowledge or actual notice from residential school personnel or other reliable source that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency. Failure to report under this section is a Class 3 misdemeanor. For purposes of this section, "school property" shall include any building, bus, campus, grounds, recreational area, or athletic field, in the charge of the principal or while the student is under the supervision of school personnel. It is the intent of the General Assembly that the principal notify the Secretary or the Superintendent of any report made to law enforcement under this section. (1998-131, s. 5; 2005-195, s. 10.)

§ 143B-146.16. Residential school personnel criminal history checks.

(a) As used in this section:

(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related

offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "Residential school personnel" means any:

a. Employee of a residential school whether full time or part time, or

b. Independent contractor or employee of an independent contractor of a residential school, if the independent contractor carries out duties customarily performed by residential school personnel,

whether paid with federal, State, local, or other funds, who has significant access to students in a residential school. Residential school personnel includes substitute teachers, driver training teachers, bus drivers, clerical staff, houseparents, and custodians.

(b) The Secretary shall require an applicant for a residential school personnel position to be checked for a criminal history before the applicant is offered an unconditional job. A residential school may employ an applicant conditionally while the Secretary is checking the person's criminal history and making a decision based on the results of the check.

The Secretary shall not require an applicant to pay for the criminal history check authorized under this subsection.

(c) The Department of Justice shall provide to the Secretary the criminal history from the State and National Repositories of Criminal Histories of any applicant for a residential school personnel position in a residential school. The Secretary shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the Secretary, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The Secretary shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The Secretary shall not require an applicant to pay for being fingerprinted.

(d) The Secretary shall review the criminal history it receives on a person. The Secretary shall determine whether the results of the review indicate that the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as residential school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The Secretary shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors.

(e) The Secretary shall provide to the State Board of Education the criminal history received on a person who is certificated, certified, or licensed by the State Board. The State Board shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the Secretary through the checking of the criminal history or by the State Board in accordance with subsection (d) of this section is privileged information and is not a public record but is for the exclusive use of the Secretary or the State Board of Education. The Secretary or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of the Secretary, the Department of Health and Human Services or its employees, a residential school or its employees, or the State Board of Education or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes. (1998-131, s. 5.)

§§ 143B-146.17 through 143B-146.20: Reserved for future codification purposes.

§ 143B-146.21. Policies, reports, and other miscellaneous provisions.

(a) The Secretary of Health and Human Services shall consult with the State Board of Education in its implementation of this act as it pertains to improving the educational programs at the residential schools. The Secretary also shall fully inform and consult with the chairs of the Appropriations Subcommittees on Education and Health and Human Services of the Senate and the House of Representatives on a regular basis as the Secretary carries out his duties under this act.

(b) The Secretary of Health and Human Services shall adopt policies and offer training opportunities to ensure that personnel who provide direct services to children in the State schools for the deaf become proficient in sign language within two years of their initial date of employment or within two years of the effective date of this act, whichever occurs later. This subsection shall not apply to preschool personnel in any oral, auditory, or cued speech preschool.

(c) The Department of Public Instruction, the Board of Governors of The University of North Carolina, and the State Board of Community Colleges shall offer and communicate the availability of professional development opportunities, including those to improve sign language skills, to the personnel assigned to the State's residential schools, particularly the Governor Morehead School and the schools for the deaf.

(d) The Secretary of Health and Human Services shall adopt policies to ensure that students of the residential schools are given priority to residing in the independent living facilities on each school's campus.

(e) The Secretary of Health and Human Services, in consultation with the Office of State Personnel, shall set the salary supplement paid to teachers, instructional support personnel, and school-based administrators who are employed in the programs operated by the Department of Health and Human Services and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the local school administrative unit where the job site is located. These salary supplements shall not be paid to central office staff. Nothing in this subsection shall be construed to include "merit pay" under the term "salary supplement". (1998-131, ss. 3, 10, 17; 2001-424, s. 21.81(a); 2005-276, s. 29.19(a).)

Editor's Note. — Session Laws 1998-131, ss. 3, 10, 17 were codified as this section at the direction of the Revisor of Statutes.

Session Laws 1998-131, s. 19, made this section effective July 1, 1998 only if funds are appropriated for the 1998-99 fiscal year to implement this act. The Revisor of Statutes has been informed that funds were appropriated.

§ 143B-146.22: Repealed by Session Laws 2001-424, s. 21.80(a), effective July 1, 2001.

§§ 143B-146.23 through 143B-146.27: Reserved for future codification purposes.

Part 4. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

§ 143B-147. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services — creation, powers and duties.

(a) There is hereby created the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services with the power and duty to adopt, amend and repeal rules to be followed in the conduct of State and local mental health, developmental disabilities, substance abuse programs including education, prevention, intervention, screening, assessment, referral, detoxification, treatment, rehabilitation, continuing care, emergency services, case management, and other related services. Such rules shall be designed to promote the amelioration or elimination of the mental illness, developmental disabilities, or substance abuse problems of the citizens of this State. Rules establishing standards for certification of child care centers providing Developmental Day programs are excluded from this section and shall be adopted by the Child Care Commission under G.S. 110-88. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall have the authority:

(1) To adopt rules regarding the
  a. Admission, including the designation of regions, treatment, and professional care of individuals admitted to a facility operated under the authority of G.S. 122C-181(a), that is now or may be established;
  b. Operation of education, prevention, intervention, treatment, rehabilitation and other related services as provided by area mental health, developmental disabilities, and substance abuse authorities, county programs, and all providers of public services under Part 4 of Article 4 of Chapter 122C of the General Statutes;
  c. Hearings and appeals of area mental health, developmental disabilities, and substance abuse authorities as provided for in Part 4 of Article 4 of Chapter 122C of the General Statutes; and
  d and e. Repealed by Session Laws 2001-437, s. 1.21(a), effective July 1, 2002.
  f. Standards of public services for mental health, developmental disabilities, and substance abuse services.

(2) To adopt rules for the licensing of facilities for the mentally ill, developmentally disabled, and substance abusers, under Article 2 of Chapter 122C of the General Statutes. These rules shall include all of the following:
  a. Standards for the use of electronic supervision devices during client sleep hours for facilities licensed under 10A NCAC 27G. 1700 or any related or subsequent regulations setting licensing standards for such facilities.

b. Personnel requirements for facilities licensed under 10A NCAC 27G. 1700, or any related or subsequent regulations setting licensing standards for such facilities, when continuous electronic supervision that meets the standards established under sub-subdivision a. of this of this subdivision is present.

(3) To advise the Secretary of the Department of Health and Human Services regarding the need for, provision and coordination of education, prevention, intervention, treatment, rehabilitation and other related services in the areas of:
a. Mental illness and mental health,
b. Developmental disabilities,
c. Substance abuse.
d. Repealed by Session Laws 2001-437, s. 1.21(a), effective July 1, 2002.

(4) To review and advise the Secretary of the Department of Health and Human Services regarding all State plans required by federal or State law and to recommend to the Secretary any changes it thinks necessary in those plans; provided, however, for the purposes of meeting State plan requirements under federal or State law, the Department of Health and Human Services is designated as the single State agency responsible for administration of plans involving mental health, developmental disabilities, and substance abuse services.

(5) To adopt rules relating to the registration and control of the manufacture, distribution, security, and dispensing of controlled substances as provided by G.S. 90-100.

(6) To adopt rules to establish the professional requirements for staff of licensed facilities for the mentally ill, developmentally disabled, and substance abusers. Such rules may require that one or more, but not all staff of a facility be either licensed or certified. If a facility has only one professional staff, such rules may require that that individual be licensed or certified. Such rules may include the recognition of professional certification boards for those professions not licensed or certified under other provisions of the General Statutes provided that the professional certification board evaluates applicants on a basis which protects the public health, safety or welfare.

(7) Except where rule making authority is assigned under that Article to the Secretary of the Department of Health and Human Services, to adopt rules to implement Article 3 of Chapter 122C of the General Statutes.

(8) To adopt rules specifying procedures for waiver of rules adopted by the Commission.

(9) To adopt rules establishing a process for non-Medicaid eligible clients to appeal to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services decisions made by an area authority or county program affecting the client. The purpose of the appeal process is to ensure that mental health, developmental disabilities, and substance abuse services are delivered within available resources, to provide an additional level of review independent of the area authority or county program to ensure appropriate application of and compliance with applicable statutes and rules, and to provide additional opportunities for the area authority or county program to resolve the underlying complaint. Upon receipt of a written request by the non-Medicaid eligible client, the Division shall review the decision of the area authority or county program and shall advise the requesting client and the area authority or county program as to the Division's findings

and the bases therefor. Notwithstanding Chapter 150B of the General Statutes, the Division's findings are not a final agency decision for purposes of that Chapter. Upon receipt of the Division's findings, the area authority or county program shall issue a final decision based on those findings. Nothing in this subdivision shall be construed to create an entitlement to mental health, developmental disabilities, and substance abuse services.

(b) All rules hereby adopted shall be consistent with the laws of this State and not inconsistent with the management responsibilities of the Secretary of the Department of Health and Human Services provided by this Chapter and the Executive Organization Act of 1973.

(c) All rules and regulations pertaining to the delivery of services and licensing of facilities heretofore adopted by the Commission for Mental Health and Mental Retardation Services, controlled substances rules and regulations adopted by the North Carolina Drug Commission, and all rules and regulations adopted by the Commission for Mental Health, Mental Retardation and Substance Abuse Services shall remain in full force and effect unless and until repealed or superseded by action of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(d) All rules adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall be enforced by the Department of Health and Human Services. (1973, ch. 476, s. 129; 1977, c. 568, ss. 2, 3; c. 679, s. 1; 1981, c. 51, s. 1; 1983, c. 718, s. 5; 1983 (Reg. Sess., 1984), c. 1110, s. 6; 1985, c. 589, ss. 47-54; 1985 (Reg. Sess., 1986), c. 863, s. 33; 1989, c. 625, s. 23; 1991, c. 309, s. 1; 1993, c. 396, s. 6; 1997-443, s. 11A.118(a); 2001-437, s. 1.21(a); 2005-276, s. 10.35(a); 2009-187, s. 1; 2009-490, s. 6.)

Editor's Note. — Session Laws 2009-490, s. 4, provides: "The Department of Health and Human Services, Division of Health Service Regulation shall establish a pilot program to study the use of electronic supervision devices as an alternative means of supervision during sleep hours at facilities for children and adolescents who have a primary diagnosis of mental illness and/or emotional disturbance. The pilot program shall be implemented at a facility currently authorized to waive the requirement set forth in 10A NCAC 27G.1704(c) or any related or subsequent rule or regulation by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services setting minimum overnight staffing requirements. The waiver shall remain in effect until December 31, 2012; however, the Division reserves the right to rescind the waiver if, at the time of the facility's license renewal, there are outstanding deficiencies that have remained uncorrected upon follow-up survey, that are related to electronic supervision."

Session Laws 2009-490, s. 5, provides: "The Department of Health and Human Services shall report on the implementation of the pilot program described in Section 4 of this act, including any findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than April 10, 2010."

Effect of Amendments. — Session Laws 2009-187, s. 1, effective January 1, 2010, added the next-to-last sentence in the introductory language of subsection (a).

Session Laws 2009-490, s. 6, effective August 26, 2009, added "These rules shall include all of the following:" at the end of the introductory language of subdivision (a)(2); and added subdivisions (a)(2)a and (a)(2)b.

§ 143B-148. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services — members; selection; quorum; compensation.

(a) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services shall consist of 32 members, as follows:

(1) Eight shall be appointed by the General Assembly, four upon the recommendation of the Speaker of the House of Representatives, and four upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. In recommending appointments under this section, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall give consideration to ensuring a balance of appointments that represent those who may have knowledge and expertise in adult issues and those who may have knowledge and expertise in children's issues. Of the four appointments recommended by the President Pro Tempore of the Senate, one shall be an attorney licensed in this State with preference given to an attorney with experience in the practice of administrative law, one shall be a physician licensed to practice medicine in North Carolina, with preference given to a psychiatrist, and two shall be members of the public. Of the four appointments recommended by the Speaker of the House of Representatives, one shall be an attorney licensed in this State with preference given to an attorney with experience in the practice of mental health law, one shall be a physician licensed to practice medicine in North Carolina who has expertise and experience in the field of developmental disabilities, or a professional holding a Ph.D. with experience in the field of developmental disabilities, and two shall be members of the public. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(2) Twenty-four shall be appointed by the Governor, one from each congressional district in the State in accordance with G.S. 147-12(3)b, and the remainder at-large members.

The Governor's appointees shall represent the following categories of appointment:

a. Three professionals licensed or certified under Chapter 90 or Chapter 90B of the General Statutes who are practicing, teaching, or conducting research in the field of mental health.

b. Four consumers or immediate family members of consumers of mental health services. Of these four, at least one shall be a consumer and at least one shall be an immediate family member of a consumer. No more than two of the consumers or immediate family members shall be selected from nominations submitted by the Coalition 2001 or its successor organization.

c. Two professionals licensed or certified under Chapter 90 or Chapter 90B of the General Statutes who are practicing, teaching, or conducting research in the field of developmental disabilities, and one individual who is a "qualified professional" as that term is defined in G.S. 122C-3(31) who has experience in the field of developmental disabilities.

d. Four consumers or immediate family members of consumers of developmental disabilities services. Of these four, at least one shall be a consumer and at least one shall be an immediate family member of a consumer. No more than two of the consumers or immediate family members shall be selected from nominations submitted by the Coalition 2001 or its successor organization.

e. Two professionals licensed or certified under Chapter 90 of the General Statutes who are practicing, teaching, or conducting research in the field of substance abuse, and one professional who is a certified prevention specialist or who specializes in the area of addiction education.

f. An individual knowledgeable and experienced in the field of controlled substances regulation and enforcement. The controlled substances appointee shall be selected from recommendations made by the Attorney General of North Carolina.

g. A physician licensed to practice medicine in North Carolina who has expertise and experience in the field of substance abuse with preference given to a physician that is certified by the American Society of Addiction Medicine (ASAM).

h. Four consumers or immediate family members of consumers of substance abuse services. Of these four, at least one shall be a consumer and at least one shall be an immediate family member of a consumer. No more than two of the consumers or immediate family members shall be selected from nominations submitted by the Coalition 2001 or its successor organization.

i. An attorney licensed in this State. The appointments of professionals licensed or certified under Chapter 90 or Chapter 90B of the General Statutes made in accordance with this subdivision, and physicians appointed in accordance with subdivision (1) of this subsection shall be selected from nominations submitted to the appointing authority by the respective professional associations.

(2a) The terms of all Commission members shall be three years. All Commission members shall serve their designated terms and until their successors are duly appointed and qualified. All Commission members may succeed themselves. A member appointed on and after July 1, 2002, shall not serve more than two consecutive terms.

(3) All appointments shall be made pursuant to current federal rules and regulations, when not inconsistent with State law, which prescribe the selection process and demographic characteristics as a necessary condition to the receipt of federal aid.

(b) Except as otherwise provided in this section, the provisions of G.S. 143B-13 through 143B-20 relating to appointment, qualifications, terms and removal of members shall apply to all members of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(c) Commission members shall receive per diem, travel and subsistence allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(d) A majority of the Commission shall constitute a quorum for the transaction of business.

(e) All clerical and other services required by the Commission shall be supplied by the Secretary of the Department of Health and Human Services. To ensure effective and efficient coordination of rules and policies adopted by the Commission and the Secretary, the Secretary shall assign an individual who is knowledgeable about and experienced in the rule-making processes of the Commission and the Secretary and in the fields of mental health, developmental disabilities, and substance abuse to assist the Commission in carrying out its duties and responsibilities. (1973, c. 476, s. 130; 1977, c. 679, s. 2; 1981, c. 51, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 55.1 through 57; 1989, c. 625, s. 23; 1991 (Reg. Sess., 1992), c. 1038, s. 17; 1995, c. 490, s. 34; 1997-443, s. 11A.118(a); 2001-437, s. 1.21(b); 2001-486, s. 2.13; 2001-487, s. 90.5; 2002-61, s. 1; 2007-504, s. 2.5(a).)

Editor's Note. — Section 143B-20, referred to in this section, was repealed by Session Laws 1991, c. 418, s. 10. As to rule making, see now G.S. 150B-18 et seq.

Session Laws 2007-504, s. 2.5(b), provides: "The appointments of licensed attorneys by the General Assembly in accordance with G.S. 143B-148(a), as amended by this act, shall be for initial terms of two years, and three-year terms thereafter."

Session Laws 2007-504, s. 2.6, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the statutory rule-making authority of the Secretary of the Department of Health and Human

Services and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. In conducting its study, the LOC shall determine whether there is duplication, conflict, or lack of clarity with respect to the Secretary's rule-making authority and that of the Commission. The LOC may also consider whether rule making should be more clearly divided between the Secretary and the Commission and, if so, how and for what reasons. The LOC shall report its findings and recommendations to the 2008 Regular Session of the 2007 General Assembly upon its convening."

§ 143B-149. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services — officers.

The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members and shall serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 131; 1977, c. 679, s. 3; 1981, c. 51, s. 1; 1989, c. 625, s. 23.)

§ 143B-150. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services — regular and special meetings.

The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least eight members. (1973, c. 476, s. 132; 1977, c. 679, s. 4; 1981, c. 51, s. 1; 1989, c. 625, s. 23.)

§§ 143B-150.1 through 143B-150.4: Reserved for future codification purposes.

Part 4A. Family Preservation Act.

§ 143B-150.5. Family Preservation Services Program established; purpose.

(a) There is established the Family Preservation Services Program of the Department of Health and Human Services. To the extent that funds are made available, locally-based family preservation services shall be available to all 100 counties. The Secretary of the Department of Health and Human Services shall be responsible for the development and implementation of the Family Preservation Services Program as established in this Part.

(b) The purpose of the Family Preservation Services Program is, where feasible and in the best interests of the child and the family, to keep the family unit intact by providing intensive family-centered services that help create, within the family, positive, long-term changes in the home environment.

(c) Family preservation services shall be financed in part through grants to local agencies for the development and implementation of locally-based family preservation services. Grants to local agencies shall be made in accordance with the provisions of G.S. 143B-150.6.

(d) The Secretary of the Department of Health and Human Services shall ensure the cooperation of the Division of Social Services, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and the

Division of Medical Assistance, in carrying out the provisions of this Part. (1991, c. 743, s. 1; 1997-443, s. 11A.118(a); 2000-137, s. 4(z); 2001-424, s. 21.50(f).)

Statewide Implementation of Intensive Family Preservation Services Program. — Session Laws 2009-451, s. 10.44, provides: "(a) Notwithstanding the provisions of G.S. 143B-150.6, the Intensive Family Preservation Services (IFPS) Program shall provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and to children and families in cases of abuse where a child is not at imminent risk of removal. The Program shall be developed and implemented statewide on a regional basis. The IFPS shall ensure the application of standardized assessment criteria for determining imminent risk and clear criteria for determining out-of-home placement.

"(b) The Department of Health and Human Services shall require that any program or entity that receives State, federal, or other funding for the purpose of Intensive Family Preservation Services shall provide information and data that allows for:

"(1) An established follow-up system with a minimum of six months of follow-up services.

"(2) Detailed information on the specific interventions applied, including utilization indicators and performance measurement.

"(3) Cost-benefit data.

"(4) Data on long-term benefits associated with Intensive Family Preservation Services. This data shall be obtained by tracking families through the intervention process.

"(5) The number of families remaining intact and the associated interventions while in IFPS and 12 months thereafter.

"(6) The number and percentage by race of children who received Intensive Family Preservation Services compared to the ratio of their distribution in the general population involved with Child Protective Services.

"(c) The Department shall establish performance-based funding protocol and shall only provide funding to those programs and entities providing the required information specified in subsection (b) of this section. The amount of funding shall be based on the individual performance of each program."

For prior similar provisions, see Session Laws 2001-424, s. 21.50(a)-(e), Session Laws 2003-284, s. 10.48(a)-(e), and Session Laws 2007-323, s. 10.33(a)-(d).

Editor's Note. — Session Laws 1991, c. 743, which enacted this Part, in s. 2 provides: "Section 1 of this act becomes effective October 1, 1991, if and only if specific funds are appropriated for the implementation of the Committee established in Section 1 of this act. Funds appropriated for the 1991-92 fiscal year or for any fiscal year in the future do not constitute an entitlement to services beyond those provided for that fiscal year. Nothing in this act creates any right except to the extent funds are appropriated by the State to implement its provisions from year to year and nothing in this act obligates the General Assembly or any County Government to appropriate funds to implement its provisions." The necessary funds were appropriated in 1991.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143B-150.6. Program services; eligibility; grants for local projects; fund transfers.

(a) Services: Services to be provided under the Family Preservation Services Program shall include but are not limited to: family assessment, intensive family and individual counseling, client advocacy, case management, development and enhancement of parenting skills, and referral for other services as appropriate.

(b) Eligibility: Families eligible for services under the Family Preservation Services Program are those with children ages 0-17 years who are at risk of imminent separation through placement in public welfare, mental health, or juvenile justice systems.

(c) Service Delivery: Services delivered to eligible families under the Family Preservation Services Program shall be provided in accordance with the following requirements:

(1) Each eligible family shall receive intensive family preservation services, beginning with identification of an imminent risk of out-of-home placement for an average of four weeks but not more than six weeks;

(2) At least one-half of a caseworker's time spent providing family preservation services to each eligible family shall be provided in the family's home and community;

(3) Family preservation caseworkers shall be available to each eligible family by telephone and on call for visits 24 hours a day, seven days a week.

(4) Each family preservation caseworker shall provide services to a maximum of four families at any given time.

(d) Grants for local projects: The Secretary of the Department of Health and Human Services shall award grants to local agencies for the development and implementation of locally-based family preservation services projects. The number of grants awarded and the level of funding of each grant for each fiscal year shall be contingent upon and determined by funds appropriated for that purpose by the General Assembly.

(e) Inter-agency fund transfers: The Department may allow the Division of Social Services and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, to use funds available to each Division to support family preservation services provided by the Division under the Program; provided that such use does not violate federal regulations pertaining to, or otherwise jeopardize the availability of federal funds. (1991, c. 743, s. 1; 1997-443, s. 11A.118(a); 1999-423, s. 9; 2001-424, s. 21.50(g).)

Intensive Family Preservation Services Funding and Performance Enhancements. — Session Laws 2005-276, s. 10.51A(a)-(d), provides: "Notwithstanding the provisions of G.S. 143B-150.6, the Intensive Family Preservation Services (IFPS) Program shall provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and to children and families in cases of abuse where a child is not at imminent risk of removal. The Program shall be developed and implemented statewide on a regional basis. The IFPS shall ensure the application of standardized assessment criteria for determining imminent risk and clear criteria for determining out-of-home placement.

"The Department of Health and Human Services shall require that any program or entity that receives State, federal, or other funding for the purpose of Intensive Family Preservation Services shall provide information and data that allows for:

"(1) An established follow-up system with a minimum of six months of follow-up services.

"(2) Detailed information on the specific interventions applied including utilization indicators and performance measurement.

"(3) Cost-benefit data.

"(4) Data on long-term benefits associated with Intensive Family Preservation Services. This data shall be obtained by tracking families through the intervention process.

"(5) The number of families remaining intact and the associated interventions while in IFPS and 12 months thereafter.

"(6) The number and percentage by race of children who received Intensive Family Preservation Services compared to the ratio of their distribution in the general population involved with Child Protective Services.

"The Department shall establish performance-based funding protocol and shall only provide funding to those programs and entities providing the required information specified in subsection (b) of this section. The amount of funding shall be based on the individual performance of each program.

"The Department shall report on the implementation of this section not later than February 1, 2006, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division."

Statewide Implementation of Intensive Family Preservation Services Program. — Session Laws 2009-451, s. 10.44, provides: "(a) Notwithstanding the provisions of G.S. 143B-150.6, the Intensive Family Preservation Services (IFPS) Program shall provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and to children and families in cases of abuse where a child is not at imminent risk of removal. The Program shall be developed and implemented statewide on a regional basis. The IFPS shall ensure the application of standardized assessment criteria for determining imminent risk and clear criteria for determining out-of-home placement.

"(b) The Department of Health and Human Services shall require that any program or entity that receives State, federal, or other funding for the purpose of Intensive Family Preservation Services shall provide information and data that allows for:

"(1) An established follow-up system with a minimum of six months of follow-up services.

"(2) Detailed information on the specific interventions applied, including utilization indicators and performance measurement.

"(3) Cost-benefit data.

"(4) Data on long-term benefits associated with Intensive Family Preservation Services. This data shall be obtained by tracking families through the intervention process.

"(5) The number of families remaining intact and the associated interventions while in IFPS and 12 months thereafter.

"(6) The number and percentage by race of children who received Intensive Family Preservation Services compared to the ratio of their distribution in the general population involved with Child Protective Services.

"(c) The Department shall establish performance-based funding protocol and shall only provide funding to those programs and entities providing the required information specified in subsection (b) of this section. The amount of funding shall be based on the individual performance of each program."

For prior similar provisions, see Session Laws 2001-424, s. 21.50(a)-(e), Session Laws 2003-284, s. 10.48(a)-(e), and Session Laws 2007-323, s. 10.33(a)-(d).

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§§ 143B-150.7 through 143B-150.9: Repealed by Session Laws 2001-424, ss. 21.50(h) to (j), effective July 1, 2001.

§§ 143B-150.10 through 143B-150.19: Reserved for future codification purposes.

Part 4B. State Child Fatality Review Team.

§ 143B-150.20. State Child Fatality Review Team; establishment; purpose; powers; duties; report by Division of Social Services.

(a) There is established in the Department of Health and Human Services, Division of Social Services, a State Child Fatality Review Team to conduct in-depth reviews of any child fatalities which have occurred involving children and families involved with local departments of social services child protective services in the 12 months preceding the fatality. Steps in this in-depth review shall include interviews with any individuals determined to have pertinent information as well as examination of any written materials containing pertinent information.

(b) The purpose of these reviews shall be to implement a team approach to identifying factors which may have contributed to conditions leading to the fatality and to develop recommendations for improving coordination between local and State entities which might have avoided the threat of injury or fatality and to identify appropriate remedies. The Division of Social Services shall make public the findings and recommendations developed for each fatality reviewed relating to improving coordination between local and State entities. These findings shall not be admissible as evidence in any civil or administrative proceedings against individuals or entities that participate in child fatality reviews conducted pursuant to this section. The State Child Fatality Review Team shall consult with the appropriate district attorney in accordance with G.S. 7B-2902(d) prior to the public release of the findings and recommendations.

(c) The State Child Fatality Review Team shall include representatives of the local departments of social services and the Division of Social Services, a member of the local Community Child Protection Team, a member of the local child fatality prevention team, a representative from local law enforcement, a prevention specialist, and a medical professional.

(d) The State Child Fatality Review Team shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of this subsection, including police investigative data, medical examiner investigative data, health records, mental health records, and social services records. The State Child Fatality Review Team may receive a copy of any reviewed materials necessary to the conduct of the fatality review. Any member of the State Child Fatality Review Team may share, only in an official meeting of the State Child Fatality Review Team, any information available to that member that the State Child Fatality Review Team needs to carry out its duties.

If the State Child Fatality Review Team does not receive information requested under this subsection within 30 days after making the request, the State Child Fatality Review Team may apply for an order compelling disclosure. The application shall state the factors supporting the need for an order compelling disclosure. The State Child Fatality Review Team shall file the application in the district court of the county where the investigation is being conducted, and the court shall have jurisdiction to issue any orders compelling disclosure. Actions brought under this section shall be scheduled for immediate hearing, and subsequent proceedings in these actions shall be given priority by the appellate courts.

(e) Meetings of the State Child Fatality Review Team are not subject to the provisions of Article 33C of Chapter 143 of the General Statutes. However, the State Child Fatality Review Team may hold periodic public meetings to discuss, in a general manner not revealing confidential information about children and families, the findings of their reviews and their recommendations for preventive actions. Minutes of all public meetings, excluding those of closed sessions, shall be kept in compliance with Article 33C of Chapter 143 of the General Statutes. Any minutes or any other information generated during any executive session shall be sealed from public inspection.

(f) All otherwise confidential information and records acquired by the State Child Fatality Review Team, in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any proceedings except pursuant to an order of the court; and may only be disclosed as necessary to carry out the purposes of the State Child Fatality Review Team. In addition, all otherwise confidential information and records created by the State Child Fatality Review Team in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any proceedings; and may only be disclosed as necessary to carry out the purposes of the State Child Fatality Review Team. No member of the State Child Fatality Review Team, nor any person who attends a meeting of the State Child Fatality Review Team, may testify in any proceeding about what transpired at the meeting, about information presented at the meeting, or about opinions formed by the person as a result of the meetings. This subsection shall not, however, prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

(g) Each member of the State Child Fatality Review Team and invited participant shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.

(h) The Division of Social Services, Department of Health and Human Services, shall report to the members of the Senate Appropriations Committee on Human Resources, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the activities of the State Child Fatality Review Team including recommendations for changes in the statewide child protection system no later than October 1 of each year. (1998-202, s. 13(oo); 1998-212, s. 12.22(e); 1999-190, s. 4; 2000-67, s. 11.14(a); 2003-304, s. 6.)

Editor's Note. — The subsection designations were added at the direction of the Revisor of Statutes. In addition, the Revisor directed the codification of Session Laws 2000-67, s. 11.14(a) as subsection (h).

Part 5. Eugenics Commission.

§§ 143B-151, 143B-152: Repealed by Session Laws 1977, c. 497.

Part 5A. S.O.S. Program.

§§ 143B-152.1 through 143B-152.7: Repealed by Session Laws 2009-451, s. 18.6, effective July 1, 2009.

Editor's Note. — Former §§ 143B-152.1 through 143B-152.7, creating the Support Our Students (S.O.S.) Program, was enacted by Session Laws 1994, Ex. Sess., c. 24, s. 30(a), and amended by Session Laws 1997-443, ss. 8.29(m), (n), 11A.118(a); 1998-202, s. 4(x); 2000-137, s. 4(bb); 2001-424, s. 24.1(b); 2008-107, s. 16.2.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

§§ 143B-152.8, 143B-152.9: Reserved for future codification purposes.

Part 5B. Family Resource Center Grant Program.

§ 143B-152.10. Family Resource Center Grant Program; creation; purpose; intent.

(a) There is created in the Department of Health and Human Services the Family Resource Center Grant Program. The purpose of the program is to provide grants to implement family support programs that are research-based and have been evaluated for effectiveness that provide services to children from birth through 17 years of age and to their families that:

(1) Enhance the children's development and ability to attain academic and social success;

(1a) Prevent child abuse and neglect by implementing program models that have been evaluated and found to improve outcomes for children and families;

(2) Ensure a successful transition from early childhood education programs and child care to the public schools;

(3) Assist families in achieving economic independence and self-sufficiency; and

(4) Mobilize public and private community resources to help children and families in need.

(b) It is the intent of the General Assembly to encourage and support broad-based collaboration among public and private agencies and among people who reflect the racial and socioeconomic diversity in communities to develop initiatives that (i) improve outcomes for children by preventing child abuse and neglect, (ii) enhance and strengthen the ability of families to ensure the safety, health, and well-being of their children, (iii) enhance the ability of families to become advocates for and supporters of the children in their families, and (iv) enhance the ability of families to function as nurturing and effective family units.

(c) It is further the intent of the General Assembly that this program shall be targeted to those neighborhoods that have disproportionately high levels of (i) children who would be less likely to attain educational or social success, (ii) families with low incomes, and (iii) crime and juvenile delinquency. (1994, Ex. Sess., c. 24, s. 31(a); 1997-443, s. 11A.118(a); 2007-130, s. 1.)

§ 143B-152.11. Administration of program.

The Department of Health and Human Services shall develop and implement the Family Resource Center Grant Program. The Department shall:

(1) Sponsor a statewide conference for teams of interested representatives to provide background information and assistance regarding all aspects of the program;

(2) Disseminate information regarding the program to interested local community groups;

(3) Provide initial technical assistance and ongoing technical assistance to grant recipients;

(4) Administer funds appropriated by the General Assembly;

(5) Monitor the grants funded and the ongoing operations of family resource centers;

(6) Revoke a grant if necessary or appropriate;

(7) Report to the General Assembly and the Joint Legislative Commission on Governmental Operations, in accordance with G.S. 143B-152.15; and

(8) Adopt rules to implement this Part. (1994, Ex. Sess., c. 24, s. 31(a); 1997-443, s. 11A.118(a).)

§ 143B-152.12. Eligible applicants: applications for grants.

(a) A community- or neighborhood-based 501(c)(3) entity or a consortium consisting of one or more local 501(c)(3) entities and one or more local school administrative units may apply for a grant.

(b) Applicants for grants shall identify the neighborhood or neighborhoods whose children and families will be served by a family resource center. The decision-making process for identifying and establishing family resource centers shall reflect the racial and socioeconomic diversity of the neighborhood or neighborhoods to be served.

(c) A grant application shall include a process for assessing on an annual basis the success of the local plan in addressing problems. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.13. Grants review and selection.

(a) The Department shall develop and disseminate a request for applications and establish procedures to be followed in developing and submitting applications to establish local family resource centers and administering grants to establish local family resource centers.

(b) The Secretary of Health and Human Services shall appoint a State task force to assist the Secretary in reviewing grant applications. The State task force shall include representatives of the Department of Health and Human Services, the Department of Public Instruction, local school administrative units, educators, parents, the juvenile justice system, social services, and governmental agencies providing services to children, and other members the Secretary considers appropriate. In appointing the State task force, the Secretary shall consult with the Superintendent of Public Instruction in an effort to coordinate the membership of this State task force, the State task force appointed by the Secretary pursuant to G.S. 143B-152.5, and the State task force appointed by the Superintendent pursuant to G.S. 115C-238.42.

In reviewing grant applications, the Secretary and the State task force may consider (i) the severity of the local problems as determined by the needs assessment data, (ii) the likelihood that the locally designed plan will result in high quality services for children and their families, (iii) evidence of local collaboration and coordination of services, (iv) any innovative or experimental aspects of the plan that will make it a useful model for replication in other counties, (v) the availability of other resources or funds, (vi) the incidence of crime and juvenile delinquency, (vii) the amount needed to implement the proposal, and (viii) any other factors consistent with the intent of this Part.

(c) In determining the amount of funds an applicant receives, the Secretary and the State task force may consider (i) the number of children to be served, (ii) the number and percentage of children to be served who participate in the subsidized lunch program, (iii) the number and percentage of school-aged children to be served with two working parents or one single parent, (iv) the availability of other resources or funds, and (v) the amount needed to implement the proposal.

(d) The Secretary shall award the grants. (1994, Ex. Sess., c. 24, s. 31(a); 1997-443, s. 11A.118(a).)

Editor's Note. — G.S. 143B-152.5, referred to in subsection (b), was repealed by Session Laws 2009-451, s. 18.6, effective July 1, 2009.

§ 143B-152.14. Cooperation of State and local agencies.

All agencies of the State and local government, including the Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program. (1994, Ex. Sess., c. 24, s. 31(a); 1997-443, s. 11A.118(a); 1998-202, s. 4(y); 2000-137, s. 4(cc).)

§ 143B-152.15. Program evaluation; reporting requirements.

(a) The Department of Health and Human Services shall develop and implement an evaluation system that will assess the efficiency and effectiveness of the Family Resource Center Grant Program. The department shall design this system to:

(1) Provide information to the Department and to the General Assembly on how to improve and refine the programs;
(2) Enable the Department and the General Assembly to assess the overall quality, efficiency, and impact of the existing programs;
(3) Enable the Department and the General Assembly to determine whether to modify the Family Resource Center Grant Program; and
(4) Provide a detailed fiscal analysis of how State funds for these programs were used.

(b) The Department shall report no later than December 1 of each year to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the program and the results of the program evaluation.

(c) A local 501(c)(3) entity or consortium that receives a grant under this Part shall report by August 1 of each year to the Department on the implementation of the program. This report shall demonstrate the extent to which the local family resource center has met the local needs, goals, and anticipated outcomes as set forth in the grant application. (1994, Ex. Sess., c. 24, s. 31(a); 1997-443, s. 11A.118(a); 2001-424, s. 21.48(f).)

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission — creation, powers and duties.

There is hereby created the Social Services Commission of the Department of Health and Human Services with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Health and Human Services shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

(1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Health and Human Services as provided in Chapter 108A of the General Statutes of the State of North Carolina.
(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:
    a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);
    b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to

help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the Department of Juvenile Justice and Delinquency Prevention, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48;

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services. The Commission shall establish standardized rates for child caring institutions. In establishing standardized rates, the Commission shall consider the rate-setting recommendations provided by the Office of the State Auditor; and

e. For client assessment and independent case management pertaining to the functions of county departments of social services for public assistance programs authorized under paragraph a. of this subdivision.

(2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;

b. For implementation of Title XX of the Social Security Act, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, by promulgating rules and regulations in the following areas:

1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
2. Standards to implement all services established under the Comprehensive Annual Services Plan;
3. Maximum rates of payment for provision of social services;
4. Fees for services to be paid by recipients of social services;
5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:

1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
3. Contracting for and purchasing services; and
4. Monitoring for effectiveness and compliance with State and federal law and regulations.

(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;

b. Repealed by Session Laws 1999-334, s. 3.5, effective October 1, 1999.

c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;

d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;

e. Repealed by Session Laws 1981, c. 562, s. 7.

f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.

(4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.

(6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Health and Human Services.

(8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, rates or fees for:

a. A fee schedule for the payment of the costs of necessary child care in licensed facilities and registered plans for minor children of needy families.

b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and

c. The payment of an administrative fee not to exceed two hundred dollars ($200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.

d. Child support enforcement services as defined by G.S. 110-130.1. (1973, c. 476, s. 134; 1975, c. 747, s. 2; 1977, c. 674, s. 7; 1977, 2nd Sess., c. 1219, ss. 26, 27; 1981, c. 275, s. 5; c. 562, s. 7; c. 961, ss. 1-3; 1983, c. 278, ss. 1, 2; c. 527, s. 2; 1985, c. 206; c. 479, s. 96; c. 689, s. 29f; 1991, c. 462, s. 1; c. 636, s. 19(d); c. 689, s. 105; c. 761, s. 28; 1993, c. 553, s. 46; 1995, c. 449, s. 4; c. 535, s. 32; 1997-443, s. 11A.118(a); 1997-456, s. 22; 1997-506, s. 55; 1998-202, s. 4(z); 1999-334, s. 3.5; 2000-111, s. 4; 2000-137, s. 4(dd); 2000-140, s. 99(a); 2006-66, s. 10.2(c).)

Cross References. — As to standards for Alzheimer's special care units, see G.S. 143B-181.50 et seq.

Child Caring Institution Rates. — Session Laws 2009-451, s. 10.47, provides: "Until the Social Services Commission adopts rules setting standardized rates for child caring institutions as authorized under G.S. 143B-153(8), the maximum reimbursement for child caring institutions shall not exceed the rate established for the specific child caring institution by the Department of Health and Human Services, Office of the Controller. In determining the maximum reimbursement, the State shall include county and IV-E reimbursements."

For prior similar provisions, see Session Laws 2007-323, s. 10.30.

Editor's Note. — Session Laws 2006-66, s. 10.2(d), provides: "The effective date for establishing standardized rates for child caring institutions in this State, as enacted in subsection (c) of this section [which amended G.S. 143-153(2)d.], shall be July 1, 2007."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2009-451, s. 10.78(t), provides: "Social Services Block Grant funds appropriated to the North Carolina Inter-Agency Council for Coordinating Homeless Programs and funds appropriated for child medical evaluations are exempt from the provisions of 10A NCAC 71R.0201(3)."

For prior similar provisions, see Session Laws 2007-323, s. 10.55(p) and Session Laws 2008-107, s. 10.17(q).

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1116 (1981).

CASE NOTES

Grant of Rule Making Authority to Social Services Commission. — The Social Services Commission has and continues to have general rule making authority under its grant in this section and by the provision of G.S. 108A-71 which authorizes the Department of Human Resources to accept all "State appropriations" for programs of social services. That grant became limited, however, by Chapter 150B upon its enactment, thereby requiring the Commission to comply with certain procedural requirements in adopting rules if specifically authorized by legislative enactment to adopt rules. Whittington v. North Carolina Dep't of Human Resources, 100 N.C. App. 603, 398 S.E.2d 40 (1990).

Social Services Commission's Regulation of State Abortion Fund. — Since the State Abortion Fund prior to the enactment of Session Laws 1985, c. 479, s. 93 was merely a "state appropriation", the Department of Human Resources, through its Social Services Commission, could and did enact rules and regulations pertaining to the program. However, by the passage of s. 93, which specifically limits, by legislative enactment, how the Fund is to be administered, the Department of Human Resources and the Commission's rule making authority must comply with the requirements of Chapter 150B. Whittington v. North Carolina Dep't of Human Resources, 100 N.C. App. 603, 398 S.E.2d 40 (1990).

Liability of State for Negligence of County Social Services Director. — In an action alleging that a foster child was negligently placed in a home by county department of social services, the Department of Human Resources would be liable for the negligent acts of its agents, the county director of social services and his subordinates, since the Department, through the Social Services Commission, has the right to control the manner in which the county director is to execute his obligation to place children in foster homes. Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

Applied in Tripp v. Flaherty, 27 N.C. App. 180, 218 S.E.2d 709 (1975).

§ 143B-153.1: Repealed by Session Laws 1983, c. 883, s. 2.

§ 143B-154. Social Services Commission — members; selection; quorum; compensation.

The Social Services Commission of the Department of Health and Human Services shall consist of one member from each congressional district in the State, all of whom shall be appointed by the Governor for four-year terms.

The initial members of the Commission shall be the appointed members of the current Social Services Commission who shall serve for the remainder of their current terms and four additional members appointed by the Governor for terms expiring April 1, 1981. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, removal or disability of a member shall be for the balance of the unexpired term.

In the event that more than 11 congressional districts are established in the State, the Governor shall on July 1 following the establishment of such additional congressional districts appoint a member of the Commission from that congressional district.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Health and Human Services. (1973, c. 476, s. 135; 1977, c. 516; 1981 (Reg. Sess., 1982), c. 1191, s. 77; 1997-443, s. 11A.118(a).)

§ 143B-155. Social Services Commission — regular and special meetings.

The Social Services Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1973, c. 476, s. 136.)

CASE NOTES

Applied in Forsyth County Bd. of Social Servs. v. Division of Social Servs., 72 N.C. App. 645, 325 S.E.2d 47 (1985).

§ 143B-156. Social Services Commission — officers.

The Commission for Social Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 137.)

Part 7. Commission for the Blind.

§ 143B-157. Commission for the Blind — creation, powers and duties.

There is recreated the Commission for the Blind of the Department of Health and Human Services with the power and duty to adopt rules governing the conduct of the State's rehabilitative programs for the blind that are necessary to carry out the provisions and purposes of this Article.

(1) The Commission shall adopt rules that are necessary and desirable for the programs administered by the Department of Health and Human Services as provided in Chapter 111 of the General Statutes of North Carolina.

(2) Repealed by Session Laws 1993, c. 561, s. 89(a).

(3) The Commission shall adopt rules, not inconsistent with the laws of this State, that are required by the federal government for grants-in-aid for rehabilitative purposes for the blind that may be made available to the State from the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3a) The Commission shall review, analyze, and advise the Department regarding the performance of its responsibilities under the federal rehabilitation program in which the State participates, as it relates to the provision of services to the blind, particularly its responsibilities relating to the following:

a. Eligibility for the program;

b. The extent, scope, and effectiveness of the services provided; and

c. The functions performed by the Department that affect, or that have the potential to affect, the ability of individuals who are blind or visually impaired to achieve rehabilitative goals and objectives under the federal rehabilitation program;

(3b) The Commission shall advise the Department regarding preparation of applications, the State Plan, amendments to this plan, the State needs assessments, and the evaluations required by the federal rehabilitation program; and in partnership with the Department develop, agree to, and review State goals and priorities;

(3c) The Commission shall, to the extent feasible, conduct a review and analysis (i) of the effectiveness of, and consumer satisfaction with, the functions performed by the Department and other public and private entities responsible for performing functions for individuals who are blind or visually impaired, and (ii) of vocational rehabilitation services provided or paid for from funds made available through other public or private sources and provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals who are blind or visually impaired;

(3d) The Commission shall prepare and submit an annual report to the Governor, the Secretary, and the federal rehabilitation program, and make the report available to the public;

(3e) The Commission shall coordinate with other councils within the State, including the statewide Independent Living Council established under section 705 of the federal Rehabilitation Act, 29 U.S.C. § 720, et seq., the advisory panel established under section 612(a)(21) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1413(A)(12), the Council on Developmental Disabilities described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 6024, the State Mental Health Planning

Council established pursuant to section 1916(e) of the Public Health Service Act, 42 U.S.C. § 300x-4(e), and the Commission on Workforce Development;

(3f) The Commission shall advise the Department and provide for coordination with, and establishment of working relationships between, the Department and the Independent Living Council;

(3g) The Commission shall prepare, in conjunction with the Department, a plan for the provision of those resources, including staff and other personnel, that are necessary to carry out the Commission's function under this Part. The resource plan shall, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan. The agreed-upon resources shall be provided pursuant to G.S. 143B-14. To the extent that there is a disagreement between the Commission and the Department with regard to the resources necessary to carry out the functions of the Commission required by this Part, the Governor shall resolve the disagreement. The Department or other State agency shall not assign any other duties to the staff and other personnel who are assisting the Commission in carrying out its duties that would create a conflict of interest;

(4) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the North Carolina State Commission for the Blind shall remain in full force and effect unless and until repealed or superseded by action of the recreated Commission for the Blind. All rules adopted by the Commission shall be enforced by the Department of Health and Human Services. (1973, c. 476, s. 139; 1993, c. 561, s. 89(a); 1997-443, s. 11A.118(a); 2000-121, ss. 29, 30.)

§ 143B-158. Commission for the Blind.

(a) The Commission for the Blind of the Department of Health and Human Services shall consist of 13 members as follows:

(1) One representative of the Statewide Independent Living Council.

(2) One representative of a parent training and information center established pursuant to section 631(c) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1431(c).

(3) One representative of the State's Client Assistance Program.

(4) One vocational rehabilitation counselor who has knowledge of and experience in vocational rehabilitation services for the blind. A vocational rehabilitation counselor appointed pursuant to this subdivision shall serve as a nonvoting member of the Commission if the counselor is an employee of the Department of Health and Human Services.

(5) One representative of community rehabilitation program services providers.

(6) One current or former applicant for, or recipient of, vocational rehabilitation services.

(7) One representative of a disability advocacy group representing individuals who are blind.

(8) One parent, family member, guardian, advocate, or authorized representative of an individual who is blind, has multiple disabilities, and either has difficulty representing himself or herself or who is unable, due to disabilities, to represent himself or herself.

(9) One representative of business, industry, and labor.

(10) One representative of the directors of projects carried out under section 121 of the Rehabilitation Act of 1973, 29 U.S.C. § 741, as amended, if there are any of these projects in the State.

(11) One representative of the Department of Public Instruction.
(12) One representative of the Commission on Workforce Development.
(13) The Director of the Division of Services for the Blind shall serve as an ex officio, nonvoting member.

(b) The members of the Commission for the Blind shall be appointed by the Governor. The Governor shall appoint members after soliciting recommendations from representatives of organizations representing a broad range of individuals who have disabilities and organizations interested in those individuals. In making appointments to the Commission, the Governor shall consider, to the greatest extent practicable, the extent to which minority populations are represented on the Commission.

(c) A majority of Commission members shall be persons who are blind, as defined in G.S. 111-11. A majority of Commission members shall be persons who are not employed by the Division of Services for the Blind.

(d) The Commission for the Blind shall select a Chairperson from among its members.

(e) The term of office of members of the Commission is three years. The term of members appointed under subdivisions (1), (2), (3), and (4) of subsection (a) of this section shall expire on June 30 of years evenly divisible by three. The term of members appointed under subdivisions (5), (6), (7), and (8) of subsection (a) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (9), (10), (11), and (12) of subsection (a) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three.

(f) No individual may be appointed to more than two consecutive three-year terms. Upon the expiration of a term, a member shall continue to serve until a successor is appointed, as provided by G.S. 128-7. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(g) A member of the Commission shall not vote on any issue before the Commission that would have a significant and predictable effect on the member's financial interest. The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(h) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(i) A majority of the Commission shall constitute a quorum for the transaction of business.

(j) All clerical and other services required by the Commission shall be supplied by the Secretary of Health and Human Services. (1973, c. 476, s. 140; 1977, c. 581; 1993, c. 561, s. 89(b); 1997-443, s. 11A.118(a); 2000-121, s. 31.)

§ 143B-159. Commission for the Blind — regular and special meetings.

The Commission for the Blind shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 476, s. 141.)

§ 143B-160. Commission for the Blind — officers.

The Commission for the Blind shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 142.)

Part 8. Professional Advisory Committee.

§ 143B-161. Professional Advisory Committee — creation, powers and duties.

There is hereby created the Professional Advisory Committee of the Department of Health and Human Services. The Professional Advisory Committee shall advise the Commission for the Blind on matters concerning or pertaining to the procurement, utilization, and rendering of professional services to the beneficiaries of the Commission's aid and services. (1973, c. 476, s. 144; 1997-443, s. 11A.118(a).)

§ 143B-162. Professional Advisory Committee — members; selection; quorum; compensation.

The Professional Advisory Committee of the Department of Health and Human Services shall consist of nine members appointed by the Governor, three of whom shall be licensed physicians nominated by the North Carolina Medical Society whose practice is limited to ophthalmology, three optometrists nominated by the North Carolina State Optometric Society, and three opticians nominated by the North Carolina Opticians Association.

Those nine members shall serve three-year terms staggered such that the terms of three members shall expire each year. A member of the Committee shall continue to serve until his successor is appointed and qualifies. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Health and Human Services.

The schedule for appointments to the Committee described in Section 1 of this act is as follows: The ophthalmologists and optometrists serving on the Committee on the date this act is ratified shall continue to serve until their respective terms expire. Initial appointments of the three opticians shall be made no later than July 2, 1979, shall become effective on that date, and shall be for one, two, and three-year terms, respectively. At the end of the respective terms of office of those nine members, the appointment of their successors shall be for terms of three years. (1973, c. 476, s. 145; 1979, c. 977, ss. 1, 2; 1997-443, s. 11A.118(a).)

Part 9. Consumer and Advocacy Advisory Committee for the Blind.

§ 143B-163. Consumer and Advocacy Advisory Committee for the Blind — creation, powers and duties.

(a) There is hereby created the Consumer and Advocacy Advisory Committee for the Blind of the Department of Health and Human Services. This Committee shall make a continuing study of the entire range of problems and needs of the blind and visually impaired population of this State and make specific recommendations to the Secretary of Health and Human Services as to how these may be solved or alleviated through legislative action. The Committee shall examine national trends and programs of other states, as well as programs and priorities in North Carolina. Because of the cost of treating persons who lose their vision, the Committee's role shall also include studying and making recommendations to the Secretary of Health and Human Services concerning methods of preventing blindness and restoring vision.

(b) The Consumer and Advocacy Advisory Committee for the Blind shall advise all State boards, commissions, agencies, divisions, departments, schools, corporations, or other State-administered associations or entities, including the secretary, director and members of said boards, commissions, agencies, divisions, departments, schools, et cetera, on the needs of the citizens of the State of North Carolina who are now or will become visually impaired.

(c) The Consumer and Advocacy Advisory Committee for the Blind shall also advise every State board, commission, agency, division, department, school, corporation, or other State-administered associations or entity concerning sight conservation programs that it supervises, administers or controls.

(d) All State boards, commissions, agencies, divisions, departments, schools, corporations, or other State-administered associations or entities including the secretary, director and members of said State boards, agencies, departments, et cetera, which supervise, administer or control any program for or affecting the citizens of the State of North Carolina who are now or will become visually impaired shall inform the Consumer and Advocacy Advisory Committee for the Blind of any proposed change in policy, program, budget, rule, or regulation which will affect the citizens of North Carolina who are now or will become visually impaired. Said board, commission, et cetera, shall allow the Consumer and Advocacy Advisory Committee for the Blind, prior to passage, unless such change is made pursuant to G.S. 150B-21.1, an opportunity to object to the change and present information and proposals on behalf of the citizens of North Carolina who are now or will become visually impaired. This subsection shall also apply to all sight conservation programs of the State of North Carolina.

(e) Nothing in this statute shall prohibit a board, commission, agency, division, department, et cetera, from implementing any change after allowing the Consumer and Advocacy Advisory Committee for the Blind an opportunity to object and propose alternatives. Shifts in budget items within a program or administrative changes in a program required in the day-to-day operation of an agency, department, or school, et cetera, shall be allowed without prior consultation with said Committee. (1977, c. 842, s. 1; c. 1050; 1979, c. 973, s. 1; 1987, c. 827, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 44; 1997-443, s. 11A.118(a); 2000-121, s. 32.)

§ 143B-164. Consumer and Advocacy Advisory Committee for the Blind — members; selection; quorum; compensation.

(a) The Consumer and Advocacy Advisory Committee for the Blind of the Department of Health and Human Services shall consist of the following members:

(1) One member of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;
(2) One member of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;
(3) President and Vice-President of the National Federation of the Blind of North Carolina;
(4) President and Vice-President of the North Carolina Council of the Blind;
(5) President and Vice-President of the North Carolina Association of Workers for the Blind;
(6) President and Vice-President of the North Carolina Chapter of the American Association of Workers for the Blind;
(7) Chairman of the State Council of the North Carolina Lions and Executive Director of the North Carolina Lions Association for the Blind, Inc.;
(8) Chairman of the Concession Stand Committee of the Division of Services for the Blind of the Department of Health and Human Services; and
(9) Executive Director of the North Carolina Society for the Prevention of Blindness, Inc.

With respect to members appointed from the General Assembly, these appointments shall be made in the odd-numbered years, and the appointments shall be made for two-year terms beginning on the first day of July and continuing through the 30th day of June two years thereafter; provided, such appointments shall be made within two weeks after ratification of this act, and the first members which may be so appointed prior to July 1 of the year of ratification shall serve through the 30th day of June of the second year thereafter. If any Committee member appointed from the General Assembly ceases to be a member of the General Assembly, for whatever reason, his position on the Committee shall be deemed vacant. In the event that either Committee position which is designated herein to be filled by a member of the General Assembly becomes vacant during a term, for whatever reason, a successor to fill that position shall be appointed for the remainder of the unexpired term by the person who made the original appointment or his successor. Provided members appointed by the President Pro Tempore of the Senate and the Speaker of the House shall not serve more than two complete consecutive terms.

With respect to the remaining Committee members, each officeholder shall serve on the Committee only so long as he holds the named position in the specified organization. Upon completion of his term, failure to secure reelection or appointment, or resignation, the individual shall be deemed to have resigned from the Committee and his successor in office shall immediately become a member of the Committee. Further, if any of the above-named organizations dissolve or if any of the above-stated positions no longer exist, then the successor organization or position shall be deemed to be substituted in the place of the former one and the officeholder in the new organization or of the new position shall become a member of the Committee.

(b) A chairman shall be elected by a majority vote of the Committee members for a one-year term to coincide with the fiscal year of the State. Provided, the first chairman shall be elected for a term to end June 30, 1978.

Provided, further, if any chairman does not desire or is unable to continue to perform as chairman for any reason, including his becoming ineligible to be a member of the Committee as specified in subsection (a), the remaining members shall elect a chairman to fulfill the remainder of his term.

(c) A majority of the members shall constitute a quorum for the transaction of business.

(d) The Committee shall meet once a quarter to act upon any information provided them by any board, commission, agency, division, department, school, et cetera. Special meetings may be held at any time and place within the State at the call of the chairman or upon written request of at least a majority of the members. Provided, a majority of the members shall be allowed to waive any meeting.

(e) All clerical and other services required by the Committee shall be supplied by the Secretary of Health and Human Services.

(f) Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1977, c. 842, s. 1; c. 1050; 1979, c. 973, s. 2; 1991, c. 739, s. 27; 1997-443, s. 11A.118(a).)

§§ 143B-164.1 through 143B-164.9: Reserved for future codification purposes.

Part 9A. State School for Sight-Impaired Children.

§ 143B-164.10. Incorporation, name and management.

The institution for the education of the blind, located in the City of Raleigh, shall be a corporation under the name and style of the Governor Morehead School, and shall be under the management of the Department of Health and Human Services and the director of the school. (1881, c. 211, s. 1; Code, s. 2227; Rev., s. 4187; 1917, c. 35, s. 1; C.S., s. 5872; 1957, c. 1434; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164; 1975, c. 19, s. 39; 1981, c. 423, s. 1; 1997-18, s. 13(a); 1997-443, s. 11A.118(a).)

Editor's Note. — This Part is former Part 8 of Article 9 of Chapter 115C, as rewritten and recodified by Session Laws 1997-18, s. 13, effective April 11, 1997. Where appropriate, the historical citations to the sections in the former Part have been added to corresponding sections in the Chapter as rewritten and recodified.

§ 143B-164.11. Board of Directors of the Governor Morehead School — creation, powers and duties.

(a) There is hereby created the Board of Directors of the Governor Morehead School of the Department of Health and Human Services with the power and duty to adopt rules and establish standards to be followed in the conduct of the Governor Morehead School including rules for the professional care of children admitted to the Governor Morehead School and rules to make the Governor Morehead School as nearly self-supporting as consistent with the purposes of its creation.

(b) The Board of Directors of the Governor Morehead School may adopt rules not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid that may be available to the State by the federal government. This subsection is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(c) The Board of Directors of the Governor Morehead School may encourage the establishment of private, nonprofit corporations to support the institution. If the sole purpose of a corporation is to support the Governor Morehead School, the Department of Health and Human Services may, with the approval of the Board of Directors, assign employees to assist with the establishment and operation of the corporation and may make available to the corporation office space, equipment, supplies, and other related resources. The limitation on hours of service by an employee provided in G.S. 143B-139.4 does not apply to employees assisting a nonprofit corporation pursuant to this subsection. The board of directors of each private, nonprofit corporation that obtains assistance under this subsection shall secure and pay for the services of the State Auditor or employ a certified public accountant to conduct an annual audit of the financial accounts of the corporation. The board of directors of the corporation shall transmit to the Department of Health and Human Services a copy of the annual financial audit report of the corporation. (1989, c. 533, s. 3; 1997-18, s. 13(b); 1997-443, s. 11A.118(a); 2001-412, s. 2.)

§ 143B-164.12. Board of Directors of the Governor Morehead School — members; selection; quorum; compensation.

(a) The Board of Directors of the Governor Morehead School of the Department of Health and Human Services shall consist of 11 members appointed by the Governor for terms of six years. Any appointment to fill a vacancy created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Governor shall have the power to remove any member of the Board from office for misfeasance, malfeasance or nonfeasance according to the provisions of G.S. 143B-13.

(b) The chairman of the Board shall be designated by the Governor from the Board members to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Board and shall serve for a term of two years or until the expiration of his regularly appointed term.

(c) The Board shall meet at least once in each quarter and may hold special meetings at any time and place at the call of the chairman or upon the written request of at least a majority of its members. A majority of the Board shall constitute a quorum.

(d) Board members shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(e) The Secretary of the Department of Health and Human Services shall provide clerical and other assistance as needed. (1989, c. 533, s. 3; 1997-18, s. 13(c); 1997-443, s. 11A.118(a).)

§ 143B-164.13. Admission of pupils; how admission obtained.

The Department of Health and Human Services shall, on application, receive in the institution for the purpose of education all blind children who are residents of this State and who are from age five through age 20 years: Provided, that pupils who are not within the age limits above set forth may be admitted to said institution in cases in which the Department of Health and Human Services finds that the admission of such pupils will be beneficial to them and in cases in which there is sufficient space available for their admission in said institution: Provided, further, that the Department of Health and Human Services is authorized to make expenditures, out of any scholarship funds or other funds already available or appropriated, of sums of money for the use of out-of-state facilities for any student who, because of peculiar conditions or disability, cannot be properly educated at the school in Raleigh. (1881, c. 211, s. 5; Code, s. 2231; Rev., s. 4191; 1917, c. 35, s. 1; C.S., s. 5876; 1947, c. 375; 1949, c. 507; 1953, c. 675, s. 14; 1963, c. 448, s. 28; 1969, c. 749, s. 2; c. 1279; 1973, c. 476, s. 164; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 23; 1985, c. 780, s. 3; 1997-18, s. 13(a); 1997-443, s. 11A.118(a).)

§ 143B-164.14. Admission of pupils from other states.

The Department of Health and Human Services may, on such terms as it deems proper and upon the receipt of tuition and necessary expenses as prescribed by the Department of Health and Human Services, admit as pupils persons of like infirmity from any other state but such power shall not be exercised to the exclusion of any child of this State, and the person so admitted shall not acquire the condition of a resident of the State by virtue of such pupilage. (1881, c. 211, s. 6; Code, s. 2232; Rev., s. 4193; C.S., s. 5878; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164; 1981, c. 423, s. 1; 1997-18, s. 13(a); 1997-443, s. 11A.118(a).)

§ 143B-164.15. Department of Health and Human Services may confer diplomas.

The Department of Health and Human Services may, upon the recommendation of the superintendent and faculty, confer such diplomas or marks of achievement upon its graduates as it may deem appropriate to encourage merit. (1881, c. 211, s. 7; Code, s. 2233; Rev., s. 4194; 1917, c. 35, s. 1; C.S., s. 5879; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164; 1981, c. 423, s. 1; 1997-18, s. 13(a); 1997-443, s. 11A.122.)

§ 143B-164.16. State Treasurer is ex officio treasurer of institution.

The State Treasurer shall be ex officio treasurer of the institution. He shall report to the Department of Health and Human Services at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C.S., s. 5881; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164; 1981, c. 423, s. 1; 1997-18, s. 13(a); 1997-443, s. 11A.118(a).)

§ 143B-164.17. When clothing, etc., for pupils paid for by county.

Where it shall appear to the satisfaction of the director of social services and the chairman of the board of county commissioners of any county in this State that the parents of any blind child residing in such county are then unable to provide such child with clothing or traveling expenses or both to and from the Governor Morehead School, or where such child has no living parent, or any estate of his own, or any person, or persons, upon which he is legally dependent who are able to provide expenses for such transportation and clothing, then upon the demand of the institution which such child attends or has been accepted for attendance, the board of county commissioners of the county in which such child resides shall pay to the proper institution an amount sufficient to clothe and pay traveling expenses of said child. (1879, c. 332, s. 1; Code, s. 2238; Rev., s. 4199; Ex. Sess. 1908, c. 69; 1917, c. 35, s. 3; 1919, c. 183; C.S., s. 5885; 1927, c. 86; 1929, c. 181; 1961, c. 186; 1963, c. 448, s. 28; 1969, c. 749, s. 2; c. 982; 1981, c. 423, s. 1; 1993, c. 257, s. 11; 1997-18, s. 13(a).)

§ 143B-164.18. Establishment of private, nonprofit corporations.

The Department of Health and Human Services may encourage the establishment of private, nonprofit corporations to support the Governor Morehead School. If the sole purpose of a corporation is to support the Governor Morehead School, the Department may, with the approval of the Board of Directors of the Governor Morehead School, assign employees to assist with the establishment and operation of the nonprofit corporation and may make available to the corporation office space, equipment, supplies, and other related resources. The limitation on hours of service by an employee provided in G.S. 143B-139.4 does not apply to employees assisting a nonprofit corporation established pursuant to this section.

The board of directors of each private, nonprofit corporation that obtains assistance under this section shall secure and pay for the services of the State Auditor or employ a certified public accountant to conduct an annual audit of the financial accounts of the corporation. The board of directors of the corporation shall transmit to the Department of Health and Human Services a copy of the annual financial audit report of the corporation. (2001-412, s. 1.)

Part 10. North Carolina Medical Care Commission.

§ 143B-165. North Carolina Medical Care Commission — creation, powers and duties.

There is hereby created the North Carolina Medical Care Commission of the Department of Health and Human Services with the power and duty to promulgate rules and regulations to be followed in the construction and maintenance of public and private hospitals, medical centers, and related facilities with the power and duty to adopt, amend and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

(1) The North Carolina Medical Care Commission has the duty to adopt statewide plans for the construction and maintenance of hospitals, medical centers, and related facilities, or such other as may be found desirable and necessary in order to meet the requirements and receive the benefits of any federal legislation with regard thereto.

(2) The Commission is authorized to adopt such rules and regulations as may be necessary to carry out the intent and purposes of Article 13 of Chapter 131 of the General Statutes of North Carolina.

(3) The Commission may adopt such reasonable and necessary standards with reference thereto as may be proper to cooperate fully with the Surgeon General or other agencies or departments of the United States and the use of funds provided by the federal government as contained and referenced in Article 13 of Chapter 131 of the General Statutes of North Carolina.

(4) The Commission shall have the power and duty to approve projects in the amounts of grants-in-aid from funds supplied by the federal and State governments for the planning and construction of hospitals and other related medical facilities according to the provisions of Article 13 of Chapter 131 of the General Statutes of North Carolina.

(5) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1388, s. 3.

(6) The Commission has the duty to adopt rules and regulations and standards with respect to the different types of hospitals to be licensed under the provisions of Article 13A of Chapter 131 of the General Statutes of North Carolina.

(7) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for medical facility services and licensure which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(8) The Commission shall adopt such rules and regulations, consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the North Carolina Medical Care Commission shall remain in full force and effect unless and until repealed or superseded by action of the North Carolina Medical Care Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Health and Human Services.

(9) The Commission shall have the power and duty to adopt rules and regulations with regard to emergency medical services in accordance with the provisions of Article 26 of Chapter 130 and Article 56 of Chapter 143 of the General Statutes of North Carolina.

(10) The Commission shall have the power and duty to adopt rules for the operation of nursing homes, as defined by Article 6 of Chapter 131E of the General Statutes.

(11) The Commission is authorized to adopt such rules as may be necessary to carry out the provisions of Part C of Article 6, and Article 10, of Chapter 131E of the General Statutes of North Carolina.

(12) The Commission shall adopt rules, including temporary rules pursuant to G.S. 150B-13, providing for the accreditation of facilities that perform mammography procedures and for laboratories evaluating screening pap smears. Mammography accreditation standards shall address, but are not limited to, the quality of mammography equipment used and the skill levels and other qualifications of personnel who administer mammographies and personnel who interpret mammogram results. The Commission's standards shall be no less stringent than those established by the United States Department of Health and Human Services for Medicare/Medicaid coverage of screening mammography. These rules shall also specify procedures for waiver of these accreditation standards on an individual basis for any facility providing screening mammography to a significant number of patients, but only if there is no accredited facility located nearby. The Commission may grant a waiver subject to any conditions it deems necessary to protect the health and safety of patients, including requiring the facility to submit a plan to meet accreditation standards.

(13) The Commission shall have the power and duty to adopt rules for the inspection and licensure of adult care homes and operation of adult care homes, as defined by Article 1 of Chapter 131D of the General Statutes, and for personnel requirements of staff employed in adult care homes, except where rule-making authority is assigned to the Secretary. (1973, c. 476, s. 148; c. 1090, s. 2; c. 1224, s. 3; 1981, c. 614, s. 10; 1981 (Reg. Sess., 1982), c. 1388, s. 3; 1983 (Reg. Sess., 1984), c. 1022, s. 6; 1987, c. 34; 1991, c. 490, s. 4; 1997-443, s. 11A.118(a); 1999-334, ss. 3.6, 3.7.)

Cross References. — As to standards for Alzheimer's special care units, see G.S. 143B-181.50 et seq.

Editor's Note. — As to nursing home licensure, see now G.S. 131E-100 et seq. Article 26 of Chapter 130, referred to in this section, was repealed by Session Laws 1983, c. 891, s. 1. As to regulation of ambulance services, see now

G.S. 131E-155 et seq. Articles 13 and 13A of Chapter 131, referred to in this section, were repealed by Session Laws 1983, c. 775, s. 1. As to health care facilities and services, see now G.S. 131E-1 et seq. Section 150B-13, referred to in this section, was repealed by Session Laws 1991, c. 418, s. 5. As to rule making, see now G.S. 150B-18 et seq.

Session Laws 1991, c. 490, which added subdivision (12), in s. 7, provides "Nothing in this act shall apply to specified accident, specified disease, hospital indemnity, or long-term care health insurance policies."

Session Laws 1999-386, s. 4, effective August 4, 1999, provides that, notwithstanding the requirements of G.S. 131E-8, G.S. 131E-13, G.S. 131E-14, G.S. 153A-176, and Article 12 of Chapter 160A of the General Statutes, and any past compliance or failure to comply with those requirements, the prior conveyance by a municipality as defined in G.S. 131E-6(5), or by a hospital authority as defined in G.S. 131E-16(14), of a hospital facility that currently serves as collateral in a transaction involving North Carolina Medical Care Commission bonds issued under Part 10 of Article 3 of Chapter 143B of the General Statutes is hereby validated. Section 5 of the act provides that Section 4 shall not apply to litigation pending on or before the effective date.

CASE NOTES

The Medical Care Commission is a creature of the State of North Carolina. Hawkins v. North Carolina Dental Soc'y, 355 F.2d 718 (4th Cir. 1966).

And the functions it serves are concededly public functions of the State. Hawkins v. North Carolina Dental Soc'y, 355 F.2d 718 (4th Cir. 1966).

§ 143B-166. North Carolina Medical Care Commission — members; selection; quorum; compensation.

The North Carolina Medical Care Commission of the Department of Health and Human Services shall consist of 17 members appointed by the Governor. Three of the members appointed by the Governor shall be nominated by the North Carolina Medical Society, one member shall be nominated by the North Carolina Nurses Association, one member shall be nominated by the North Carolina Pharmaceutical Association, one member nominated by the Duke Foundation and one member nominated by the North Carolina Hospital Association. The remaining 10 members of the North Carolina Medical Care Commission shall be appointed by the Governor and selected so as to fairly represent agriculture, industry, labor, and other interest groups in North Carolina. One such member appointed by the Governor shall be a dentist licensed to practice in North Carolina. The initial members of the Commission shall be 18 members of the North Carolina Medical Care Commission who shall serve for a period equal to the remainder of their current terms on the North Carolina Medical Care Commission, six of whose appointments expire June 30, 1973, four of whose appointments expire June 30, 1974, four of whose appointments expire June 30, 1975, and four of whose appointments expire June 30, 1976. To achieve the required 17 members the Governor shall appoint three members to the Commission upon the expiration of four members' initial terms on June 30, 1973. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

Vacancies on said Commission among the membership nominated by a society, association, or foundation as hereinabove provided shall be filled by the Executive Committee or other authorized agent of said society, association or foundation until the next meeting of the society, association or foundation at which time the society, association or foundation shall nominate a member to fill the vacancy for the unexpired term.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Health and Human Services. (1973, c. 476, s. 149; c. 1090, s. 2; 1997-443, s. 11A.118(a).)

§ 143B-167. North Carolina Medical Care Commission — regular and special meetings.

The North Carolina Medical Care Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least nine members. (1973, c. 476, s. 150; c. 1090, s. 2.)

§ 143B-168. North Carolina Medical Care Commission — officers.

The North Carolina Medical Care Commission shall have a chairman and vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 151; c. 1090, s. 2.)

Part 10A. Child Day-Care Commission.

[Child Care Commission.]

§ 143B-168.1: Repealed by Session Laws 1987, c. 788, s. 23.

Cross References. — As to child care, see G.S. 110-85 et seq. As to the Child Care Commission, see G.S. 143B-168.3.

§ 143B-168.2: Repealed by Session Laws 1987, c. 788, s. 24.

Cross References. — As to child care, see G.S. 110-85 et seq. As to the Child Care Commission, see G.S. 143B-168.3.

§ 143B-168.3. Child Care Commission — powers and duties.

(a) The Child Day-Care Licensing Commission of the Department of Administration is transferred, recodified, and renamed the Child Care Commission of the Department of Health and Human Services with the power and duty to adopt rules to be followed in the licensing and operation of child care facilities as provided by Article 7 of Chapter 110 of the General Statutes.

(a1) The Child Care Commission shall adopt rules:

(1) For the issuance of licenses to any child care facility; and

(2) To adopt rules as provided by Article 7 of Chapter 110 of the General Statutes of the State of North Carolina, and to establish standards for enhanced program licenses, as authorized by G.S. 110-88(7).

(b) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Child Day-Care Licensing Commission shall remain in full force and effect unless and until repealed or superseded by action of the Child Care Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Health and Human Services. (1985, c. 757, s. 155(a); 1987, c. 788, ss. 25, 26; 1997-443, s. 11A.118(a); 1997-456, s. 27; 1997-506, s. 56.)

Task Force on the Consolidation of Early Childhood Education and Care. — For provisions regarding the Task Force on the Consolidation of Early Childhood Education and Care under Session Laws 2009-451, s. 10.7A, see the notes at G.S. 143B-138.1 and G.S. 143B-168.10.

Editor's Note. — Session Laws 1985, c. 757, s. 155(q) provides: "The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the North Carolina Day Care Licensing Commission of the Department of Administration is transferred to the Department of Human Resources. The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the Office of Day Care Licensing of the Department of Administration and of the Office of Day Care Services of the Department of Human Resources, are transferred to the Division of Facility Services of the Department of Human Resources. Any disputes arising out of this transfer shall be resolved by the Governor pursuant to G.S. 143B-4."

The first, undesignated, paragraph of this section was renumbered as subsection (a), and subsection (a) was renumbered as subsection (a1) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 143B-168.4. Child Care Commission — members; selection; quorum.

(a) The Child Care Commission of the Department of Health and Human Services shall consist of 15 members. Seven of the members shall be appointed by the Governor and eight by the General Assembly, four upon the recommendation of the President Pro Tempore of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. Four of the members appointed by the Governor, two by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on the recommendation of the Speaker of the House of Representatives, shall be members of the public who are not employed in, or providing, child care and who have no financial interest in a child care facility. Two of the foregoing public members appointed by the Governor, one of the foregoing public members recommended by the President Pro Tempore of the Senate, and one of the foregoing public members recommended by the Speaker of the House of Representatives shall be parents of children receiving child care services. Of the remaining two public members appointed by the Governor, one shall be a pediatrician currently licensed to practice in North Carolina. Three of the members appointed by the Governor shall be child care providers, one of whom shall be affiliated with a for profit child care center, one of whom shall be affiliated with a for profit family child care home, and one of whom shall be affiliated with a nonprofit facility. Two of the members appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on recommendation of the Speaker of the House of Representatives, shall be child care providers, one affiliated with a for profit child care facility, and one affiliated with a nonprofit child care facility. None may be employees of the State.

(b) Members shall be appointed as follows:

(1) Of the Governor's initial appointees, four shall be appointed for terms expiring June 30, 1986, and three shall be appointed for terms expiring June 30, 1987;

(2) Of the General Assembly's initial appointees appointed upon recommendation of the President of the Senate, two shall be appointed for terms expiring June 30, 1986, and two shall be appointed for terms expiring June 30, 1987;

(3) Of the General Assembly's initial appointees appointed upon recommendation of the Speaker of the House of Representatives, two shall be appointed for terms expiring June 30, 1986, and two shall be appointed for terms expiring June 30, 1987.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121. After the initial appointees' terms have expired, all members shall be appointed to serve two-year terms. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) A vacancy occurring during a term of office is filled:

(1) By the Governor, if the Governor made the initial appointment;

(2) By the General Assembly, if the General Assembly made the initial appointment in accordance with G.S. 120-122.

At its first meeting the Commission members shall elect a chairman to serve a two-year term. Chairmen shall be elected for two-year terms thereafter. The same member may serve as chairman for two consecutive terms.

Commission members may be reappointed and may succeed themselves for a maximum of four consecutive terms.

The Commission shall meet quarterly, and at other times at the call of the chairman or upon written request of at least six members.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Health and Human Services. (1985, c. 757, s. 155(a); 1987 (Reg. Sess., 1988), c. 896; 1989, c. 342; 1995, c. 490, s. 10; 1997-443, s. 11A.118(a); 1997-506, s. 57.)

§ 143B-168.5. Child Care — special unit.

There is established within the Department of Health and Human Services a special unit to deal primarily with violations involving child abuse and neglect in child care arrangements. The Child Care Commission shall make rules for the investigation of reports of child abuse or neglect and for administrative action when child abuse or neglect is substantiated, pursuant to G.S. 110-88(6a), 110-105, and 110-105.2. (1985, c. 757, s. 156(r); 1991, c. 273, s. 12; 1997-443, s. 11A.118(a); 1997-506, s. 58.)

§§ 143B-168.6 through 143B-168.9: Reserved for future codification purposes.

Part 10B. Early Childhood Initiatives.

§ 143B-168.10. Early childhood initiatives; findings.

The General Assembly finds, upon consultation with the Governor, that every child can benefit from, and should have access to, high-quality early childhood education and development services. The economic future and well-being of the State depend upon it. To ensure that all children have access to high-quality early childhood education and development services, the General Assembly further finds that:

(1) Parents have the primary duty to raise, educate, and transmit values to young preschool children;

(2) The State can assist parents in their role as the primary caregivers and educators of young preschool children; and

(3) There is a need to explore innovative approaches and strategies for aiding parents and families in the education and development of young preschool children. (1993, c. 321, s. 254(a); 1998-212, s. 12.37B(a).)

Smart Start Performance Audit. — Session Laws 1997-443, s. 11.55(b), provides: "Notwithstanding any provision of Part 10B of Article 3 of Chapter 143B of the General Statutes or any other provision of law or policy, the Department of Human Resources and the North Carolina Partnership for Children, Inc., jointly shall continue to implement the recommendations contained in the Smart Start Performance Audit prepared pursuant to Section 27A(1)b. of Chapter 324 of the 1995 Session Laws, as modified by Section 24.29 of Chapter 18 of the Session Laws, Second Extra Session 1996. The North Carolina Partnership for Children, Inc., shall continue to report quarterly to the Joint Legislative Commission on Governmental Operations on its progress toward full implementation of the modified audit recommendations."

Session Laws 2005-276, s. 10.67(b)-(f), as amended by Session Laws 2006-66, s. 7.18(b)-(h) provides: "(b) The Department of Public Instruction shall continue the implementation of the 'More at Four' prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

"(1) A process and system for identifying children at risk of academic failure.

"(2) A process and system for identifying children who are not being served in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.

"(3) A curriculum or several curricula that are research-based and/or built on sound instructional theory. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.

"(4) An emphasis on ongoing family involvement with the prekindergarten program.

"(5) Evaluation of child progress through a statewide evaluation, as well as ongoing assessment of the children by teachers.

"(6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.

"(7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.

"(8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services and the Department of Public Instruction. The Department may use the child care rating system to assist in determining program participation.

"(9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.

"(10) A local contribution. Programs must demonstrate that they are accessing resources other than 'More at Four'.

"(11) A system of accountability.

"(12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services and the Department of Public Instruction shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services.

"(c) The Department of Public Instruction shall implement a plan to expand 'More at Four' program standards within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. The 'NC Prekindergarten Program Standards' initiative shall recognize four- and five-star-rated centers that choose to apply and meet equivalent 'More at Four' program standards as high quality pre-k classrooms. Classrooms meeting these standards shall, have access to training and workshops for 'More at Four' programs. Whenever expansion slots are available, these classrooms shall have first priority to receive them.

"The 'More at Four' program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through January 31 of each year, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care.

"(d) The Department of Public Instruction shall submit a report by February 1, 2007, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Education, the House of Representatives Appropriations Subcommittee on Education, and the Fiscal Research Division. This final report shall include the following:

"(1) The number of children participating in the program.

"(2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.

"(3) The expected expenditures for the programs and the source of the local match for each grantee.

"(4) The location of program sites and the corresponding number of children participating in the program at each site.

"(5) A comprehensive cost analysis of the program, including the cost per child served by the program.

"(6) The status of the NC Prekindergarten initiatives as outlined in this section.

"(e) For the 2005-2006 and the 2006-2007 fiscal years, the 'More at Four' program shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors.

"(f) The 'More at Four' program funding shall not supplant any funding for classrooms serving four-year-olds as of the 2005-2006 fiscal year. Support of existing four-year-old classrooms with 'More at Four' program funding shall be permitted when current funding is eliminated, reduced or redirected as required to meet other specified federal or State educational mandates."

"The Department of Health and Human Services, Division of Child Development, shall review and evaluate the early literacy project in Davie County and consider incorporation of this curriculum into the 'More at Four' program."

Session Laws 2007-323, s. 7.24(a)-(f), as amended by Session Laws 2008-107, s. 7.17(a) and (c), and as amended by Session Laws 2008-181, s. 49.1, provides: "(a) The Department of Public Instruction shall continue the implementation of the 'More at Four' prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

"(1) A process and system for identifying children at risk of academic failure.

"(2) A process and system for identifying children who are not being served in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.

"(3) A curriculum or several curricula that are research-based and/or built on sound instructional theory. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.

"(4) An emphasis on ongoing family involvement with the prekindergarten program.

"(5) Evaluation of child progress through a statewide evaluation, as well as ongoing assessment of the children by teachers.

"(6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.

"(7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.

"(8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services and the Department of Public Instruction. The Department may use the child care rating system to assist in determining program participation.

"(9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.

"(10) A local contribution. Programs must demonstrate that they are accessing resources other than 'More at Four.'

"(11) A system of accountability to include a yearly review. The Department shall contract with an independent research organization to produce an annual report to include longitudinal review of the program and academic, behavioral, and other child-specific outcomes. The review shall also include a test of the feasibility of conducting a quasi experimental research design with a representative sample or samples of children who complete the More at Four program every year and children of comparable demographics and grade levels that do not participate in a More at Four program. The review shall be presented to the Joint Legislative Oversight Committee on Education by January 31 of every year.

"(12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services and the Department of Public Instruction shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services.

"(b) The Department of Public Instruction shall implement a plan to expand 'More at Four' program standards within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. The 'NC Prekindergarten Program Standards' initiative shall recognize four- and five-star-rated centers that choose to apply and meet equivalent 'More at Four' program standards as high quality pre-k classrooms. Classrooms meeting these standards shall have access to training and workshops for 'More at Four' programs. Whenever expansion slots are available, these classrooms shall have first priority to receive them.

"The 'More at Four' program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through January 31 of each year, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care.

"(c) The Department of Public Instruction shall submit a report by February 1, 2008, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Education, the House of Representatives Appropriations Subcommittee on Education, and the Fiscal Research Division. This final report shall include the following:

"(1) The number of children participating in the program.

"(2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.

"(3) The expected expenditures for the programs and the source of the local match for each grantee.

"(4) The location of program sites and the corresponding number of children participating in the program at each site.

"(5) A comprehensive cost analysis of the program, including the cost per child served by the program.

"(6) The status of the NC Prekindergarten initiatives as outlined in this section.

"(d) For the 2007-2008 and the 2008-2009 fiscal years, the 'More at Four' program shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors. Furthermore, any age-eligible child of (i) an active duty member of the armed forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the armed forces, who is ordered to active duty by the proper authority within the last 18 months or expected to be ordered within the next 18 months, or (ii) a member of the armed forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the armed forces, who was injured or killed while serving on active duty, shall be eligible for the program.

"(e) The 'More at Four' program funding

shall not supplant any funding for classrooms serving four-year-olds as of the 2005-2006 fiscal year. Support of existing four-year-old classrooms with 'More at Four' program funding shall be permitted when current funding is eliminated, reduced, or redirected as required to meet other specified federal or State educational mandates.

"(f) If a county is unable to increase 'More at Four' slots because of a documented lack of available resources necessary to provide the required local contribution for the additional slots allocated to the county for the 2007-2008 fiscal year or the 2008-2009 fiscal year, the contract agency for that county may appeal to the Office of School Readiness for an exception to the required local amount for those additional slots. The Office of School Readiness may grant an exception and allot funds to pay up to ninety percent (90%) of the full cost of the additional slots for that county if it finds that (i) there is in fact a documented lack of available resources in the county and (ii) granting the exception will not reduce access statewide to 'More at Four' slots."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Transfer More at Four program and Office of School Readiness to the Department of Public Instruction. — Session Laws 2006-66, s. 7.18(a), effective July 1, 2006, provides: "The More at Four program and the Office of School Readiness are transferred from the Office of the Governor to the Department of Public Instruction effective July 1, 2006. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6. The Office of School Readiness will provide oversight to the More at Four program and other related early childhood and prekindergarten education experiences. An Executive Director for the Office of School Readiness will be appointed by the State Board of Education."

Smart Start Funding Study. — Session Laws 2004-161, ss. 35.1 to 35.13, established the Smart Start Funding Study Commission.

Session Laws 2004-161, s. 35.4, provides: "Duties of Commission. — The Commission shall study the funding of the North Carolina Partnership for Children, Inc. In conducting the study, the Commission shall consider the following:

"(1) The current funding system of the North Carolina Partnership for Children, Inc.

"(2) Any strategies for achieving full funding and full service for North Carolina's young children and families.

"(3) Funding equity among all counties and local partnerships.

"(4) Any other information the Commission deems relevant."

Session Laws 2004-161, s. 35.12, provides: "Report. — The Commission shall make its findings and recommendations in a final report to the 2005 General Assembly. Upon the earlier of the filing of its final report or the convening of the 2005 General Assembly, the Commission shall terminate."

Session Laws 2005-276, s. 10.65(a) and (b), provides: "(a) The North Carolina Partnership for Children, Inc., shall study its allocation of funds to local partnerships. The North Carolina Partnership for Children, Inc., shall study funding equity among all counties and local partnerships based on population, the number of children from birth to five years of age residing in the county region, economic indicators, and the quality of existing child care. The North Carolina Partnership for Children, Inc., shall develop strategies to alleviate the inequity of funds to local partnerships.

"(b) The North Carolina Partnership for Children, Inc., shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2006."

Office of School Readiness. — Session Laws 2005-276, s. 10.68(a)-(d), provides: "The Department of Health and Human Services, the Department of Public Instruction, and the Office of the Governor shall establish a study group to develop a plan for the creation of an Office of School Readiness. In conducting the study, the study group shall identify all State programs impacting children's readiness for school and the ways in which these State programs currently coordinate. The study shall include a survey of other states to determine organizational structures that exist to manage prekindergarten programs, child care licensure and regulation, and other early childhood-related programs. The study group shall also study the advantages or disadvantages of transferring the 'More at Four' program to the Department of Public Instruction or the Department of Health and Human Services and any advantages or disadvantages the transfer may have on children being served by the 'More at Four' program.

"After conducting the study, the study group shall develop a recommendation for the structure of North Carolina's prekindergarten and other early childhood-related programs and develop a plan for the implementation of these recommendations.

"Effective when this act becomes law, early childhood-related programs, including the 'More at Four' program, Head Start program, and child care licensure and regulation, shall remain in their current departments until the General Assembly approves the plan.

"The study group shall report the results of its study to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by March 1, 2006."

Costs and Procedures for Early Childhood Education and Development Initiatives Enhancements. — Session Laws 2009-451, s. 10.7(a)-(g), provides: "(a) Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. For purposes of this subsection, administrative costs shall include costs associated with partnership oversight, business and financial management, general accounting, human resources, budgeting, purchasing, contracting, and information systems management.

"(b) The North Carolina Partnership for Children, Inc., and all local partnerships shall use competitive bidding practices in contracting for goods and services on contract amounts as follows:

"(1) For amounts of five thousand dollars ($5,000) or less, the procedures specified by a written policy to be developed by the Board of Directors of the North Carolina Partnership for Children, Inc.

"(2) For amounts greater than five thousand dollars ($5,000), but less than fifteen thousand dollars ($15,000), three written quotes.

"(3) For amounts of fifteen thousand dollars ($15,000) or more, but less than forty thousand dollars ($40,000), a request for proposal process.

"(4) For amounts of forty thousand dollars ($40,000) or more, a request for proposal process and advertising in a major newspaper.

"(c) The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than fifty percent (50%) of the total amount budgeted for the program in each fiscal year of the biennium as follows: contributions of cash equal to at least fifteen percent (15%) and in-kind donated resources equal to no more than five percent (5%) for a total match requirement of twenty percent (20%) for each fiscal year. The North Carolina Partnership for Children, Inc., may carry forward any amount in excess of the required match for a fiscal year in order to meet the match requirement of the succeeding fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children, Inc., or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

"(1) Be verifiable from the contractor's records.

"(2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.

"(3) Not include expenses funded by State funds.

"(4) Be supplemental to and not supplant preexisting resources for related program activities.

"(5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives.

"(6) Be otherwise allowable under federal or State law.

"(7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children, Inc., or the local partnership.

"(8) Be reported to the North Carolina Partnership for Children, Inc., or the local partnership by the contractor in the same manner as reimbursable expenses.

"Failure to obtain a twenty percent (20%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

"(d) The Department of Health and Human Services shall continue to implement the performance-based evaluation system.

"(e) The Department of Health and Human Services and the North Carolina Partnership for Children, Inc., shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2009-2010 and 2010-2011 shall be administered and distributed in the following manner:

"(1) Capital expenditures are prohibited for fiscal years 2009-2010 and 2010-2011. For the purposes of this section, 'capital expenditures' means expenditures for capital improvements as defined in G.S. 143C-1-1(d)(5).

"(2) Expenditures of State funds for advertising and promotional activities are prohibited for fiscal years 2009-2010 and 2010-2011.

"(f) A county may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure pursuant to Article 7 of Chapter 110 of the General Statutes.

"(g) For fiscal years 2009-2010 and 2010-2011, the local partnerships shall spend an amount for child care subsidies that provides at least fifty-two million dollars ($52,000,000) for the TANF maintenance of effort requirement and the Child Care Development Fund and Block Grant match requirement. The Department of Health and Human Services shall determine the level of funds that need to be expended in order to draw down all federal recovery funds and shall direct the local partnerships to spend at least at the determined level. The local partnerships shall not spend at a level less than that directed by the Department."

For prior similar provisions, see Session Laws 2001-424, s. 21.75(a)-(c), Session Laws 2004-284, s. 10.38(a)-(k), Session Laws 2005-276, s. 10.64(a)-(g), and Session Laws 2007-323, s. 10.19(a)-(g).

Task Force on the Consolidation of Early Childhood Education and Care. — Session Laws 2009-451, s. 10.7A(a)-(k), provides: "(a) Intent. — It is the intent of the General Assembly that not later than July 1, 2010, certain agencies and programs relating to early childhood education and care shall be consolidated.

"(b) Task Force Established. — There is established the Joint Legislative Task Force on the Consolidation of Early Childhood Education and Care (Task Force). The Department of Health and Human Services and the Department of Public Instruction shall work with the Task Force to develop a Consolidation Plan (Plan) to implement the Plan as approved by the 2010 Regular Session of the 2009 General Assembly.

"(c) Task Force Membership. — Appointments to the Task Force shall be as follows:

"a. Three members of the House of Representatives appointed by the Speaker of the House of Representatives.

"b. Three members of the Senate appointed by the President Pro Tempore of the Senate.

"c. Three members appointed by the Governor.

"d. Any additional ad hoc members the Governor deems beneficial to achieve the goals of the Task Force.

"Appointments to the Task Force shall be made no later than September 1, 2009.

"Vacancies in the Task Force or a vacancy as chair of the Task Force resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made.

"(d) Duties of the Task Force. —

"(1) In consultation with the Department of Health and Human Services and the Department of Public Instruction, develop a Plan for a highly coordinated and efficient system of early childhood education and care.

"(2) Not later than January 15, 2010, establish and appoint a transition team to implement the Plan approved by the General Assembly. The transition team shall be responsible for guiding the transition from the multiagency/multiprogram system now in place to a consolidated system and to ensure continuity and quality of existing services to young children, families, and early childhood programs and personnel.

"(3) Adhere to the following principles in the development and implementation of the Plan approved by the General Assembly:

"a. Ensuring high quality programs.

"b. Ensuring core functions remain intact.

"c. Maintaining the strengths and effectiveness of each program.

"d. Identifying and proposing efficiencies.

"e. Identifying needed improvements.

"f. Streamlining administrative savings.

"g. Promoting a seamless delivery of services from birth through kindergarten.

"h. Any other principles the Task Force deems relevant.

"(4) Consider the following agencies and functions for consolidation:

"a. The North Carolina Partnership for Children, Inc.

"b. The More at Four program.

"c. Title I Prekindergarten programs.

"d. Preschool Exceptional Children.

"e. Early Intervention programs.

"f. Head Start Collaboration.

"g. Child Care Regulatory and Subsidy.

"h. Licensing and Regulatory Functions.

"i. Workforce Professional Development and Recognition.

"j. Quality Initiatives.

"(5) Consult with appropriate State departments, agencies, and board representatives on issues related to early childhood education and care.

"(6) In developing the Plan, review and consider the proposal included in Ensuring School Readiness for North Carolina's Children: Bringing the Parts Together to Create an Integrated Early Care and Education System, November 2004.

"(e) Chair; Meetings. — The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate one member to serve as cochair of the Task Force.

"The cochairs shall call the initial meeting of the Task Force on or before October 1, 2009. The Task Force shall subsequently meet upon such notice and in such manner as its members determine. A majority of the members of the Task Force shall constitute a quorum.

"(f) Expenses of Members. — Members of the Task Force shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"(g) Cooperation by Government Agencies. — The Task Force may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

"(h) Report. — The Task Force shall report its findings and recommendations by March 15, 2010, to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Subcommittee on Education, the Senate Appropriations Committee on Education, and the Fiscal Research Division. The Task Force shall terminate upon filing its final report.

"(i) Proposal. — After reviewing the report submitted by the Task Force, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Education, and the Senate Appropriations Committee on Education shall develop language and a budget proposal by May 30, 2010, to present to the 2010 Regular Session of the 2009 General Assembly to implement the consolidation of early childhood education and care programs, which consolidation shall become effective July 1, 2010.

"(j) Funding. — The Legislative Services Officer shall allocate funds to carry out the duties of the Task Force.

"(k) Effective Date. — This section becomes effective July 1, 2009. Effective July 1, 2010, the Consolidation, as contained in the Plan approved by the 2010 Regular Session of the 2009 General Assembly, shall be implemented."

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 2000-67, s. 11.28(e), repealed Session Laws 1999-237, s. 11.48(c), which had provided that notwithstanding any provision of this Part or any other provision of law or policy, the Department of Health and Human Services and the North Carolina Partnership for Children, Inc., was to jointly continue to implement the recommendations contained in the Smart Start Performance Audit prepared pursuant to Section 27A(1)b. of Chapter 324 of the 1995 Session Laws, as modified by Section 24.29 of Chapter 18 of the Session Laws, Second Extra Session 1996.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Oper-

ations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143B-168.11. Early childhood initiatives; purpose; definitions.

(a) The purpose of this Part is to establish a framework whereby the General Assembly, upon consultation with the Governor, may support through financial and other means, the North Carolina Partnership for Children, Inc. and comparable local partnerships, which have as their missions the development of a comprehensive, long-range strategic plan for early childhood development and the provision, through public and private means, of high-quality early childhood education and development services for children and families. It is the intent of the General Assembly that communities be given the maximum flexibility and discretion practicable in developing their plans while remaining subject to the approval of the North Carolina Partnership and accountable to the North Carolina Partnership and to the General Assembly for their plans and for the programmatic and fiscal integrity of the programs and services provided to implement them.

(b) The following definitions apply in this Part:

(1) Board of Directors. — The Board of Directors of the North Carolina Partnership for Children, Inc.

(2) Department. — The Department of Health and Human Services.

(2a) Early Childhood. — Birth through five years of age.

(3) Local Partnership. — A county or regional private, nonprofit 501(c)(3) organization established to coordinate a local demonstration project, to provide ongoing analyses of their local needs that must be met to ensure that the developmental needs of children are met in order to prepare them to begin school healthy and ready to succeed, and, in consultation with the North Carolina Partnership and subject to the approval of the North Carolina Partnership, to provide programs and services to meet these needs under this Part, while remaining accountable for the programmatic and fiscal integrity of their programs and services to the North Carolina Partnership.

(4) North Carolina Partnership. — The North Carolina Partnership for Children, Inc.

(5) Secretary. — The Secretary of Health and Human Services. (1993, c. 321, s. 254(a); 1993 (Reg. Sess., 1994), c. 766, s. 1; 1997-443, s. 11A.118(a); 1998-212, s. 12.37B(a).)

Editor's Note. — Subdivision (b)(2a) had been enacted as (b)(2.1) by Session Laws 1998-212, s. 12.37B(a), and was redesignated as (b)(2a) at the direction of the Revisor of Statutes.

§ 143B-168.12. North Carolina Partnership for Children, Inc.; conditions.

(a) In order to receive State funds, the following conditions shall be met:

(1) The North Carolina Partnership shall have a Board of Directors consisting of the following 26 members:

a. The Secretary of Health and Human Services, ex officio, or the Secretary's designee;

b. Repealed by Session Laws 1997, c. 443, s. 11A.105.

c. The Superintendent of Public Instruction, ex officio, or the Superintendent's designee;

d. The President of the Community Colleges System, ex officio, or the President's designee;

e. Three members of the public, including one child care provider, one other who is a parent, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate;

f. Three members of the public, including one who is a parent, one other who is a representative of the faith community, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives;

g. Twelve members, appointed by the Governor. Three of these 12 members shall be members of the party other than the Governor's party, appointed by the Governor. Seven of these 12 members shall be appointed as follows: one who is a child care provider, one other who is a pediatrician, one other who is a health care provider, one other who is a parent, one other who is a member of the business community, one other who is a member representing a philanthropic agency, and one other who is an early childhood educator;

h. Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.

h1. The Chair of the North Carolina Partnership Board shall be appointed by the Governor;
i. Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.
j. One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the Senate;
k. One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the House of Representatives;
l. One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the Senate;
m. One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the House of Representatives; and
n. The Director of the More at Four Pre-Kindergarten Program, or the Director's designee.

All members appointed to succeed the initial members and members appointed thereafter shall be appointed for three-year terms. Members may succeed themselves.

All appointed board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the North Carolina Partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the North Carolina Partnership regarding the disbursement of funds.

All ex officio members are voting members. Each ex officio member may be represented by a designee. These designees shall be voting members. No members of the General Assembly shall serve as members.

The North Carolina Partnership may establish a nominating committee and, in making their recommendations of members to be appointed by the General Assembly or by the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Majority Leader of the Senate, the Majority Leader of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, and the Governor shall consult with and consider the recommendations of this nominating committee.

The North Carolina Partnership may establish a policy on members' attendance, which policy shall include provisions for reporting absences of at least three meetings immediately to the appropriate appointing authority.

Members who miss more than three consecutive meetings without excuse or members who vacate their membership shall be replaced by the appropriate appointing authority, and the replacing member shall serve either until the General Assembly and the Governor can appoint a successor or until the replaced member's term expires, whichever is earlier.

The North Carolina Partnership shall establish a policy on membership of the local boards. No member of the General Assembly shall serve as a member of a local board. Within these requirements for local board membership, the North Carolina Partnership shall allow local partnerships that are regional to have flexibility in the composition of their boards so that all counties in the region have adequate representation.

All appointed local board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the partnership regarding the disbursement of funds.

(2) The North Carolina Partnership and the local partnerships shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department. The procedures may provide for the confidentiality of personnel files comparable to Article 7 of Chapter 126 of the General Statutes.

(3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected and shall approve the ongoing plans, programs, and services developed and implemented by the local partnerships and hold the local partnerships accountable for the financial and programmatic integrity of the programs and services. The North Carolina Partnership may contract at the State level to obtain services or resources when the North Carolina Partnership determines it would be more efficient to do so.

In the event that the North Carolina Partnership determines that a local partnership is not fulfilling its mandate to provide programs and services designed to meet the developmental needs of children in order to prepare them to begin school healthy and ready to succeed and is not being accountable for the programmatic and fiscal integrity of its programs and services, the North Carolina Partnership may suspend all funds to the partnership until the partnership demonstrates that these defects are corrected. Further, at its discretion, the North Carolina Partnership may assume the managerial responsibilities for the partnership's programs and services until the North Carolina Partnership determines that it is appropriate to return the programs and services to the local partnership.

(4) The North Carolina Partnership shall develop and implement a comprehensive standard fiscal accountability plan to ensure the fiscal integrity and accountability of State funds appropriated to it and to the local partnerships. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. The North Carolina Partnership may contract with outside firms to develop and implement the standard fiscal accountability plan. All local partnerships shall be required to participate in the standard fiscal accountability plan developed and adopted by the North Carolina Partnership pursuant to this subdivision.

(5) The North Carolina Partnership shall develop a regional accounting and contract management system which incorporates features of the required standard fiscal accountability plan described in subdivision (4) of subsection (a) of this section. All local partnerships shall participate in the regional accounting and contract management system.

(6) The North Carolina Partnership shall develop a formula for allocating direct services funds appropriated for this purpose to local partnerships.

(7) The North Carolina Partnership may adjust its allocations by up to ten percent (10%) on the basis of local partnerships' performance assessments. In determining whether to adjust its allocations to local

partnerships, the North Carolina Partnership shall consider whether the local partnerships are meeting the outcome goals and objectives of the North Carolina Partnership and the goals and objectives set forth by the local partnerships in their approved annual program plans.

The North Carolina Partnership may use additional factors to determine whether to adjust the local partnerships' allocations. These additional factors shall be developed with input from the local partnerships and shall be communicated to the local partnerships when the additional factors are selected. These additional factors may include board involvement, family and community outreach, collaboration among public and private service agencies, and family involvement.

On the basis of performance assessments, local partnerships annually shall be rated "superior", "satisfactory", or "needs improvement".

The North Carolina Partnership may contract with outside firms to conduct the performance assessments of local partnerships.

(8) The North Carolina Partnership shall establish a local partnership advisory committee comprised of 15 members. Eight of the members shall be chosen from past board chairs or duly elected officers currently serving on local partnerships' board of directors at the time of appointment and shall serve three-year terms. Seven of the members shall be staff of local partnerships. Members shall be chosen by the Chair of the North Carolina Partnership from a pool of candidates nominated by their respective boards of directors. The local partnership advisory committee shall serve in an advisory capacity to the North Carolina Partnership and shall establish a schedule of regular meetings. Members shall be chosen from local partnerships on a rotating basis. The advisory committee shall annually elect a chair from among its members.

(9) Repealed by Session Laws 2001-424, s. 21.75(h), effective July 1, 2001.

(b) The North Carolina Partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the North Carolina Partnership.

(c) The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars ($100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be subject to the requirements of G.S. 143C-6-22. Organizations subject to G.S. 159-34 shall be exempt from this requirement.

(d) The North Carolina Partnership for Children, Inc., shall make a report no later than December 1 of each year to the General Assembly that shall include the following:

(1) A description of the program and significant services and initiatives.
(2) A history of Smart Start funding and the previous fiscal year's expenditures.
(3) The number of children served by type of service.
(4) The type and quantity of services provided.
(5) The results of the previous year's evaluations of the Initiatives or related programs and services.
(6) A description of significant policy and program changes.
(7) Any recommendations for legislative action.

(e) The North Carolina Partnership shall develop guidelines for local partnerships to follow in selecting capital projects to fund. The guidelines shall include assessing the community needs in relation to the quantity of child care centers, assessing the cost of purchasing or constructing new facilities as opposed to renovating existing facilities, and prioritizing capital needs such as construction, renovations, and playground equipment and other amenities.

(f) The North Carolina Partnership for Children, Inc., shall establish uniform guidelines and a reporting format for local partnerships to document the qualifying expenses occurring at the contractor level. Local partnerships shall monitor qualifying expenses to ensure they have occurred and meet the requirements prescribed in this subsection. (1993, c. 321, s. 254(a); 1993 (Reg. Sess., 1994), c. 766, s. 1; 1995, c. 324, s. 27A.1; 1996, 2nd Ex. Sess., c. 18, s. 24.29(b); 1997-443, ss. 11.55(*l*), 11A.105; 1998-212, s. 12.37B(a), (b); 1999-84, s. 24; 1999-237, s. 11.48(a); 2000-67, s. 11.28(a); 2001-424, ss. 21.75(h), 21.75(i); 2002-126, s. 10.55(d); 2003-284, ss. 10.38(l), 10.38(m), 10.38(n); 2004-124, s. 10.37; 2006-203, s. 104; 2006-264, s. 1(b); 2007-323, s. 10.19B(a); 2009-451, s. 20C.1(a).)

Smart Start Budget — Report. — Session Laws 2001-424, s. 21.75(k), provides: "(k) Effective January 1, 2002, the North Carolina Partnership for Children, Inc., in consultation with Department of Health and Human Services, shall report the following information to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on a quarterly basis:

"(1) Total Smart Start budget and expenditures by month for the current fiscal year.

"(2) The number of children served by type of service.

"(3) A description of and expenditures for statewide initiatives.

"(4) A description of and quantity of non-child care services provided.

"(5) An accounting of expenditures for the child care voucher subsidy programs.

"(6) The progress of the North Carolina Partnership for Children, Inc., in complying with the provisions of this section.

"(7) Any other related information."

Costs and Procedures for Early Childhood Education and Development Initiatives Enhancements. — Session Laws 2009-451, s. 10.7(a)-(g), provides: "(a) Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. For purposes of this subsection, administrative costs shall include costs associated with partnership oversight, business and financial management, general accounting, human resources, budgeting, purchasing, contracting, and information systems management.

"(b) The North Carolina Partnership for Children, Inc., and all local partnerships shall use competitive bidding practices in contracting for goods and services on contract amounts as follows:

"(1) For amounts of five thousand dollars ($5,000) or less, the procedures specified by a written policy to be developed by the Board of Directors of the North Carolina Partnership for Children, Inc.

"(2) For amounts greater than five thousand dollars ($5,000), but less than fifteen thousand dollars ($15,000), three written quotes.

"(3) For amounts of fifteen thousand dollars ($15,000) or more, but less than forty thousand dollars ($40,000), a request for proposal process.

"(4) For amounts of forty thousand dollars ($40,000) or more, a request for proposal process and advertising in a major newspaper.

"(c) The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than fifty percent (50%) of the total amount budgeted for the program in each fiscal year of the biennium as follows: contributions of cash equal to at least fifteen percent (15%) and in-kind donated resources equal to no more than five percent (5%) for a total match requirement of twenty percent (20%) for each fiscal year. The North Carolina Partnership for Children, Inc., may carry forward any amount in excess of the required match for a fiscal year in order to meet the match requirement of the succeeding fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children, Inc., or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

"(1) Be verifiable from the contractor's records.

"(2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.

"(3) Not include expenses funded by State funds.

"(4) Be supplemental to and not supplant preexisting resources for related program activities.

"(5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives.

"(6) Be otherwise allowable under federal or State law.

"(7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children, Inc., or the local partnership.

"(8) Be reported to the North Carolina Partnership for Children, Inc., or the local partnership by the contractor in the same manner as reimbursable expenses.

"Failure to obtain a twenty percent (20%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

"(d) The Department of Health and Human Services shall continue to implement the performance-based evaluation system.

"(e) The Department of Health and Human Services and the North Carolina Partnership for Children, Inc., shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2009-2010 and 2010-2011 shall be administered and distributed in the following manner:

"(1) Capital expenditures are prohibited for fiscal years 2009-2010 and 2010-2011. For the purposes of this section, "capital expenditures" means expenditures for capital improvements as defined in G.S. 143C-1-1(d)(5).

"(2) Expenditures of State funds for advertising and promotional activities are prohibited for fiscal years 2009-2010 and 2010-2011.

"(f) A county may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure pursuant to Article 7 of Chapter 110 of the General Statutes.

"(g) For fiscal years 2009-2010 and 2010-2011, the local partnerships shall spend an amount for child care subsidies that provides at least fifty-two million dollars ($52,000,000) for the TANF maintenance of effort requirement and the Child Care Development Fund and Block Grant match requirement. The Department of Health and Human Services shall determine the level of funds that need to be expended in order to draw down all federal recovery funds and shall direct the local partnerships to spend at least at the determined level. The local partnerships shall not spend at a level less than that directed by the Department."

For prior similar provisions, see Session Laws 2001-424, s. 21.75(a)-(c), Session Laws 2004-284, s. 10.38(a)-(k), Session Laws 2005-276, s. 10.64(a)-(g), and Session Laws 2007-323, s. 10.19(a)-(g).

Task Force on the Consolidation of Early Childhood Education and Care. — For provisions regarding the Task Force on the Consolidation of Early Childhood Education and Care under Session Laws 2009-451, s. 10.7A, see the notes at G.S. 143B-138.1 and G.S. 143B-168.10.

Editor's Note. — Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Acts of 2001.'"

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2006-264, s. 1(b), which amended this section by substituting "G.S. 143-6.2" for "G.S. 143-6.1" in the next-to-last sentence of subsection (c), was not given effect pursuant to Session Laws 2006-264, s. 1(c), which stated if House Bill 914, 2005 Regular Session [2006-203], becomes law, this section is repealed.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-203, s. 104, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "subject to the requirements of G.S. 143C-6.14" for "audited as required by G.S. 143-6.1" near the end of subsection (c).

Session Laws 2009-451, s. 20C.1(a), effective July 1, 2009, substituted "G.S. 143C-6-22" for "G.S. 143C-6.14" at the end of the first sentence of subsection (c).

OPINIONS OF ATTORNEY GENERAL

Legislators Precluded from Serving on the Board of North Carolina Partnership for Children, Inc. — The separation of powers provision of the N.C. Constitution precludes legislators from serving as members of a private, non-profit corporation where the corporation is "a special instrumentality of government" created to implement specific legislation. See opinion of Attorney General to The Honorable John R. Gamble, Jr., N.C. House of Representatives, 1998 N.C.A.G. 34 (7/30/98).

Simultaneous Membership in County Partnership for Children and County Interagency Transportation Corporation. — Members of a county partnership for children, who were also members of the board of directors of the county interagency transportation corporation, did not violate this section by remaining on the partnership board and participating in a vote to award a grant to the interagency transportation corporation where one of the individuals who sat on both boards was the county administrator and the other was chairman of the interagency transportation corporation; those members gained nothing personally by a grant to the interagency transportation corporation. See opinion of Attorney General to Kipling Godwin, Chairman, Columbus County Partnership for Children, 1999 N.C. AG LEXIS 36 (8/27/99).

§ 143B-168.13. Implementation of program; duties of Department and Secretary.

(a) The Department shall:

(1) Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.

(1a) Develop and conduct a statewide needs and resource assessment every third year, beginning in the 1997-98 fiscal year. This needs assessment shall be conducted in cooperation with the North Carolina

Partnership and with the local partnerships. This needs assessment shall include a statewide assessment of capital needs. The data and findings of this needs assessment shall form the basis for annual program plans developed by local partnerships and approved by the North Carolina Partnership.

(2) Recodified as (a)(1a) by Session Laws 1998-212, s. 12.37B(a).

(2a) Repealed by Session Laws 1998-212, s. 12.37B(l), effective October 30, 1998.

(3) Provide technical and administrative assistance to local partnerships, particularly during the first year after they are selected under this Part to receive State funds. The Department, at any time, may authorize the North Carolina Partnership or a governmental or public entity to do the contracting for one or more local partnerships. After a local partnership's first year, the Department may allow the partnership to contract for itself.

(4) Adopt, in cooperation with the North Carolina Partnership, any rules necessary to implement this Part, including rules to ensure that State leave policy is not applied to the North Carolina Partnership and the local partnerships. In order to allow local partnerships to focus on the development of long-range plans in their initial year of funding, the Department may adopt rules that limit the categories of direct services for young children and their families for which funds are made available during the initial year.

(5) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 24.29(c).

(6) Annually update its funding formula, in collaboration with the North Carolina Partnership for Children, Inc., using the most recent data available. These amounts shall serve as the basis for determining "full funding" amounts for each local partnership.

(b) Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998. (1993 (Reg. Sess., 1994), c. 766, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 24.29(c); 1997-443, s. 11.55(m); 1998-212, s. 12.37B(a), (b); 2000-67, s. 11.28(b); 2002-126, s. 10.55(e).)

Editor's Note — Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Acts of 2001.'"

Session Laws 2001-424, s. 21.75(j), provides: "(j) Notwithstanding the funding formula in G.S. 143B-168.13(a)(6), the State, in consultation with the North Carolina Partnership for Children, Inc., shall evaluate the feasibility of developing a revised funding formula which takes into consideration all relevant funding used by the State, local human services agencies and programs, and local partnerships to provide services and assistance to children under age five and their families. These funds shall include the Early Intervention Preschool Program, Health Choice, and Family Resource Centers, as well as other State and local services and programs funded with State funds, federal funds, local funds, and other resources."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Legal Periodicals. — See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

§ 143B-168.14. Local partnerships; conditions.

(a) In order to receive State funds, the following conditions shall be met:

(1) Each local partnership shall develop a comprehensive, collaborative, long-range plan of services to children and families in the service-delivery area. No existing local, private, nonprofit 501(c)(3) organization, other than one established on or after July 1, 1993, and that

meets the guidelines for local partnerships as established under this Part, shall be eligible to apply to serve as the local partnership for the purpose of this Part. The Board of the North Carolina Partnership may authorize exceptions to this eligibility requirement.

(2) Each local partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department. The procedures may provide for the confidentiality of personnel files comparable to Article 7 of Chapter 126 of the General Statutes.

(3) Each local partnership shall adopt procedures to ensure that all personnel who provide services to young children and their families under this Part know and understand their responsibility to report suspected child abuse, neglect, or dependency, as defined in G.S. 7B-101.

(4) Each local partnership shall participate in the uniform, standard fiscal accountability plan developed and adopted by the North Carolina Partnership.

(b) Each local partnership shall be subject to audit and review by the North Carolina Partnership. The North Carolina Partnership shall contract for annual financial and compliance audits of local partnerships that are rated "needs improvement" in performance assessments authorized in G.S. 143B-168.12(a)(7). Local partnerships that are rated "superior" or "satisfactory" in performance assessments authorized in G.S. 143B-168.12(a)(7) shall undergo biennial financial and compliance audits as contracted for by the North Carolina Partnership. The North Carolina Partnership shall provide the State Auditor with a copy of each audit conducted pursuant to this subsection. (1993 (Reg. Sess., 1994), c. 766, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 24.29(d)(1); 1997-506, s. 59; 1998-202, s. 13(ll); 1998-212, s. 12.37B(a); 2003-284, s. 19.1; 2007-323, s. 10.19B(b); 2009-451, s. 20C.1(b).)

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 20C.1(b), effective July 1, 2009, in subsection (b), substituted "North Carolina Partnership" for "State Auditor under Article 5A of Chapter 147 of the General Statutes" at the end of the first sentence, substituted "The North Carolina Partnership shall contract for" for "The State Auditor shall conduct" at the beginning of the second sentence, substituted "as contracted for by the North Carolina Partnership" for "by the State Auditor" at the end of third sentence, and added the last sentence.

§ 143B-168.15. Use of State funds.

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the funds allocated to local partnerships for direct services, seventy percent (70%) of the funds spent in each year shall be used in child care related activities and early childhood education programs that improve access to child care and early childhood education services, develop new child care and early childhood education services, and improve the quality of child care and early childhood education services in all settings.

(c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and providers. State funds designated to support direct services for children, families, and providers shall not be used for major capital expenses unless the North Carolina Partnership approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be able to meet this priority need by using State or federal funds available to that local partnership. The funds approved for capital projects in any two consecutive fiscal years may not exceed ten percent (10%) of the total funds for direct services allocated to a local partnership in those two consecutive fiscal years.

(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county.

(f) Repealed by Session Laws 2001-424, s. 21.75(g), effective July 1, 2001.

(g) Not less than thirty percent (30%) of the funds spent in each year of each local partnership's direct services allocation shall be used to expand child care subsidies. To the extent practicable, these funds shall be used to enhance the affordability, availability, and quality of child care services as described in this section. The North Carolina Partnership may increase this percentage requirement up to a maximum of fifty percent (50%) when, based upon a significant local waiting list for subsidized child care, the North Carolina Partnership determines a higher percentage is justified.

(h) State funds allocated to local partnerships that are unexpended at the end of a fiscal year shall remain available to the North Carolina Partnership for Children, Inc., to reallocate to local partnerships. (1993 (Reg. Sess., 1994), c. 766, s. 1; 1995, c. 509, s. 97; 1996, 2nd Ex. Sess., c. 18, s. 24.29(e); 1997-443, s. 11.55(n); 1997-506, s. 60; 1998-212, s. 12.37B(a), (b); 1999-237, s. 11.48(o); 2000-67, ss. 11.28(c), 11.28(d); 2001-424, s. 21.75(g); 2008-123, s. 2.)

Child Care Allocation Formula. — Session Laws 2009-451, s. 10.2(a)-(c), provides: "(a) The Department of Health and Human Services shall allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families. The mandatory thirty percent (30%) Smart Start subsidy allocation under G.S. 143B-168.15(g) shall constitute the base amount for each county's child care subsidy allocation. The Department of Health and Human Services shall use the following method when allocating federal and State child care funds, not including the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation:

"(1) Funds shall be allocated to a county based upon the projected cost of serving children under age 11 in families with all parents working who earn less than seventy-five percent (75%) of the State median income.

"(2) No county's allocation shall be less than ninety percent (90%) of its State fiscal year 2001-2002 initial child care subsidy allocation.

"(b) The Department of Health and Human Services may reallocate unused child care subsidy voucher funds in order to meet the child care needs of low-income families. Any reallocation of funds shall be based upon the expenditures of all child care subsidy voucher funding, including Smart Start funds, within a county.

"(c) Notwithstanding subsection (a) of this section, the Department of Health and Human Services shall allocate up to twenty million dollars ($20,000,000) in federal block grant funds and State funds appropriated for fiscal years 2009-2010 and 2010-2011 for child care services. These funds shall be allocated to prevent termination of child care services. Funds appropriated for specific purposes, including targeted market rate adjustments given in the past, may also be allocated by the Department separately from the allocation formula described in subsection (a) of this section."

For earlier provisions on similar and related subjects, see Session Laws 1999-237, s. 11.48(i), as amended by Session Laws 2000-67, s. 11.28(g); Session Laws 2001-424, s. 21.69(a)-(d); Session Laws 2006-66, s. 37; and Session Laws 2007-323, s. 10.16(a)-(c).

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-123, s. 2, effective July 1, 2008, added subsection (h).

§ 143B-168.16. Home-centered services; consent.

No home-centered services including home visits or in-home parenting training shall be allowed under this Part unless the written, informed consent of the participating parents authorizing the home-centered services is first obtained by the local partnership, educational institution, local school administrative unit, private school, not-for-profit organization, governmental agency, or other entity that is conducting the parenting program. The participating parents may revoke at any time their consent for the home-centered services.

The consent form shall contain a clear description of the program including (i) the activities and information to be provided by the program during the home visits, (ii) the number of expected home visits, (iii) any responsibilities of the parents, (iv) the fact, if applicable, that a record will be made and maintained on the home visits, (v) the fact that the parents may revoke at any time the consent, and (vi) any other information as may be necessary to convey to the parents a clear understanding of the program.

Parents at all times shall have access to any record maintained on home-centered services provided to their family and may place in that record a written response to any information with which they disagree that is in the record. (1993 (Reg. Sess., 1994), c. 766, s. 1.)

Part 11. Council for Institutional Boards.

§§ 143B-169 through 143B-172: Repealed by Session Laws 1979, c. 504, s. 9.

Part 12. Boards of Directors of Institutions.

§§ 143B-173 through 143B-176: Repealed by Session Laws 1989, c. 533, s. 3.

Cross References. — As to the Board of Directors of the Governor Morehead School, see G.S. 143B-164.11, 143B-164.12.

Part 12A. Board of Directors of the Governor Morehead School.

§§ 143B-176.1, 143B-176.2: Recodified as §§ 143B-164.11 and 143B-164.12 by Session Laws 1997-18, s. 13(b) and (c).

Part 13. Council on Developmental Disabilities.

§ 143B-177. Council on Developmental Disabilities — creation, powers and duties.

There is hereby created the Council on Developmental Disabilities of the Department of Health and Human Services. The Council on Developmental Disabilities shall have the following functions and duties:

(1) To advise the Secretary of Health and Human Services regarding the development and implementation of the State plan as required by Public Law 98-527, the Developmental Disabilities Act of 1984, by:

a. Identifying ways and means of promoting public understanding of developmental disabilities;

b. Examining the federally assisted State programs of all State agencies which provide services for persons with developmental disabilities;

c. Describing the quality, extent and scope of services being provided, or to be provided, to persons with developmental disabilities in North Carolina;

d. Recommending ways and means for coordination of programs to prevent duplication and overlapping of such services;

e. Considering the need for new State programs and laws in the field of developmental disabilities; and

f. Conducting activities which will increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

(2) To advise the Secretary of Health and Human Services regarding the coordination of planning and service delivery of all State-funded programs which provide service to persons with developmental disabilities by:

a. Gathering, analyzing and interpreting individual and aggregate needs assessment data from all State agencies that provide services to developmentally disabled;

b. Conducting special needs assessment studies as may be necessary;

c. Specifying and supporting activities that will enhance the services delivered by individual agencies by reducing barriers between agencies;

d. Identifying service development priorities that require cooperative interagency planning and development;

e. Providing coordinative and technical assistance in interagency planning and development efforts; and

f. Coordinating interagency training efforts that will promote more effective service delivery to persons with developmental disabilities.

(3) To advise the Secretary of Health and Human Services regarding other matters relating to developmental disabilities and upon any

matter the Secretary may refer to it. (1973, c. 476, s. 167; 1987, c. 780; 1997-443, s. 11A.118(a).)

§ 143B-178. Council on Developmental Disabilities — definitions.

The following definitions apply to this Chapter:

(1) The term "developmental disability" means a severe, chronic disability of a person which:
  a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;
  c. Is likely to continue indefinitely;
  d. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
  e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(2) The term "services for persons with developmental disabilities," as it is used in this Article, means:
  a. Alternative community living arrangement services, employment related activities, child development services, and case management services; and
  b. Any other specialized services or special adaptations of generic services including diagnosis, evaluation, treatment, personal care, child care, adult care, special living arrangements, training, education, sheltered employment, recreation and socialization, counseling of the individual with such a disability and of his family, protective and other social and sociolegal services, information and referral services, follow-along services, nonvocational social-developmental services, and transportation services necessary to assure delivery of services to persons with developmental disabilities, and services to promote and coordinate activities to prevent developmental disabilities. (1973, c. 476, s. 168; 1977, c. 881, ss. 1, 2; 1979, c. 752, s. 1 1987, c. 780; 1995, c. 535, s. 33; 1997-506, s. 61.)

§ 143B-179. Council on Developmental Disabilities — members; selection; quorum; compensation.

(a) The Council on Developmental Disabilities of the Department of Health and Human Services shall consist of 32 members appointed by the Governor. The composition of the Council shall be as follows:

(1) Eleven members from the General Assembly and State government agencies as follows: One person who is a member of the Senate, one person who is a member of the House of Representatives, one representative of the Department of Public Instruction, one representative of the Department of Correction, and seven representatives of the Department of Health and Human Services to include the Secretary or his designee.

(2) Sixteen members designated as consumers of service for the developmentally disabled. A consumer of services for the developmentally disabled is a person who (i) has a developmental disability or is the parent or guardian of such a person, or (ii) is an immediate relative or guardian of a person with mentally impairing developmental disability, and (iii) is not an employee of a State agency that receives funds or provides services under the provisions of Part B, Title 1, P.L. 98-527, as amended, the Developmental Disabilities Act of 1984, is not a managing employee (as defined in Section 1126(b) of the Social Security Act) of any other entity that receives funds or provides services under such Part, and is not a person with an ownership or control interest (within the meaning of Section 1124(a)(3) of the Social Security Act) with respect to such an entity. Of these 16 members, at least one third shall be persons with developmental disabilities and at least another one third shall be the immediate relatives or guardians of persons with mentally impairing developmental disabilities, of whom at least one shall be an immediate relative or guardian of an institutionalized developmentally disabled person.

(3) Five members at large as follows: One representative of the university affiliated facility, one representative of the State protection and advocacy system, one representative of a local agency, one representative of a nongovernmental agency or nonprofit group concerned with services to persons with developmental disabilities, and one representative from the public at large.

The appointments of all members, with the exception of those from the General Assembly and State agencies shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall make appropriate provisions for the rotation of membership on the Council.

(b) The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the council shall be supplied by the Secretary of Health and Human Services. (1973, c. 476, s. 169; c. 1117; 1977, c. 881, s. 3; 1979, c. 752, s. 2; 1987, c. 780; 1997-443, s. 11A.118(a); 1997-456, s. 27.)

Editor's Note. — Subdivisions (a)(2)(1) through (a)(2)(3) were renumbered as subdivisions (a)(2)(i) through (a)(2)(iii) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§§ 143B-179.1 through 143B-179.4: Reserved for future codification purposes.

Part 13A. Interagency Coordinating Council for Children with Disabilities from Birth to Five Years of Age.

§ 143B-179.5. Interagency Coordinating Council for Children from Birth to Five with Disabilities and Their Families; establishment, composition, organization; duties, compensation, reporting.

(a) There is established an Interagency Coordinating Council for Children from Birth to Five with Disabilities and Their Families in the Department of Health and Human Services.

(b) The Interagency Coordinating Council shall have 26 members, appointed by the Governor. Effective July 1, 1994, the Governor shall designate 13 appointees to serve for two years and 13 appointees to serve for one year. Thereafter, the terms of all Council members shall be two years. The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Members may be appointed to succeed themselves for one term and may be appointed again, after being off the Council for one term.

The composition of the Council and the designation of the Council's chair shall be as specified in the "Individuals with Disabilities Education Act" (IDEA), P.L. 102-119, the federal early intervention legislation, except that two members shall be members of the Senate, appointed from recommendations of the President Pro Tempore of the Senate and two members shall be members of the House of Representatives, appointed from recommendations of the Speaker of the House of Representatives.

(c) The chair may establish those standing and ad hoc committees and task forces as may be necessary to carry out the functions of the Council and appoint Council members or other individuals to serve on these committees and task forces. The Council shall meet at least quarterly. A majority of the Council shall constitute a quorum for the transaction of business.

(d) The Council shall advise the Department of Health and Human Services and other appropriate agencies in carrying out their early intervention services, and the Department of Public Instruction, and other appropriate agencies, in their activities related to the provision of special education services for preschoolers. The Council shall specifically address in its studies and evaluations that it considers necessary to its advising:

(1) The identification of sources of fiscal and other support for the early intervention system;
(2) The development of policies related to the early intervention services;
(3) The preparation of applications for available federal funds;
(4) The resolution of interagency disputes; and
(5) The promotion of interagency agreements.

(e) Members of the Council and parents on ad hoc committees and task forces of the Council shall receive travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) The Council shall prepare and submit an annual report to the Governor and to the General Assembly on the status of the early intervention system for eligible infants and toddlers and on the status of special education services for preschoolers.

All clerical and other services required by the Council shall be supplied by the Secretary of Health and Human Services and the Superintendent of Public Instruction, as specified by the interagency agreement authorized by G.S.

122C-112(a)(13). (1989 (Reg. Sess., 1990), c. 1003, s. 1; 1993, c. 487, s. 1; 1997-443, s. 11A.106.)

Task Force on the Consolidation of Early Childhood Education and Care. — For provisions regarding the Task Force on the Consolidation of Early Childhood Education and Care under Session Laws 2009-451, s. 10.7A, see the notes at G.S. 143B-138.1 and G.S. 143B-168.10.

Editor's Note. — Session Laws 1989 (Reg. Sess. 1990), c. 1003, s. 6 provides: "Funds appropriated for the 1990-91 fiscal year or for any fiscal year in the future do not constitute any entitlement to services beyond those provided for that fiscal year. Nothing in this act creates any rights except to the extent that funds are appropriated by the State to implement its provisions from year to year and nothing in this act obligates the General Assembly to appropriate any funds to implement its provisions." Funds to implement the provisions of c. 1003 were appropriated in the 1989 (Reg. Sess., 1990) Session.

Session Laws 2006-69, s. 3(o), as amended by Session Laws 2006-259, s. 34, effective July 10, 2006, rewrote the Part heading, which formerly read: "Interagency Coordinating Council for Handicapped Children with Disabilities from Birth to Five Years of Age."

§ 143B-179.5A: Repealed by Session Laws 2008-85, s. 1, effective July 11, 2008.

§ 143B-179.6. Interagency Coordinating Council for Children with Disabilities from Birth to Five Years of Age; agency cooperation.

All appropriate agencies, including the Department of Health and Human Services and the Department of Public Instruction, and other public and private service providers shall cooperate with the Council in carrying out its mandate. (1989 (Reg. Sess., 1990), c. 1003, s. 1; 1997-443, s. 11A.107; 2006-69, s. 3(p).)

Part 14. Governor's Advisory Council on Aging; Division of Aging.

§ 143B-180. Governor's Advisory Council on Aging — creation, powers and duties.

There is hereby created the Governor's Advisory Council on Aging of the Department of Health and Human Services. The Advisory Council on Aging shall have the following functions and duties:

(1) To make recommendations to the Governor and the Secretary of Health and Human Services aimed at improving human services to the elderly;

(2) To study ways and means of promoting public understanding of the problems of the aging, to consider the need for new State programs in the field of aging, and to make recommendations to and advise the Governor and the Secretary on these matters;

(3) To advise the Department of Health and Human Services in the preparation of a plan describing the quality, extent and scope of services being provided, or to be provided, to elderly persons in North Carolina;

(4) To study the programs of all State agencies which provide services for elderly persons and to advise the Governor and the Secretary of Health and Human Services on the coordination of programs to prevent duplication and overlapping of such services;

(5) To advise the Governor and the Secretary of Health and Human Services upon any matter which the Governor and the Secretary may refer to it. (1973, c. 476, s. 171; 1977, c. 242, s. 1; 1983, c. 40, s. 1; 1997-443, s. 11A.118(a).)

§ 143B-181. Governor's Advisory Council on Aging — members; selection; quorum; compensation.

The Governor's Advisory Council on Aging of the Department of Health and Human Services shall consist of 33 members, 29 members to be appointed by the Governor, two members to be appointed by the President Pro Tempore of the Senate, and two members to be appointed by the Speaker of the House of Representatives. The composition of the Council shall be as follows: one representative of the Department of Administration; one representative of the Department of Cultural Resources; one representative of the Employment Security Commission; one representative of the Teachers' and State Employees' Retirement System; one representative of the Commissioner of Labor; one representative of the Department of Public Instruction; one representative of the Department of Environment and Natural Resources; one representative of the Department of Insurance; one representative of the Department of Crime Control and Public Safety; one representative of the Department of Community Colleges; one representative of the School of Public Health of The University of North Carolina; one representative of the School of Social Work of The University of North Carolina; one representative of the Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 19 members at large. The at large members shall be citizens who are knowledgeable about services supported through the Older Americans Act of 1965, as amended, and shall include persons with greatest economic or social need, minority older persons, and participants in programs under the Older Americans Act of 1965, as amended. The Governor shall appoint 15 members at large who meet these qualifications and are 60 years of age or older. The four remaining members at large, two of whom shall be appointed by the President Pro Tempore of the Senate and two of whom shall be appointed by the Speaker of the House of Representatives, shall be broadly representative of the major private agencies and organizations in the State who are experienced in or have demonstrated particular interest in the special concerns of older persons. At least one of each of the at-large appointments of the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be persons 60 years of age or older. The Council shall meet at least quarterly.

Members at large shall be appointed for four-year terms and until their successors are appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council as chair to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Health and Human Services. (1973, c. 476, s. 172; 1975, c. 128, ss. 1, 2; 1977, c. 242, s. 2; c. 771, s. 4; 1983, c. 40, s. 2; 1989, c. 727, s. 218(127); 1993, c. 522, s. 16; 1995, c. 490, s. 3; 1997-443, s. 11A.108.)

§ 143B-181.1. Division of Aging — creation, powers and duties.

(a) There is hereby created within the office of the Secretary of the Department of Health and Human Services a Division of Aging, which shall have the following functions and duties:

(1) To maintain a continuing review of existing programs for the aging in the State of North Carolina, and periodically make recommendations to the Secretary of Health and Human Services for transmittal to the Governor and the General Assembly as appropriate for improvements in and additions to such programs;

(2) To study, collect, maintain, publish and disseminate factual data and pertinent information relative to all aspects of aging. These include the societal, economic, educational, recreational and health needs and opportunities of the aging;

(3) To stimulate, inform, educate and assist local organizations, the community at large, and older people themselves about aging, including needs, resources and opportunities for the aging, and about the role they can play in improving conditions for the aging;

(4) To serve as the agency through which various public and nonpublic organizations concerned with the aged can exchange information, coordinate programs, and be helped to engage in joint endeavors;

(5) To provide advice, information and technical assistance to North Carolina State government departments and agencies and to nongovernmental organizations which may be considering the inauguration of services, programs, or facilities for the aging, or which can be stimulated to take such action;

(6) To coordinate governmental programs with private agency programs for aging in order that such efforts be effective and that duplication and wasted effort be prevented or eliminated;

(7) To promote employment opportunities as well as proper and adequate recreational use of leisure for older people, including opportunities for uncompensated but satisfying volunteer work;

(8) To identify research needs, encourage research, and assist in obtaining funds for research and demonstration projects;

(9) To establish or help to establish demonstration programs of services to the aging;

(10) To establish a fee schedule to cover the cost of providing in-home and community-based services funded by the Division. The fees may vary on the basis of the type of service provided and the ability of the recipient to pay for the service. The fees may be imposed on the recipient of a service unless prohibited by federal law. The local agency shall retain the fee and use it to extend the availability of in-home and community-based services provided by the Division in support of functionally impaired older adults and family caregivers of functionally impaired older adults;

(11) To administer a Home and Community Care Block Grant for older adults, effective July 1, 1992. The Home and Community Care Block Grant shall be comprised of applicable Older Americans Act funds, Social Services Block Grant funding in support of the Respite Care Program (G.S. 143B-181.10), State funds for home and community care services administered by the Division of Aging, portions of the State In-Home and Adult Day Care funds (Chapter 1048, 1981 Session Laws) administered by the Division of Social Services which support services to older adults, and other funds appropriated by the General Assembly as part of the Home and Community Care Block

Grant. Funding currently administered by the Division of Social Services to be included in the block grant will be based on the expenditures for older adults at a point in time to be mutually determined by the Divisions of Social Services and Aging. The total amount of Older Americans Act funds to be included in the Home and Community Care Block Grant and the matching rates for the block grant shall be established by the Department of Health and Human Services, Division of Aging. Allocations made to counties in support of older adults shall not be less than resources made available for the period July 1, 1990, through June 30, 1991, contingent upon availability of current State and federal funding; and

(12) To organize, coordinate, and provide staff support to the North Carolina Senior Tar Heel Legislature.

(b) The Division shall function under the authority of the Department of Health and Human Services and the Secretary of Health and Human Services as provided in the Executive Organization Act of 1973 and shall perform such other duties as are assigned by the Secretary.

(c) The Secretary of Health and Human Services shall adopt rules to implement this Part and Title 42, Chapter 35, of the United States Code, entitled Programs for Older Americans. (1977, c. 242, s. 4; 1981, c. 614, s. 19; 1987, c. 827, s. 244; 1991, c. 52, s. 1; c. 241, s. 1; 1993, c. 503, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 2009-407, ss. 1 and 2, provide: "SECTION 1. The University of North Carolina Institute on Aging, and the Division of Aging and Adult Services, Department of Health and Human Services, shall help the State prepare for increased numbers of older adults, due to the aging of the baby boomer generation and the influx of elderly retirees into the State. Activities shall include, but are not limited to, the following:

"(1) Organizing and facilitating meetings of gerontologists, researchers, county representatives, directors of area agencies on aging, and providers of State services, to collectively identify and prioritize issues for the State to address.

"(2) Working with the North Carolina Association of County Commissioners, the University of North Carolina School of Government, higher education departments of municipal and regional planning and their partners, and area agencies on aging to establish a Web site containing:

"a. Information on fostering retiree and volunteer involvement, and

"b. Models of local planning efforts, in order to assist municipalities in addressing accessibility and service delivery for increasing numbers of older adults.

"SECTION 2. The University of North Carolina Institute on Aging, and the Division of Aging and Adult Services, Department of Health and Human Services, shall make progress reports on the activities required by this act to the Governor and to the North Carolina Study Commission on Aging on or before March 1, 2010, and on or before November 1, 2010."

§ 143B-181.1A. Plan for serving older adults; inventory of existing data; cooperation by State agencies.

(a) The Division of Aging, Department of Health and Human Services shall submit a regularly updated plan to the General Assembly by March 1 of every other odd-numbered year, beginning March 1, 1995. This plan shall include:

(1) A detailed analysis of the needs of older adults in North Carolina, based on existing available data, including demographic, geographic, health, social, economical, and other pertinent indicators;

(2) A clear statement of the goals of the State's long-term public policy on aging;

(3) An analysis of services currently provided and an analysis of additional services needed; and

(4) Specific implementation recommendations on expansion and funding of current and additional services and services levels.

(b) The Division of Aging, Department of Health and Human Services, shall maintain an inventory of existing data sets regarding the elderly in North Carolina, in order to ensure that adequate demographic, geographic, health, social, economic, and other pertinent indicators are available to generate its regularly updated Plan for Serving Older Adults.

Upon request, the Division shall make information on these data sets available within a reasonable time.

All State agencies and entities that possess data relating to the elderly, including the Department of Health and Human Services' Division of Health Services, the Division of Health Service Regulation, and the Division of Social Services, and the Department of Administration, shall cooperate, upon request, with the Division of Aging in implementing this subsection. (1989, c. 52, s. 1; c. 695, s. 1; 1995, c. 253, s. 1; 1997-443, s. 11A.118(a); 2007-182, s. 1.)

§ 143B-181.1B. Division as clearinghouse for information; agencies to provide information.

(a) The Division of Aging, Department of Health and Human Services, shall be the central clearinghouse for information regarding all State education and training programs available and being provided about and for the elderly in North Carolina.

(b) The Division of Aging, Department of Health and Human Services, shall produce and distribute annually an updated calendar of conferences, training events, and educational programs about and for the elderly in North Carolina.

(c) All State agencies and entities administering State or federal funding for education and training programs about and for the elderly shall provide to the Division of Aging by September 1 of each year all information required by the Division regarding conferences, training events, and educational programs provided about and for the elderly. (1989, c. 696, ss. 1-3; 1997-443, s. 11A.118(a).)

§ 143B-181.2. Assistant Secretary for Aging — appointment and duties.

(a) The Secretary of Health and Human Services shall appoint an assistant secretary in the Department of Health and Human Services, whose title shall be the Assistant Secretary for Aging. The Assistant Secretary for Aging shall monitor all aging programs in the Department of Health and Human Services and shall have such powers and duties as are conferred on him by this Part and delegated to him by the Secretary of Health and Human Services.

(b) The Assistant Secretary for Aging, through the appropriate subunits of the Department of Health and Human Services, shall, at the request of the Secretary, identify program needs for the aging, recommend program changes, coordinate intra-departmental program efforts, represent the Secretary in aging matters before boards and commissions, the General Assembly and the public, coordinate program contacts between the Department of Health and Human Services and private, State and federal agencies, initiate special studies on aging matters, and have the responsibility of assuring that services are delivered to the elderly of the State. (1977, c. 242, s. 4; 1997-443, s. 11A.118(a).)

Part 14A. Policy Act for the Aging.

§ 143B-181.3. Statement of principles.

To utilize effectively the resources of our State, to provide a better quality of life for our senior citizens, and to assure older adults the right of choosing where and how they want to live, the following principles are hereby endorsed:

(1) Older people should be able to live as normal a life as possible.
(2) Older adults should have a choice of life styles which will allow them to remain contributing members of society for as long as possible.
(3) Preventive and primary health care are necessary to keep older adults active and contributing members of society.
(4) Appropriate training in gerontology and geriatrics should be developed for individuals serving older adults.
(5) Transportation to meet daily needs and to make accessible a broad range of services should be provided so that older persons may realize their full potential.
(6) Services for older adults should be coordinated so that all their needs can be served efficiently and effectively.
(7) Information on all services for older citizens and advocacy for these services should be available in each county.
(8) Increased employment opportunities for older adults should be made available.
(9) Options in housing should be made available.
(10) Planning for programs for older citizens should always be done in consultation with them.
(11) The State should aid older people to help themselves and should encourage families in caring for their older members. (1979, c. 983, s. 1.)

§ 143B-181.4. Responsibility for policy.

Responsibility for developing policy to carry out the purpose of this Part is vested in the Secretary of the Department of Health and Human Services as provided in G.S. 143B-181.1 who may assign responsibility to the Assistant Secretary for Aging. The Assistant Secretary for Aging shall, at the request of the Secretary, be the bridge between the federal and local level and shall review policies that affect the well being of older people with the goal of providing a balance in State programs to meet the social welfare and health needs of the total population. Responsibilities may include:
(1) Serving as chief advocate for older adults;
(2) Developing the State plan which will aid in the coordination of all programs for older people;
(3) Providing information and research to identify gaps in existing services;
(4) Promoting the development and expansion of services;
(5) Evaluation of programs;
(6) Bringing together the public and private sectors to provide services for older people. (1979, c. 983, s. 1; 1997-443, s. 11A.118(a).)

Part 14B. Long-Term Care.

§ 143B-181.5. Long-term care policy.

The North Carolina General Assembly finds that the aging of the population and advanced medical technology have resulted in a growing number of persons who require assistance. The primary resource for long-term care provision continues to be the family and friends. However, these traditional caregivers are increasingly employed outside the home. There is growing demand for improvement and expansion of home and community-based long-term care services to support and complement the services provided by these informal caregivers.

The North Carolina General Assembly further finds that the public interest would best be served by a broad array of long-term care services that support persons who need such services in the home or in the community whenever practicable and that promote individual autonomy, dignity, and choice.

The North Carolina General Assembly finds that as other long-term care options become more available, the relative need for institutional care will stabilize or decline relative to the growing aging population. The General Assembly recognizes, however, that institutional care will continue to be a critical part of the State's long-term care options and that such services should promote individual dignity, autonomy, and a home-like environment. (1981, c. 675, s. 1; 1995 (Reg. Sess., 1996), c. 583, s. 2.)

Drug Testing for Employees — Session Laws 2009-574, ss. 15.1 and 15.2, provides: "SECTION 15.1. The Department of Health and Human Services, Division of Health Service Regulation and the Division of Aging and Adult Services, may conduct a study on the feasibility of requiring long-term care facilities to require drug tests on applicants for employment and on employees. The Department may solicit input from advocates, long-term care facilities, and other interested stakeholders while conducting the study.

"SECTION 15.2. The Department may report findings and recommendations on the feasibility of conducting drug tests for long-term care facility employment applicants and employees to the North Carolina Study Commission on Aging on or before October 1, 2010."

Editor's Note. — Session Laws 2003-284, s. 10.8F, provides: "(a) In accordance with the recommendations in the final report from the Institute of Medicine Task Force on Long-Term Care and the study report recommendations resulting from S.L. 2001-491, Part XXII, the Department of Health and Human Services shall implement a communications and coordination initiative to support local coordination of long-term care and shall pilot the establishment of local lead agencies to facilitate the long-term care coordination process at the county or regional level. For those counties that voluntarily participate, the local long-term care coordination initiative shall aid in the development of core services, coordinate local services, and streamline access to services. The initiative shall eliminate fragmentation and barriers to information and services; provide a seamless connection among State agencies and local entities, regardless of funding sources; and allow consumers to efficiently and effectively navigate among long-term care services.

"(b) The Department shall submit an interim report on the pilot project for local long-term care coordination to the North Carolina Study Commission on Aging by October 1, 2004, and a final report by October 1, 2005."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5, provides a severability note.

Session Laws 2004-124, s. 10.2.(a) provides: "The Department of Health and Human Services shall work with long-term care providers and advocates for the elderly and the mentally ill to study issues concerning the care of mentally ill individuals residing in long-term care facilities. The study shall include:

"(1) Examining whether current State statutes and Departmental rules adequately address the populations served by long-term care facilities.

"(2) Exploring the development of separate licensure categories within the adult care home and nursing home designations to address the various populations being served.

"(3) Examining adult care home rules to determine whether they are easy to understand, attainable under current staffing patterns, give appropriate guidance to facility operators according to the needs and characteristics of residents served, support residents' freedom of choice, and whether they support the autonomy, dignity, and independence philosophy of assisted living.

"(4) Determining the most effective way to identify mentally ill individuals that have mental health treatment needs.

"(5) Examining the criteria for admission of mentally ill individuals to long-term care facilities to ensure that the health and safety of all residents are safeguarded.

"(6) Providing recommendations for improving the quality of care for mentally ill individuals in adult care homes and nursing homes including the potential cost associated with implementing the recommendations.

"(7) Identifying specific problems that exist due to mixing aging and mentally ill populations."

For prior similar provisions, see Session

Laws 2001-424, s. 21.9(a)-(c).

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2009-574, s. 52.1, provides: "For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate."

§ 143B-181.6. Purpose and intent.

It is the North Carolina General Assembly's intent in the State's development and implementation of long-term care policies that:

(1) Long-term care services administered by the Department of Health and Human Services and other State and local agencies shall include a balanced array of health, social, and supportive services that promote individual choice, dignity, and the highest practicable level of independence;

(2) Home and community-based services shall be developed, expanded, or maintained in order to meet the needs of consumers in the least confusing manner and based on the desires of the elderly and their families;

(3) All services shall be responsive and appropriate to individual need and shall be delivered through a seamless system that is flexible and responsive regardless of funding source;

(4) Services shall be available to all elderly who need them but targeted primarily to the most frail, needy elderly;

(5) State and local agencies shall maximize the use of limited resources by establishing a fee system for persons who have the ability to pay;

(6) Institutional care shall be provided in such a manner and in such an environment as to promote maintenance or enhancement of the quality of life of each resident and timely discharge to a less restrictive care setting when appropriate; and

(7) State health planning for institutional bed supply shall take into account increased availability of other home and community-based services options. (1981, c. 675, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 583, s. 2; 1997-443, s. 11A.118(a).)

§§ 143B-181.7 through 143B-181.9: Repealed by Session Laws 1995 (Regular Session, 1996), c. 583, s. 2.

§ 143B-181.9A: Repealed by Session Laws 1995, c. 179, s. 1.

Part 14C. Respite Care Program.

§ 143B-181.10. Respite care program established; eligibility; services; administration; payment rates.

(a) A respite care program is established to provide needed relief to caregivers of impaired adults who cannot be left alone because of mental or physical problems.

(b) Those eligible for respite care under the program established by this section are limited to those unpaid primary caregivers who are caring for people 60 years of age or older and their spouses, or those unpaid primary caregivers 60 years of age or older who are caring for persons 18 years of age or older, who require constant supervision and who cannot be left alone either because of memory impairment, physical immobility, or other problems that renders them unsafe alone.

(c) Respite care services provided by the programs established by this section may include:

(1) Counseling and training in the caregiving role, including coping mechanisms and behavior modification techniques;
(2) Counseling and accessing available local, regional, and State services;
(3) Support group development and facilitation;
(4) Assessment and care planning for the patient of the caregiver;
(5) Attendance and companion services for the patient in order to provide release time to the caregiver;
(6) Personal care services, including meal preparation, for the patient of the caregiver;
(7) Temporarily placing the person out of his home to provide the caregiver total respite when the mental or physical stress on the caregiver necessitates this type of respite.

An out of home placement is defined as placement in a hospital, skilled or intermediate nursing facility, adult care home, adult day health center, or adult day care center. Duration of the service period may extend beyond a year.

(d) The respite care program established by this section shall be administered by the Division of Aging consistent with the policies and procedures of the Older Americans Act. The programs shall be coordinated with other appropriate Divisions in the Department of Health and Human Services, and with agencies and organizations concerned with the delivery of services to frail older adults and their unpaid caregivers. The Division shall choose respite care provider agencies in accordance with procedures outlined under the Older Americans Act and shall include the following criteria: documented capacity to provide care, adequacy of quality assurance, training, supervision, abuse prevention, complaint mechanisms, and cost. All funds allocated by the Division pursuant to this section shall be allocated on the same basis as funding under the Older Americans Act.

(e) Funding for the Division of Aging to administer this program shall not exceed the percentage allowed for administration as provided in the Older Americans Act but shall not be less than that budgeted for administration in fiscal year 1988-89.

(f) Unless prohibited by federal law, caregivers receiving respite care services through the program established by this section shall pay for some of the services on a sliding scale depending on their ability to pay. The Division of Aging, in consultation with the Councils of Governments in each region, shall specify rates of payment for the services. (1985 (Reg. Sess., 1986), c. 1014, s. 7.1; 1989, c. 500, s. 96(a); c. 770, s. 63; 1991, c. 332, s. 1; 1995, c. 535, s. 34; 1997-443, s. 11A.118(a); 1998-97, s. 1; 2000-50, s. 1.)

Editor's Note. — Session Laws 2007-39, ss. 1.(a) and (b), provides: "(a) The Department of Health and Human Services, Division of Facility Services, Division of Medical Assistance, and the Division of Aging and Adult Services, shall study the availability and delivery of respite care which provides temporary relief for family members and others who care for individuals with disabilities, chronic or terminal illnesses, dementia, or the elderly. The study shall examine the following:

"(1) The need and availability of respite care in North Carolina.

"(2) The delivery and licensing of respite care in other states and possible models for North Carolina.

"(3) The application process for a grant under the Lifespan Respite Care Act of 2006, 42 U.S.C.

"(4) The need for separate statutory language pertaining to respite care.

"(5) The need, proposed structure, and development timeline for a separate licensure category for respite care.

"(6) The development of a Medicaid waiver covering a proposed new licensure category for respite care.

"(b) In response to the study authorized in this section, the Department of Health and Human Services shall present findings and recommendations, including any proposed statutory changes and new licensure categories, to the Study Commission on Aging on or before March 1, 2008."

§§ 143B-181.11 through 143B-181.14: Reserved for future codification purposes.

Part 14D. Long-Term Care Ombudsman Program.

§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

The General Assembly finds that a significant number of older citizens of this State reside in long-term care facilities and are dependent on others to provide their care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long-term care facilities, and to educate the public about the long-term care system. It is the further intent of the General Assembly that the Department of Health and Human Services, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., ensure that the quality of care and life for these residents is maintained, that necessary reports are made, and that, when necessary, corrective action is taken at the Department level. (1989, c. 403, s. 1; 1995, c. 254, s. 1; 1997-443, s. 11A.118(a).)

§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

Unless the content clearly requires otherwise, as used in this Article:

(1) "Long-term care facility" means any skilled nursing facility and intermediate care facility as defined in G.S. 131A-3(4) or any adult care home as defined in G.S. 131D-20(2).

(2) "Resident" means any person who is receiving treatment or care in any long-term care facility.

(3) "State Ombudsman" means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., who carries out the duties and functions established by this Article.

(4) "Regional Ombudsman" means a person employed by an Area Agency on Aging to carry out the functions of the Regional Ombudsman Office established by this Article. (1989, c. 403, s. 1; 1995, c. 254, s. 2; c. 535, s. 35.)

Editor's Note. — Section 131D-20(2), referred to in this section, was repealed by Session Laws 1995, c. 535, s. 13.

§ 143B-181.17. Office of State Long-Term Care Ombudsman Program/Office; establishment.

The Secretary of Department of Health and Human Services shall establish and maintain the Office of State Long-Term Ombudsman in the Division of Aging. The Office shall carry out the functions and duties required by the Older Americans Act of 1965, as amended. This Office shall be headed by a State Ombudsman who is a person qualified by training and with experience in geriatrics and long-term care. The Attorney General shall provide legal staff and advice to this Office. (1989, c. 403, s. 1; 1997-443, s. 11A.118(a).)

§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.

The State Ombudsman shall:

(1) Promote community involvement with long-term care providers and residents of long-term care facilities and serve as liaison between residents, residents' families, facility personnel, and facility administration;

(2) Supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Health and Human Services pursuant to G.S. 143B-10;

(3) Certify regional ombudsmen. Certification requirements shall include an internship, training in the aging process, complaint resolution, long-term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;

(4) Attempt to resolve complaints made by or on behalf of individuals who are residents of long-term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents;

(5) Provide training and technical assistance to regional ombudsmen;

(6) Establish procedures for appropriate access by regional ombudsmen to long-term care facilities and residents' records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.;

(7) Analyze data relating to complaints and conditions in long-term care facilities to identify significant problems and recommend solutions;

(8) Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long-term care issues;

(9) Prepare findings regarding public education and community involvement efforts and innovative programs being provided in long-term care facilities; and

(10) Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution. (1989, c. 403, s. 1; 1995, c. 254, s. 3; 1997-443, s. 11A.118(a).)

§ 143B-181.19. Office of Regional Long-Term Care Ombudsman; Regional Ombudsman; duties.

(a) An Office of Regional Ombudsman Program shall be established in each of the Area Agencies on Aging, and shall be headed by a Regional Ombudsman who shall carry out the functions and duties of the Office. The Area Agency on Aging administration shall provide administrative supervision to each Regional Ombudsman.

(b) Pursuant to policies and procedures established by the State Office of Long-Term Care Ombudsman, the Regional Ombudsman shall:

(1) Promote community involvement with long-term care facilities and residents of long-term care facilities and serve as a liaison between residents, residents' families, facility personnel, and facility administration;
(2) Receive and attempt to resolve complaints made by or on behalf of residents in long-term care facilities;
(3) Collect data about the number and types of complaints handled;
(4) Work with long-term care providers to resolve issues of common concern;
(5) Work with long-term care providers to promote increased community involvement;
(6) Offer assistance to long-term care providers in staff training regarding residents' rights;
(7) Report regularly to the office of State Ombudsman about the data collected and about the activities of the Regional Ombudsman;
(8) Provide training and technical assistance to the community advisory committees; and
(9) Provide information to the general public on long-term care issues. (1989, c. 403, s. 1.)

§ 143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter; cooperation of government agencies; communication with residents.

(a) The State and Regional Ombudsman may enter any long-term care facility and may have reasonable access to any resident in the reasonable pursuit of his function. The Ombudsman may communicate privately and confidentially with residents of the facility individually or in groups. The Ombudsman shall have access to the patient records as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., and under procedures established by the State Ombudsman pursuant to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents and if the long-term care facility requires registration of all visitors entering the facility, then the State or Regional Ombudsman must also register. Any State or Regional Ombudsman who discloses any information obtained from the patient's records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., is guilty of a Class 1 misdemeanor.

(b) The State or Regional Ombudsman shall identify himself as such to the resident, and the resident has the right to refuse to communicate with the Ombudsman.

(c) The resident has the right to participate in planning any course of action to be taken on his behalf by the State or Regional Ombudsman, and the resident has the right to approve or disapprove any proposed action to be taken on his behalf by the Ombudsman.

(d) The State or Regional Ombudsman shall meet with the facility administrator or person in charge before any action is taken to allow the facility the opportunity to respond, provide additional information, or take appropriate action to resolve the concern.

(e) The State and Regional Ombudsman may obtain from any government agency, and this agency shall provide, that cooperation, assistance, services, data, and access to files and records that will enable the Ombudsman to properly perform his duties and exercise his powers, provided this information is not privileged by law.

(f) If the subject of the complaint involves suspected abuse, neglect, or exploitation, the State or Regional Ombudsman shall notify the county department of social services' Adult Protection Services section of the county department of social services, pursuant to Article 6 of Chapter 108A of the General Statutes. (1989, c. 403, s. 1; 1993, c. 539, s. 1038; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 254, s. 4.)

§ 143B-181.21. State/Regional Long-Term Care Ombudsman; resolution of complaints.

(a) Following receipt of a complaint, the State or Regional Ombudsman shall attempt to resolve the complaint using, whenever possible, informal technique of mediation, conciliation, and persuasion.

(b) Complaints or conditions adversely affecting residents of long-term care facilities that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the State or Regional Ombudsman to the appropriate licensure agency pursuant to G.S. 131E-100 through 110 and Part 1 of Article 1 of Chapter 131D of the General Statutes. (1989, c. 403, s. 1; 2009-462, s. 4(n).)

Effect of Amendments. — Session Laws 2009-462, s. 4(n), effective October 1, 2009, substituted "Part 1 of Article 1 of Chapter 131D of the General Statutes" for "G.S. 131D-2" at the end of subsection (b).

§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.

The identity of any complainant, resident on whose behalf a complaint is made, or any individual providing information on behalf of the resident or complainant relevant to the attempted resolution of the complaint along with the information produced by the process of complaint resolution is confidential and shall be disclosed only as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. (1989, c. 403, s. 1; 1995, c. 254, s. 5.)

§ 143B-181.23. State/Regional Long-Term Care Ombudsman; prohibition of retaliation.

No person shall discriminate or retaliate in any manner against any resident or relative or guardian of a resident, any employee of a long-term care facility, or any other person because of the making of a complaint or providing of information in good faith to the State Ombudsman or Regional Ombudsman. (1989, c. 403, s. 1.)

§ 143B-181.24. Office of State/Regional Long-Term Care Ombudsman; immunity from liability.

No representative of the Office shall be liable for good faith performance of official duties. (1989, c. 403, s. 1.)

§ 143B-181.25. Office of State/Regional Long-Term Care Ombudsman; penalty for willful interference.

Willful or unnecessary obstruction with the State or Regional Long-Term Care Ombudsman in the performance of his official duties is a Class 1 misdemeanor. (1989, c. 403, s. 1; 1993, c. 539, s. 1039; 1994, Ex. Sess., c. 24, s. 14(c).)

§§ 143B-181.26 through 143B-181.49: Reserved for future codification purposes.

Part 14E. Standards for Alzheimer's Special Care Units.

§§ 143B-181.50 through 143B-181.54: Repealed by Session Laws 1999-334, s. 3.11, effective July 22, 1999.

Editor's Note. — Former G.S. 143B-181.53 and 143B-181.54 had been reserved for future codification purposes.

Part 14F. Senior Tar Heel Legislature.

§ 143B-181.55. Creation, membership, meetings, organization, and adoption of measures.

(a) There is created the North Carolina Senior Tar Heel Legislature. It shall:

(1) Provide information and education to senior citizens on the legislative process and matters being considered by the General Assembly;

(2) Promote citizen involvement and advocacy concerning aging issues before the General Assembly; and

(3) Assess the legislative needs of older citizens by convening a forum modeled after the General Assembly.

(b) The delegates to the Senior Tar Heel Legislature shall be age 60 or over and shall be duly selected pursuant to procedures developed by the Department of Health and Human Services, Division of Aging, and approved by the Secretary of the Department in consultation with senior citizens advocacy groups who have given written notice to the Division of Aging that they desire to be consulted. The Senior Tar Heel Legislative Session shall be organized and coordinated by the Division with Area Agencies on Aging organizing the local election procedures and other related matters. At the conclusion of each session, the Senior Tar Heel Legislature shall make a report of that session's proceedings and recommendations to the General Assembly. Delegates to the Senior Tar Heel Legislature shall be from each county.

(c) The Senior Tar Heel Legislature is authorized to meet one day in March of every year beginning in 1994 but shall hold its first session no later than August 1993. The sessions shall be held in the State Capitol or in a building to be selected by the Governor or the Governor's designee. The Senior Tar Heel Legislature is authorized to adopt bylaws to govern its internal procedures and is authorized to adopt such recommendations as it deems appropriate to present to the General Assembly for consideration.

(d) A report of the proceedings of each session of the Senior Tar Heel Legislature shall be presented to the next Regular Session of the North Carolina General Assembly. (1993, c. 503, s. 1; 1997-443, s. 11A.118(a).)

Part 15. Mental Health Advisory Council.

§§ 143B-182, 143B-183: Repealed by Session Laws 1981, c. 51, s. 13.

Part 16. Governor's Council on Employment of the Handicapped.

[Transferred.]

Editor's Note. — Part 16 of this Article was transferred to Article 9, Part 16, and subsequently repealed.

Part 16A. North Carolina Arthritis Program Committee.

§§ 143B-184, 143B-185: Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1028, s. 28.

Part 17. Governor's Advocacy Council on Children and Youth.

§§ 143B-186, 143B-187: Transferred to §§ 143B-414, 143B-415 by Session Laws 1977, c. 872, s. 6.

Part 18. Council on Sickle Cell Syndrome.

§§ 143B-188 through 143B-190: Recodified as §§ 130A-131 through 130A-131.2 by Session Laws 1989, c. 727, s. 179.

§§ 143B-191 through 143B-196: Repealed by Session Laws 1987, c. 822, s. 1.

Cross References. — As to the Sickle Cell Program, see G.S. 130A-129, 130A-130. As to the Council on Sickle Cell Syndrome, see G.S. 130A-131 et seq.

Part 19. Commission for Human Skills and Resource Development.

§§ 143B-197 through 143B-201: Repealed by Session Laws 1979, c. 504, s. 10.

§§ 143B-202, 143B-203: Repealed by Session Laws 1989, c. 727, s. 181.

Part 20. Commission of Anatomy.

§§ 143B-204 through 143B-206: Recodified as §§ 130A-33.30 through 130A-33.32 by Session Laws 1989, c. 727, s. 182(a).

Part 21. Youth Services Advisory Committee.

§§ 143B-207, 143B-208: Repealed by Session Laws 1981, c. 50, s. 7.

Part 22. Human Tissue Advisory Council.

§ 143B-209: Repealed by Session Laws 1983, c. 891, s. 10.

Part 23. North Carolina Drug Commission.

§§ 143B-210 through 143B-212: Repealed by Session Laws 1981, c. 51, s. 7.

Part 24. North Carolina Council for the Hearing Impaired.

§§ 143B-213 through 143B-216.5B: Repealed by Session Laws 1989, c. 533, s. 1.

Cross References. — As to the Council for the Deaf and Hard of Hearing and Division of Services for the Deaf and the Hard of Hearing, see G.S. 143B-216.30 et seq.

Part 25. Nutrition Advisory Committee.

§§ 143B-216.6, 143B-216.7: Repealed by Session Laws 1979, c. 504, s. 13.

Part 26. Governor's Council on Physical Fitness and Health.

§§ 143B-216.8, 143B-216.9: Recodified as §§ 130A-33.40, 130A-33.41 by Session Laws 1989, c. 727, s. 186.

Part 27. Governor's Waste Management Board.

§§ 143B-216.10 through 143B-216.15: Recodified as §§ 143B-285.10 through 143B-285.15 by Session Laws 1989, c. 727, s. 189.

§§ 143B-216.16 through 143B-216.19: Reserved for future codification purposes.

Part 28. North Carolina Council on the Holocaust.

§§ 143B-216.20 through 143B-216.23: Recodified as G.S. 143A-48.1(a) to (d) by Session Laws 2002-126, s. 10.10D(a), effective October 1, 2002.

§§ 143B-216.24 through 143B-216.29: Reserved for future codification purposes.

Part 29. Council for the Deaf and the Hard of Hearing; Division of Services for the Deaf and the Hard of Hearing.

§ 143B-216.30. Definitions.

The following definitions shall apply throughout this Part unless otherwise specified:

(1) "Council" means the Council for the Deaf and the Hard of Hearing of the Department of Health and Human Services.

(2) "Deaf" means the inability to hear and/or understand oral communication, with or without assistance of amplification devices.

(3) "Division" means the Division of Services for the Deaf and the Hard of Hearing of the Department of Health and Human Services.

(4) "Hard of hearing" means permanent hearing loss which is severe enough to necessitate the use of amplification devices to hear oral communication.

(5) "Ring signaling device" means a mechanism such as a flashing light which visually indicates that a communication is being received through a telephone line. This phrase also means mechanisms such as adjustable volume ringers and buzzers which audibly and loudly indicate an incoming telephone communication.

(6) "Speech impaired" means permanent loss of oral communication ability.

(7) "Telecommunications device" or "TDD" means a keyboard mechanism attached to or in place of a standard telephone by some coupling device, used to transmit or receive signals through telephone lines.

(8) "Volume control handset" means a telephone handset or other telephone listening device which has an adjustable control for increasing the volume of the sound being produced by the telephone receiving unit. (1989, c. 533, s. 2; 1997-443, s. 11A.118(a).)

§ 143B-216.31. Council for the Deaf and the Hard of Hearing — creation and duties.

There is hereby created the Council for the Deaf and the Hard of Hearing of the Department of Health and Human Services. The Council shall have duties including the following:

(1) To make recommendations to the Secretary of the Department of Health and Human Services for cost-effective provision, coordination, and improvement of services;

(2) To create public awareness of the specific needs and abilities of people who are deaf, hard of hearing, or deaf-blind and to consider the need for new State programs concerning the deaf, hard of hearing, and deaf-blind;

(3) To advise the Secretary of the Department of Health and Human Services during planning and implementation of services being provided to North Carolina citizens who are deaf, hard of hearing, or deaf-blind with respect to the quality, extent, and scope of those services;

(4) To advise the Secretary of the Department of Health and Human Services and the Superintendent of the Department of Public Instruction regarding planning, implementation, and cost-effective coordina-

tion of State programs providing educational services for persons who are deaf, hard of hearing, or deaf-blind; and

(5) To respond to the request of the Secretary of the Department of Health and Human Services for advice or recommendations pertaining to any matter affecting deaf, hard of hearing, or deaf-blind citizens of North Carolina. (1989, c. 533, s. 2; 1997-443, s. 11A.118(a); 2003-343, s. 1.)

§ 143B-216.32. Council for the Deaf and the Hard of Hearing — membership; quorum; compensation.

(a) The Council for the Deaf and the Hard of Hearing shall consist of 28 members. Twenty members shall be members appointed by the Governor. Three members appointed by the Governor shall be persons who are deaf and three members shall be persons who are hard of hearing. One appointment shall be an educator who trains deaf education teachers and one appointment shall be an audiologist licensed under Article 22 of Chapter 90 of the General Statutes. Three appointments shall be parents of deaf or hard of hearing children including one parent of a student in a residential school; one parent of a student in a preschool program; and one parent of a student in a mainstream education program, with at least one parent coming from each region of the North Carolina schools for the deaf regions. One member appointed by the Governor shall be recommended by the President of the North Carolina Association of the Deaf; one member shall be recommended by the President of the North Carolina Deaf-Blind Associates; one member shall be recommended by the North Carolina Chapter of Self Help for the Hard of Hearing (SHHH); one member shall be recommended by the North Carolina Black Deaf Advocates (NCBDA); one member shall be a representative from a facility that performs cochlear implants; one member shall be recommended by the President of the North Carolina Pediatric Society; one member shall be recommended by the President of the North Carolina Registry of Interpreters for the Deaf; one member shall be recommended by a local education agency; and one member shall be recommended by the Superintendent of Public Instruction. Two members shall be appointed from the House of Representatives by the Speaker of the House of Representatives and two members shall be appointed from the Senate by the President Pro Tempore of the Senate. The Secretary of Health and Human Services shall appoint four members as follows: one from the Division of Vocational Rehabilitation, one from the Division of Aging, one from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and one from the Division of Social Services.

(b) The terms of the initial members of the Council shall commence July 1, 1989. In his initial appointments, the Governor shall designate four members who shall serve terms of five years, four who shall serve terms of four years, four who shall serve terms of three years, and three who shall serve terms of two years. After the initial appointees' terms have expired, all members shall be appointed for a term of four years. No member shall serve more than two successive terms unless the member is an employee of the Department of Health and Human Services or the Department of Public Instruction representing his or her agency as a specialist in the field of service.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) The chairman of the Council shall be designated by the Secretary of the Department of Health and Human Services from the Council members. The chairman shall hold this office for not more than four years.

(d) The Council shall meet quarterly and at other times at the call of the chairman. A majority of the Council shall constitute a quorum.

(e) Council members shall be reimbursed for expenses incurred in the performance of their duties in accordance with G.S. 138-5.

(f) The Secretary of the Department of Health and Human Services shall provide clerical and other assistance as needed. (1989, c. 533, s. 2; 1993, c. 551, s. 1; 1997-443, s. 11A.118(a); 2001-424, s. 21.81(d); 2001-486, s. 2.14; 2003-343, s. 2.)

Editor's Note. — Session Laws 2003-343, s. 3, provides: "Pursuant to G.S. 143B-216.32(a), as enacted in Section 2 of this act, the member appointed by the Governor as recommended by the President of the North Carolina Deaf-Blind Associates shall be appointed for a four-year term to commence July 1, 2003, the member who is a representative from a facility that performs cochlear implants and who is appointed by the Governor shall be appointed for a four-year term to commence July 1, 2003, and the member appointed by the Governor as recommended by a local education agency shall be appointed for a four-year term to commence July 1, 2003. Members described in this section shall serve for the terms for which they were appointed and until their successors are appointed and qualified.

"Pursuant to G.S. 143B-216.32(a), as enacted in Section 2 of this act, when the term of the member appointed by the Secretary of Health and Human Services who is a representative from the North Carolina Chapter of Self Help for the Hard of Hearing (SHHH) expires, the Governor shall appoint one member upon the recommendation of the North Carolina Chapter of Self Help for the Hard of Hearing to serve a four-year term to commence July 1, 2003. When the term of the member appointed by the Secretary of Health and Human Services who is a representative from Statewide Parents' Education and Advocacy for Kids (SPEAK) expires, the Governor shall appoint one member upon the recommendation of the North Carolina Black Deaf Advocates (NCBDA) to serve a four-year term to commence July 1, 2003."

§ 143B-216.33. Division of Services for the Deaf and the Hard of Hearing — creation, powers and duties.

(a) There is hereby created within the Department of Health and Human Services, the Division of Services for the Deaf and the Hard of Hearing. The Division shall have the powers and duties including the following:

(1) To review existing programs for persons who are deaf or hard of hearing in the State, and make recommendations to the Secretary of the Department of Health and Human Services and to the Superintendent of the Department of Public Instruction for improvements to such programs;

(2) Repealed by Session Laws 1999-237, s. 11.4(b).

(3) To provide a network of resource centers for local access to services such as interpreters, information and referral, telephone relay, and advocacy for persons who are deaf or hard of hearing;

(4) To collect, study, maintain, publish and disseminate information relative to all aspects of deafness;

(5) To promote public awareness of the needs of, resources and opportunities available to persons who are deaf or hard of hearing;

(6) To provide technical assistance to agencies and organizations in the development of services to persons who are deaf or hard of hearing;

(7) To administer the Telecommunications Program for the Deaf pursuant to G.S. 143B-216.34; and

(8) To provide training and skill development programming to enhance the competence of individuals who aspire to be licensed or who are currently licensed as interpreters or transliterators under Chapter 90D of the General Statutes.

(b) The Division shall function under the authority of the Department of Health and Human Services and the Secretary of the Department of Health and Human Services as provided in the Executive Organization Act of 1973 and shall perform such other duties as are assigned by the Secretary.

(c) The Department of Health and Human Services may receive moneys from any source, including federal funds, gifts, grants and bequests which shall be expended for the purposes designated in this Part. Gifts and bequests received shall be deposited in a trust fund with the State Treasurer who shall hold them in trust in a separate account in the name of the Division. The cash balance of this account may be pooled for investment purposes, but investment earnings shall be credited pro rata to this participating account. Moneys deposited with the State Treasurer in the trust fund account pursuant to this subsection, and investment earnings thereon, are available for expenditure without further authorization from the General Assembly. Such funds shall be administered by the Division under the direction of the director and fiscal officer of the Division and will be subject to audits normally conducted with the agency.

(d) The Secretary of the Department of Health and Human Services shall adopt rules to implement this Part. (1989, c. 533, s. 2; 1997-443, s. 11A.118(a); 1999-237, s. 11.4(b); 2002-182, s. 5; 2003-56, s. 3.)

Editor's Note. — The Telecommunications Program for the Deaf, referred to in subdivision (a)(7), is apparently the same as the communication services program established in G.S. 143B-216.34.

The 2002 amendment to subdivision (a)(8), which rewrote subdivision (a)(8), became effective January 1, 2004, by Laws 2002-182, s. 10, as amended by Session Laws 2003-56, s. 3.

§ 143B-216.34. Division of Services for the Deaf and the Hard of Hearing — temporary loan program established.

(a) There is established an assistive equipment loan program for the deaf, hard of hearing, and speech impaired to be developed, administered, and implemented by the Division of Services for the Deaf and the Hard of Hearing. The assistive equipment loan program supplements the telecommunications equipment distribution program established pursuant to G.S. 62-157.

(b) The Division shall develop rules for the distribution of the communications and alerting equipment and shall determine performance standards. The Division shall select equipment for distribution to qualifying recipients. The equipment discussed in this section shall be leased at no cost to qualifying recipients for a period of time up to and not exceeding two years. Nothing herein shall be construed to prevent the renewal of any lease previously executed with a qualified recipient. In addition, the Division shall provide consultative services and training to those individuals and organizations utilizing communications and alerting equipment pursuant to this section.

(c) The central communications office of each county sheriff's department shall purchase and continually operate at least one telecommunications device that is functionally equivalent in providing equal access to services for individuals who are deaf, hard of hearing, deaf-blind, and speech impaired.

The central communications office of each police department and firefighting agency in municipalities with a population of 25,000 to 250,000 shall purchase and continually operate at least one such device.

The central communications office of each police department and firefighting agency in municipalities with a population exceeding 250,000 persons shall purchase and continually operate at least two such devices.

(d) Each public safety office, health care facility (including hospitals and urgent care facilities), and the 911 emergency number system is required to obtain a telecommunications device that is functionally equivalent in providing equal access to services for individuals who are deaf, hard of hearing, and speech impaired pursuant to this section and shall continually operate and staff the equipment during hours of operation, including up to 24 hours. (1989, c. 533, s. 2; 2007-149, s. 1.)

§§ 143B-216.35 through 143B-216.39: Reserved for future codification purposes.

Part 30. State Schools for Hearing-impaired Children.

§ 143B-216.40. Establishment; operations.

There are established, and there shall be maintained, the following schools for the deaf: the Eastern North Carolina School for the Deaf at Wilson (K-12) and the North Carolina School for the Deaf at Morganton (K-12). The Department of Health and Human Services shall be responsible for the operation and maintenance of the schools. (1891, c. 399, s. 1; Rev., s. 4202; 1915, c. 14; C. S., s. 5888; 1957, c. 1433; 1963, c. 448, s. 28; 1969, c. 1279; 1971, c. 1000; 1973, c. 476, s. 165; 1981, c. 423, s. 1; c. 635, s. 2; 1997-18, s. 12; 1997-443, s. 11A.118(a); 2001-424, s. 21.81(b); 2006-69, s. 3(q).)

§ 143B-216.41. Pupils admitted; education.

(a) The Department of Health and Human Services may consider for admission all deaf and deaf/multidisabled children into the schools for the deaf who meet the following criteria and in accordance with federal and State law and rules adopted by the Office of Education Services:

(1) The child has been referred by the child's local education agency and an admission is deemed appropriate by the child's Individualized Education Program (IEP) Team.

(2) The child is a resident of this State, except as provided in subsection (b) of this section.

(3) The child is at least five years of age but not older than 21 years of age.

(b) Nonresident deaf or deaf/multidisabled children may be admitted to the schools for the deaf in accordance with rules adopted by the Office of Education Services if the admission does not prevent the attendance of any deaf or deaf/multidisabled child who is a resident of the State. Only children who are residents of North Carolina are entitled to free tuition and room and board.

(c) The Department, through the Office of Education Services, shall provide unique instructional programs to meet the needs of all students admitted to the schools for the deaf. The Department shall encourage the State to provide classrooms with modern auditory training equipment, audiovisual media equipment, and any other special equipment to provide the best educational conditions for the deaf and deaf/multidisabled.

(d) The Department, through the Office of Education Services, shall do the following:

(1) Maintain a collaborative relationship with institutions of higher education to provide teacher-training opportunities.

(2) Provide for a comprehensive vocational and technical training program as directed in the transition component of the Individualized Education Programs of students. (1961, c. 968; 1963, c. 448, s. 28; 1969, c. 1279; 1971, c. 1000; 1973, c. 476, s. 165; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 23; 1985, c. 780, s. 3; 1997-18, s. 12; 1997-443, s. 11A.118(a); 2003-253, s. 1.)

Editor's Note. — For the creation of the Office of Education Services, see Editor's note at G.S. 143B-136.1 under the heading of "Division of Early Intervention and Education."

§ 143B-216.42. Free textbooks and State purchase and rental system.

The Schools for the Deaf shall have the right and privilege of participating in the distribution of free textbooks and in the purchase and rental system operated by the State of North Carolina in the same manner as any other public school in the State. (1943, c. 205; 1963, c. 448, s. 28; 1971, c. 1000; 1981, c. 423, s. 1; 1997-18, s. 12.)

§ 143B-216.43. Agreements with local governing authorities.

The Department is authorized to make such agreements with the governing authority of any municipality, or of any county, as may be mutually agreed upon, to promote convenience and economy for joint water supply, lighted areas, use of sewage facilities, or any other utilities or facilities that may be necessary and as may be agreed upon. (1891, c. 399, ss. 8-10; Rev., s. 4205; C.S., s. 5893; 1963, c. 448, s. 28; 1971, c. 1000; 1973, c. 476, s. 165; 1981, c. 423, s. 1; 1997-18, s. 12.)

§ 143B-216.44. Fees for athletic programs; appeal.

The Secretary of Health and Human Services may establish by regulation fees not to exceed one hundred dollars ($100.00) per year to support the athletic program and after school student activities and an appeal process under Chapter 150B by which a student unable to pay may prove that he is unable to pay and be relieved of the fee. (1981, c. 562, s. 3; c. 912, s. 2; 1987, c. 827, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. — This section was enacted as G.S. 115-343 by Session Laws 1981, c. 562, s. 3; recodified as G.S. 115C-126.1 by Session Laws 1981, c. 912, s. 2, and recodified as G.S. 143B-216.44 by 1997-18, s. 12.

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Student activity fees, which are assessed from students of the Schools for the Deaf pursuant to this section, are "State funds" and are subject to the fiscal control of the Executive Budget Act. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

§§ 143B-216.45 through 143B-216.49: Reserved for future codification purposes.

Part 31. Office of the Internal Auditor.

§ 143B-216.50. Department of Health and Human Services; office of the Internal Auditor.

(a) The office of Internal Auditor is established in the Department of Health and Human Services. The office of the Internal Auditor shall provide independent reviews and analyses of various functions and programs within the Department that will provide management information to promote accountability, integrity, and efficiency within the Department.

(b) It shall be the duty and responsibility of the Internal Auditor to:

(1) Advise in the development of performance measures, standards, and procedures for the evaluation of the Department;

(2) Assess the reliability and validity of performance measures and the information provided by the Department on performance measures and standards and make recommendations for improvement, if necessary;

(3) Review the actions taken by the Department of Health and Human Services to improve program performance and meet program standards and make recommendations for improvement, if necessary;

(4) Provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to programs and operations of the Department;

(5) Conduct independent analysis of programs carried out or financed by the Department of Health and Human Services for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting waste, management, misconduct, fraud and abuse in its programs and operations;

(6) Keep the Secretary of the Department of Health and Human Services informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the Department of Health and Human Services, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action;

(7) Ensure effective coordination and cooperation between the State Auditor, federal auditors, and other governmental bodies with a view toward avoiding duplication; and

(8) Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities.

(c) The Internal Auditor shall be appointed by the Secretary. The Internal Auditor shall be appointed without regard to political affiliation.

(d) The Internal Auditor shall report to an official designated by the Secretary.

(e) The Internal Auditor shall have access to any records, data, or other information of the Department the Internal Auditor believes necessary to carry out the Internal Auditor's duties. (1997-443, s. 12.21(c).)

§ 143B-216.51. Department of Health and Human Services office of the Internal Auditor; Department audits.

(a) To ensure that Department audits are performed in accordance with applicable auditing standards, the Internal Auditor shall possess the following qualifications:

(1) A bachelors degree from an accredited college or university with a major in accounting, or with a major in business which includes five courses in accounting, and five years' experience as an internal auditor or independent postauditor, electronic data processing auditor, accountant, or any combination thereof. The experience shall, at a minimum, consist of audits of units of government or private business enterprises operating for profit or not for profit;

(2) A masters degree in accounting, business administration, or public administration from an accredited college or university and four years of experience as required in subdivision (1) of this subsection; or

(3) A certified public accountant license issued pursuant to law or a certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and four years' experience as required in subdivision (1) of this subsection.

The Internal Auditor shall, to the extent both necessary and practicable, include on the Internal Auditor's staff individuals with electronic data processing auditing experience.

(b) In carrying out the auditing duties and responsibilities of this Part, the Internal Auditor shall review and evaluate internal controls necessary to ensure the fiscal accountability of the Department. The Internal Auditor shall conduct financial, compliance, electronic data processing, and performance audits of the Department and prepare audit reports of findings. The scope and assignment of the audits shall be determined by the Internal Auditor; however, the Secretary may at any time direct the Internal Auditor to perform an audit of a special program, function, or organizational unit. The performance of the audit shall be under the direction of the Internal Audit.

(c) Audits undertaken pursuant to this Part shall be conducted in accordance with auditing standards prescribed by the State Auditor. All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to these standards.

(d) The Internal Auditor shall maintain, for 10 years, a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under the Internal Auditor's authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of his office shall be retained according to an agreement between the Internal Auditor and State Archives. To promote cooperation and avoid unnecessary duplication of audit effort, audit work papers related to issued audit reports shall be, unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal governments in connection with some matter officially before them. Except as otherwise provided in this subsection, or upon subpoena issued by a duly authorized court or court official, audit work papers shall be kept confidential. Audit reports shall be public records to the extent that they do not include information which, under State laws, is confidential and exempt from Chapter 132 of the General Statutes or would compromise the security systems of the Department.

(e) The Internal Auditor shall submit the final report to the Secretary.

(f) The State Auditor shall review a sample of the Department's internal audit reports and related work papers when determined by the State Auditor that, when conducting audits, it would be efficient to consider the work of the Internal Auditor. If the State Auditor finds deficiencies in the work of the Internal Auditor, the State Auditor shall include a statement of these findings in the audit report of the Department. The office of the Internal Auditor will cause to be made an external quality control review at least once every three years by a qualified organization not affiliated with the office of the Internal Auditor. The external quality review should determine whether the Department's internal quality control system is in place and operating effectively to provide reasonable assurance that established policies and procedures and applicable audit standards are being followed.

(g) The Internal Auditor shall monitor the implementation of the Department's response to any audit of the Department conducted by the State Auditor pursuant to law. No later than six months after the State Auditor publishes a report of the audit of the Department, the Internal Auditor shall report to the Secretary on the status of corrective actions taken. A copy of the report shall be filed with the Joint Legislative Commission on Governmental Operations.

(h) The Internal Auditor shall develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include postaudit samplings of payments and accounts. The plan shall show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. The State Controller may utilize audits performed by the Internal Auditor. The plan shall be submitted to the Secretary for approval. A copy of the approved plan shall be submitted to the State Auditor. (1997-443, s. 12.21(c).)

§§ 143B-216.52 through 143B-216.59: Reserved for future codification purposes.

Part 32. Heart Disease and Stroke Prevention Task Force.

§ 143B-216.60. The Justus-Warren Heart Disease and Stroke Prevention Task Force.

(a) The Justus-Warren Heart Disease and Stroke Prevention Task Force is created in the Department of Health and Human Services.

(b) The Task Force shall have 27 members. The Governor shall appoint the Chair, and the Vice-Chair shall be elected by the Task Force. The Director of the Department of Health and Human Services, the Director of the Division of Medical Assistance in the Department of Health and Human Services, and the Director of the Division of Aging in the Department of Health and Human Services, or their designees, shall be members of the Task Force. Appointments to the Task Force shall be made as follows:

(1) By the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as follows:
  a. Three members of the Senate;
  b. A heart attack survivor;
  c. A local health director;
  d. A certified health educator;
  e. A hospital administrator; and
  f. A representative of the North Carolina Association of Area Agencies on Aging.

(2) By the General Assembly upon the recommendation of the Speaker of the House of Representatives, as follows:
  a. Three members of the House of Representatives;
  b. A stroke survivor;
  c. A county commissioner;
  d. A licensed dietitian/nutritionist;
  e. A pharmacist; and
  f. A registered nurse.

(3) By the Governor, as follows:
  a. A practicing family physician, pediatrician, or internist;
  b. A president or chief executive officer of a business upon recommendation of a North Carolina wellness council which is a member of the Wellness Councils of America;
  c. A news director of a newspaper or television or radio station;
  d. A volunteer of the North Carolina Affiliate of the American Heart Association;
  e. A representative from the North Carolina Cooperative Extension Service;
  f. A representative of the Governor's Council on Physical Fitness and Health; and
  g. Two members at large.

(c) Each appointing authority shall assure insofar as possible that its appointees to the Task Force reflect the composition of the North Carolina population with regard to ethnic, racial, age, gender, and religious composition.

(d) The General Assembly and the Governor shall make their appointments to the Task Force not later than 30 days after the adjournment of the 1995 General Assembly, Regular Session 1995. A vacancy on the Task Force shall be filled by the original appointing authority, using the criteria set out in this section for the original appointment.

(e) The Task Force shall meet at least quarterly or more frequently at the call of the Chair.

(f) The Task Force Chair may establish committees for the purpose of making special studies pursuant to its duties, and may appoint non-Task Force members to serve on each committee as resource persons. Resource persons shall be voting members of the committees and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6. Committees may meet with the frequency needed to accomplish the purposes of this section.

(g) Members of the Task Force shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 120-3.1, 138-5 and 138-6, as applicable.

(h) A majority of the Task Force shall constitute a quorum for the transaction of its business.

(i) The Task Force may use funds allocated to it to establish two positions and for other expenditures needed to assist the Task Force in carrying out its duties.

(j) The Task Force has the following duties:

(1) To undertake a statistical and qualitative examination of the incidence of and causes of heart disease and stroke deaths and risks, including identification of subpopulations at highest risk for developing heart disease and stroke, and establish a profile of the heart disease and stroke burden in North Carolina.

(2) To publicize the profile of the heart disease and stroke burden and its preventability in North Carolina.

(3) To identify priority strategies which are effective in preventing and controlling risks for heart disease and stroke.

(4) To identify, examine limitations of, and recommend to the Governor and the General Assembly changes to existing laws, regulations, programs, services, and policies to enhance heart disease and stroke prevention by and for the people of North Carolina.

(5) To determine and recommend to the Governor and the General Assembly the funding and strategies needed to enact new or to modify existing laws, regulations, programs, services, and policies to enhance heart disease and stroke prevention by and for the people of North Carolina.

(6) To adopt and promote a statewide comprehensive Heart Disease and Stroke Prevention Plan to the general public, State and local elected officials, various public and private organizations and associations, businesses and industries, agencies, potential funders, and other community resources.

(7) To identify and facilitate specific commitments to help implement the Plan from the entities listed in subdivision (6) above.

(8) To facilitate coordination of and communication among State and local agencies and organizations regarding current or future involvement in achieving the aims of the Heart Disease and Stroke Prevention Plan.

(9) To receive and consider reports and testimony from individuals, local health departments, community-based organizations, voluntary health organizations, and other public and private organizations statewide, to learn more about their contributions to heart disease and stroke prevention, and their ideas for improving heart disease and stroke prevention in North Carolina.

(10) Establish and maintain a Stroke Advisory Council, which shall advise the Task Force regarding the development of a statewide system of stroke care that shall include, among other items, a system for identifying and disseminating information about the location of primary stroke centers.

(k) Notwithstanding Section 11.57 of S.L. 1999-237, the Task Force shall submit a final report to the Governor and the General Assembly by June 30, 2003, and a report to each subsequent regular legislative session within one week of its convening. (1995-507, s. 26.9; 1997-443, ss. 11A-122, 11A-123; 2001-424, s. 21.95; 2002-126, s. 10.45; 2003-284, s. 10.33B; 2006-197, s. 1.)

Editor's Note. — This Part and Part heading were created at the direction of the Revisor of Statutes.

Subsections (b) through (k) of Session Laws 1995-507, s. 26.9, effective July 1, 1995, were enacted as subsections (a) through (j) of this section, respectively, at the direction of the Revisor of Statutes. The last sentence of Session Laws, 2001-424, s. 21.95, effective July 1, 2001, as rewritten by Session Laws 2002-126, s. 10.45, effective July 1, 2002, was enacted as subsection (k) of this section at the direction of the Revisor of Statutes.

Session Laws 2006-197, s. 2, provides: "The Justus-Warren Heart Disease and Stroke Prevention Task Force shall appoint the members of the Stroke Advisory Council as follows:

"(1) Four physicians, one upon the recommendation of the North Carolina Medical Society, one upon the recommendation of the North Carolina College of Emergency Physicians, one upon the recommendation of the Old North State Medical Society, and one who specializes in the treatment of strokes.

"(2) A hospital administrator recommended by the North Carolina Hospital Association.

"(3) A representative from the American Heart Association.

"(4) A representative from the North Carolina Association of Rescue and Emergency Medical Services.

"(5) A representative from the Area Health Education Centers (AHEC).

"(6) Other relevant experts as the Task Force deems beneficial to achieve the goals of the Stroke Advisory Council."

Session Laws 2006-197, s. 3, provides: "Not later than February 15, 2007, the Justus-Warren Heart Disease and Stroke Prevention Task Force shall report to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the findings and recommendations of the Stroke Advisory Council regarding the development of a statewide system of stroke care."

Session Laws 2006-197, s. 4, provides: "Notwithstanding any other provision of law to the contrary, the members of the Stroke Advisory Council shall, for the 2006-2007 fiscal year only, serve without compensation and without reimbursement for travel, food, and lodging."

§§ 143B-216.61 through 143B-216.64: Reserved for future codification purposes.

Part 33. North Carolina Brain Injury Advisory Council.

§ 143B-216.65. North Carolina Brain Injury Advisory Council — creation and duties.

There is established the North Carolina Brain Injury Advisory Council in the Department of Health and Human Services to review traumatic and other acquired brain injuries in North Carolina. The Council shall have duties including the following:

(1) Review how the term "traumatic brain injury" is defined by State and federal regulations and to determine whether changes should be made to the State definition to include "acquired brain injury" or other appropriate conditions.

(2) Promote interagency coordination among State agencies responsible for services and support of individuals that have traumatic brain injury.

(3) Study the needs of individuals with traumatic brain injury and their families.

(4) Make recommendations to the Governor, the General Assembly, and the Secretary of Health and Human Services regarding the planning, development, funding, and implementation of a comprehensive statewide service delivery system.

(5) Promote and implement injury prevention strategies across the State. (2003-114, s. 1; 2009-361, s. 3.)

Editor's Note. — Session Laws 2009-361, s. 3, deleted "Traumatic" preceding "Brain Injury" in the Part heading.

Session Laws 2009-361, s. 4, provides: "This act is effective when it becomes law [July 27, 2009]. Each appointment made under G.S. 143B-216.66, as enacted by Section 3 of this act, shall become effective at the expiration of the term of the member serving on the Council prior to the effective date of this act [July 27, 2009].

Effect of Amendments. — Session Laws 2009-361, s. 3, effective July 27, 2009, deleted "Traumatic" preceding "Brain Injury" in the section heading and in the first sentence of the introductory language, and added "to review traumatic and other acquired brain injuries in North Carolina" at the end of the first sentence of the introductory language, and deleted "sustained" preceding "traumatic brain injury" at the end of subdivision (2).

§ 143B-216.66. North Carolina Brain Injury Advisory Council — membership; quorum; compensation.

(a) The Council shall consist of 23 voting and 10 ex officio nonvoting members, appointed as follows:

(1) Three members by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, as follows:
   a. A representative of the North Carolina Medical Society or other organization with interest in brain injury prevention or treatment.
   b. A nurse with expertise in trauma, neurosurgery, neuropsychology, physical medicine and rehabilitation, or emergency medicine.
   c. One at-large member who shall be a veteran or family member of a veteran who has suffered a brain injury.

(2) Three members by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, as follows:
   a. One at-large member who may have experience as a school nurse or rehabilitation specialist.
   b. A representative of the North Carolina Hospital Association or other organization interested in brain injury prevention or treatment.
   c. A physician with expertise in trauma, neurosurgery, neuropsychology, physical medicine and rehabilitation, or emergency medicine.

(3) Fourteen members by the Governor, as follows:
   a. Three survivors of brain injury, one each representing the eastern, central, and western regions of the State.
   b. Four family members of persons with brain injury with consideration for geographic representation.
   c. A brain injury service provider in the private sector.
   d. The director of a local management entity of mental health, developmental disabilities, and substance abuse services.
   e. The Executive Director, or designee thereof, of North Carolina Advocates for Justice.
   f. The Executive Director, or designee thereof, of the Brain Injury Association of North Carolina.

g. The Chair of the Board, or designee thereof, of the Brain Injury Association of North Carolina.
h. The Executive Director, or designee thereof, of the North Carolina Protection and Advocacy System.
i. One stroke survivor, as recommended by the American Heart Association.

(4) Nine ex officio members by the Secretary of Health and Human Services, as follows:
a. One member from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
b. One member from the Division of Vocational Rehabilitation.
c. One member from the Council on Developmental Disabilities.
d. One member from the Division of Medical Assistance.
e. Two members from the Division of Health Service Regulation.
f. One member from the Division of Social Services.
g. One member from the Office of Emergency Medical Services.
h. One member from the Division of Public Health.

(5) Two members by the Superintendent of Public Instruction, one of whom is ex officio, nonvoting, and employed with the Division of Exceptional Children.

(6) One member by the Commissioner of Insurance, or the Commissioner's designee.

(7) One member by the Secretary of Administration representing veterans affairs.

(b) The terms of the initial members of the Council shall commence October 1, 2003. In his initial appointments, the Governor shall designate four members who shall serve terms of four years, four members who shall serve terms of three years, and three members who shall serve terms of two years. After the initial appointees' terms have expired, all members shall be appointed for a term of four years. No member appointed by the Governor shall serve more than two successive terms.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Terms for ex officio, nonvoting members do not expire.

(c) The initial chair of the Council shall be designated by the Secretary of the Department of Health and Human Services from the Council members. The chair shall hold this office for not more than four years. Subsequent chairs will be elected by the Council.

(d) The Council shall meet quarterly and at other times at the call of the chair. A majority of voting members of the Council shall constitute a quorum.

(e) Council members shall be reimbursed for expenses incurred in the performance of their duties in accordance with G.S. 138-5 and G.S. 138-6, as applicable.

(f) The Secretary of the Department of Health and Human Services shall provide clerical and other assistance as needed. (2003-114, s. 1; 2007-182, s. 1; 2009-361, s. 3.)

Editor's Note. — Session Laws 2009-361, s. 4, provides: "This act is effective when it becomes law [July 27, 2009]. Each appointment made under G.S. 143B-216.66, as enacted by Section 3 of this act, shall become effective at the expiration of the term of the member serving on the Council prior to the effective date of this act [July 27, 2009]."

Effect of Amendments. — Session Laws 2009-361, s. 3, effective July 27, 2009, in the section heading, deleted "Traumatic" preceding "Brain Injury"; rewrote subdivisions (a)(1)a, (a)(1)c, (a)(2)a, (a)(2)b, (a)(3)f, and (a)(3)g; in subdivision (a)(3), in the introductory language, substituted "Fourteen" for "Eleven"; in subdivision (a)(3)b, substituted "Four" for "Three" at the beginning, and added "with consideration for geographic representation" at the end; in subdivision (a)(3)c, substituted "the private sector" for "private practice"; in subdivision (a)(3)d, substituted "a local management entity" for "an area program or county program"; in subdivision (a)(3)e, substituted "North Carolina Advocates for Justice" for "the North Carolina Academy of Trial Lawyers"; added subdivisions (a)(3)h and (a)(3)i; in subdivision (a)(4), in the introductory language, substituted "Nine ex officio" for "Eight" at the beginning, and "as follows" for "one from each of the following" at the end; in subdivisions (a)(4)a through (a)(4)d, and subdivisions (a)(4)f through (a)(4)h, added "One member from" at the beginning; in subdivision (a)(4)e, added "Two members from the" at the beginning; in subdivision (a)(5), substituted "one of whom is ex officio, nonvoting, and employed with" for "at least one of whom is from"; in subdivision (a)(6), added "or the Commissioner's designee" at the end; in subsection (b), in the last paragraph, added the last sentence; in subsection (c), inserted "initial" in the first sentence, and added the last sentence; and in subsection (d), inserted "voting members of" in the last sentence; and made minor stylistic changes.

§§ 143B-216.67 through 143B-216.69: Reserved for future codification purposes.

Part 34. Office of Policy and Planning.

§ 143B-216.70. Office of Policy and Planning.

(a) To promote coordinated policy development and strategic planning for the State's health and human services systems, the Secretary of Health and Human Services shall establish an Office of Policy and Planning from existing resources across the Department. The Director of the Office of Policy and Planning shall report directly to the Secretary and shall have the following responsibilities:

(1) Coordinate the development of departmental policies, plans, and rules, in consultation with the Divisions of the Department.

(2) Development of a departmental process for the development and implementation of new policies, plans, and rules.

(3) Development of a departmental process for the review of existing policies, plans, and rules to ensure that departmental policies, plans, and rules are relevant.

(4) Coordination and review of all departmental policies before dissemination to ensure that all policies are well-coordinated within and across all programs.

(5) Implementation of ongoing strategic planning that integrates budget, personnel, and resources with the mission and operational goals of the Department.

(6) Review, disseminate, monitor, and evaluate best practice models.

(b) Under the direction of the Secretary of Health and Human Services, the Director of the Office of Policy and Planning shall have the authority to direct Divisions, offices, and programs within the Department to conduct periodic reviews of policies, plans, and rules and shall advise the Secretary when it is determined to be appropriate or necessary to modify, amend, and repeal departmental policies, plans, and rules. All policy and management positions within the Office of Policy and Planning are exempt positions as that term is defined in G.S. 126-5. (2005-276, s. 10.2.)

Editor's Note. — For similar earlier provisions, see Session Laws 2003-284, ss. 10.2(a) and (b) and Session Laws 2001-424, s. 21.14(a).

§§ 143B-216.71, 143B-216.72: Reserved for future codification purposes.

Part 34A. North Carolina Energy Assistance Act for Low-Income Persons.

§§ 143B-216.72A through 143B-216.72C: Recodified as G.S. 143B-472.121 through 143B-472.123 by Session Laws 2009-446, s. 2(a).

Editor's Note. — Session Laws 2009-446, s. 2(a), effective August 7, 2009, recodified Part 34A of Article 3 of Chapter 143B as Part 21 of Article 10 of Chapter 143B, and G.S. 143B-216.72A through 143B-216.72C were recodified as G.S. 143B-472.121 through 143B-472.123, respectively.

§§ 143B-216.73, 143B-216.74: Reserved for future codification purposes.

Part 35. Governor's Commission on Early Childhood Vision Care.

§ 143B-216.75. Governor's Commission on Early Childhood Vision Care.

(a) There is established the Governor's Commission on Early Childhood Vision Care ("Commission"). The Commission shall be located in the Department of Health and Human Services for administrative and budgetary purposes only.

(b) The Commission shall consist of 10 members appointed as follows:

(1) Four optometrists, two ophthalmologists, and one general pediatrician or a family physician who provides services to children, each of whom is licensed to practice in this State, and one school nurse who is certified by the Prevent Blindness North Carolina Board, appointed by the Governor. Among the optometrists and ophthalmologists appointed by the Governor, one shall be a currently serving member of the Prevent Blindness North Carolina Board;

(2) One optometrist licensed to practice in this State appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and

(3) One ophthalmologist licensed to practice in this State appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

The initial members appointed by the General Assembly shall each serve a one-year term. The initial members appointed by the Governor shall each serve a two-year term. Subsequent appointments shall be for three-year terms. Vacancies shall be filled by the original appointing authority.

(c) The Commission shall adopt rules to implement and administer the Governor's Vision Care Program established under this section. The rules shall address:

(1) Accepting and processing of applications by families for Program services.

(2) Establishment and verification of applicant income eligibility.

(3) Reimbursement to providers for services provided to eligible participants.

(4) Informing providers and the general public about the Program.

(5) Other duties necessary to implement the purposes and requirements of this section, including the development of a comprehensive eye examination transmittal form required under G.S. 130A-440.1.

The Commission shall develop alternative ways for providing services to children who qualify for the Program when funding for Program services has been exhausted.

The Commission shall prepare written information for providers conducting vision screening. The written information shall state, in effect: "Vision screening is not a substitute for a comprehensive eye examination." The Commission shall provide copies of this information to providers so that the provider may give a copy to the parent, guardian, or person standing in loco parentis.

(d) Commission members who are officials or employees of the State or local government agencies shall be paid per diem, subsistence, and travel expenses in accordance with G.S. 138-6. All other Commission members shall be paid in accordance with G.S. 138-5.

(e) The Chair of the Commission shall be an ophthalmologist or optometrist appointed by the Governor to serve alternately from year to year. The Commission shall meet upon the call of the Chair. A majority of the Commission members shall constitute a quorum. The Department of Health and Human Services shall provide meeting space and staff to assist the Commission. (2005-276, s. 10.59F(d); 2005-345, s. 20(d); 2006-240, s. 2(a).)

Governor's Vision Program Established. — Session Laws 2005-276, ss. 10.59F(a)-(c), as amended by Session Laws 2005-345, ss. 20(a) and (b), and as amended by Session Laws 2006-240, s. 2(d), provide: "(a) Program established. — There is established in the Department of Health and Human Services, Division of Public Health, the Governor's Vision Care Program. The purpose of the Program is to provide funds for early detection and correction of vision problems in children enrolling or enrolled in grades K through 3 who are eligible for services under the Program. These funds shall be allocated to reimburse optometrists and ophthalmologists licensed to practice in this State for the comprehensive eye examination, including necessary spectacles, provided to meet the requirements of G.S. 130A-440.1.

"(b) Repealed by Session Laws 2006-240, s. 2(d).

"(c) For the purposes of this section, 'comprehensive eye examination' means a complete and thorough examination of the eye and human visual system that includes an evaluation, determination, and diagnosis of:

"(1) Visual acuity at distance and near;

"(2) Alignment and ocular motility;

"(3) Binocular fusion abnormalities, including tracking;

"(4) Actual refractive errors, including verification by subject means;

"(5) Any color vision disorder;

"(6) Intraocular pressure as may be medically appropriate; and

"(7) Ocular health, including internal and external assessment.

"Routine screening that does not encompass all of the examination components listed in this subsection does not qualify for reimbursement from the Program."

Editor's Note. — Session Laws 2005-276, s. 10.59F(d), enacted this Part as Part 34, and this section as G.S. 143B-216.67. It has been renumbered as this Part 35 and as G.S. 143B-216.75 at the direction of the Revisor of Statutes.

Session Laws 2005-276, s. 10.59F(f), as amended by Session Laws 2005-345, s. 20(c), provides: "Not later than January 15, 2006, the Department of Health and Human Services shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the implementation of this section."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-240, s. 2(b) and (c), provide: "(b) The Governor's Commission on Early Childhood Vision Care shall work with the Department of Public Instruction to establish procedures for identifying and referring children who need vision screening or a comprehensive eye examination as required by G.S. 143B-216.75.

"(c) The Department of Health and Human Services, Division of Public Health, shall study and determine the methodology of compiling data on the number of children who received comprehensive eye examinations, the types of problems found, and treatments provided, and shall report its findings to the Governor's Commission on Early Childhood Vision Care, the Joint Legislative Health Care Oversight Committee, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than July 1, 2007."

Session Laws 2006-240, s. 5, provides: "The Governor's Commission on Early Childhood Vision Care may adopt temporary rules in accordance with G.S. 150B-21.1 to implement this act."

ARTICLE 4.

Department of Revenue.

Part 1. General Provisions.

§ 143B-217. Department of Revenue — creation.

There is hereby recreated and reestablished a department to be known as the "Department of Revenue" with the organization, duties, functions, and powers defined in the Executive Organization Act of 1973. (1973, c. 476, s. 184.)

Pilot Program to Allow Public-Private Partnerships to Meet Department of Revenue Technology Needs. — Session Laws 2009-451, s. 6.20(a)-(e), provides: "(a) To speed the implementation of the Tax Information Management System (TIMS) and the additional components of the Planning and Design Project (PDP) during the 2009-2011 fiscal biennium, the Secretary of the Department of Revenue may enter into public-private arrangements where (i) the funding of project under the arrangement comes from revenue generated by the project and (ii) the project is related to the implementation of TIMS and additional components of the PDP. As used in this section, the 'additional components of the PDP' are Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services.

"Work under a public-private arrangement may be contracted by requests for proposals, modifications to existing contracts, and purchases using existing contract vehicles.

"The Secretary of Revenue shall establish a measurement process to determine the increased revenue attributable to the public-private arrangements. To accomplish this, the Secretary shall consult subject matter experts outside the Department of Revenue, both within State government and from private industry. The measurement process shall include:

"(1) Calculation of a revenue baseline against which the increased revenue attributable to the project is measured;

"(2) Periodic evaluation to determine if the baseline needs to be modified based on significant measurable changes in the economic environment; and

"(3) Monthly calculation of increased revenue attributable to contracts executed under this program.

"Of funds generated from collections above the baseline established by subdivision (1) of this subsection, in both the General and Highway Funds, up to forty-one million dollars ($41,000,000) may be authorized by the Office of State Budget and Management (i) for the purchases related to the implementation of TIMS and the additional components of the PDP, including payment for services from non-State entities and (ii) toward internal State costs related to the implementation of TIMS and PDP components. The total of any funds expended during the 2009-2011 biennium for implementation of TIMS and the additional PDP components shall not exceed the sum of forty-one million dollars ($41,000,000).

"If the Department of Revenue finds that it cannot generate additional benefits totaling forty-one million dollars ($41,000,000) in the 2009-2011 biennium, the Department shall immediately notify the Chairs of the House of Representatives and Senate Appropriations Committees and Fiscal Research Division, identify any obligations to vendors, identify options for meeting obligations to vendors, and provide costs associated with each option. The Department shall ensure that this notification is made in sufficient time to allow the General Assembly to properly evaluate the options presented.

"(b) Notwithstanding G.S. 114-2.3, the Department of Revenue shall engage the services of private counsel with the pertinent information technology and computer law expertise to review requests for proposals, and to negotiate and review contracts associated with TIMS and the additional components of the Planning and Design Project (PDP) (Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services).

"(c) There is established within the Department of Revenue the Oversight Committee for reviewing and approving the benefits measurement methodology and calculation process. The Oversight Committee shall review and approve all contracts executed under this section. This shall include (i) details of each public-private contract, (ii) the benefits from each contract, and (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including the measurement process established for the Secretary of Revenue. The Oversight Committee shall approve all of the fund transfers for this project.

"The members of the Committee shall include the following:

"(1) The State Budget Director;

"(2) The Secretary of the Department of Revenue;

"(3) The State Chief Information Officer;

"(4) Two persons appointed by the Governor;

"(5) One member of the general public having expertise in information technology appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and

"(6) One member of the general public having expertise in economic and revenue forecasting appointed by the General Assembly upon recommendation of the President Pro-Tempore of the Senate.

"The State Budget Director shall serve as chair of the Committee. The Committee shall set its meeting schedule and adopt its rules of operation by majority vote. A majority of the members constitutes a quorum. Vacancies shall be filled by the appointing authority. Administrative support staff shall be provided by the Department of Revenue. Members of the Committee shall receive reimbursements for subsistence and travel expenses as provided by Chapter 138 of the General Statutes. The Committee shall terminate on June 30, 2011.

"(d) Beginning October 1, 2009 and quarterly thereafter, the Department of Revenue shall submit reports to the Chairs of the House of Representatives and Senate Committees on Appropriation, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office. The report shall include (i) details of each public-private contract, (ii) the benefits from each contract, (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including cost savings and the acceleration of the project timeline, (iv) and any issues associated with the operation of the public-private partnership. Within 60 days of implementing the public-private partnership, the Department of Revenue shall provide to the Chairs of the House of Representatives and Senate Appropriations Committees, and Fiscal Research Division, a schedule for vendor payments that identifies sources and amounts of funding anticipated as a result of the project's implementation.

"(e) In addition to the oversight provided by the Oversight Committee established in subsection (c) of this section, the TIMS project shall be subject to existing Information Technology project oversight legislation, including, but not limited to, G.S. 147-33.72C and G.S. 147-33.72E."

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143B-218. Department of Revenue — duties.

It shall be the duty of the Department to collect and account for the State's tax funds, to insure uniformity of administration of the tax laws and regulations, to conduct research on revenue matters, and to exercise general and specific supervision over the valuation and taxation of property throughout the State. (1973, c. 476, s. 185; 1981, c. 859, s. 81; c. 1127, s. 53.)

§ 143B-218.1: Recodified as G.S. 105-256(a)(6) by Session Laws 2001-414, s. 25, effective September 14, 2001.

§ 143B-219. Department of Revenue — functions.

(a) The functions of the Department of Revenue shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all executive functions of the State in relation to revenue collection, tax research, tax settlement, and property tax supervision including those prescribed powers, duties and functions enumerated in Article 16 of Chapter 143A of the General Statutes of this State.

(b) All functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 16 of Chapter 143A of the General Statutes are hereby transferred to and vested in the Department of Revenue, except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

(1) The Commissioner and Department of Revenue,
(2) The Department of Tax Research, and
(3) The State Board of Assessment. (1973, c. 476, s. 186; 1981, c. 859, s. 82; c. 1127, s. 53.)

Editor's Note. — Article 16 of Chapter 143A, referred to in this section, has been repealed. For present provisions as to the Department of Revenue, see G.S. 143B-217 et seq.

CASE NOTES

Among the duties and obligations of the Secretary of Revenue is responsibility for all executive functions relative to revenue collection. Bailey v. State, 330 N.C. 227, 412 S.E.2d 295 (1991), cert. denied, 504 U.S. 911, 112 S. Ct. 1942, 118 L. Ed. 2d 547 (1992), overruled on other grounds, 348 N.C. 130, 500 S.E.2d 54 (1998).

§ 143B-220. Department of Revenue — head.

The Secretary of Revenue shall be the head of the Department. (1973, c. 476, s. 187.)

§ 143B-221: Repealed by Session Laws 2001-414, s. 47, effective September 14, 2001.

Part 2. Property Tax Commission.

§§ 143B-222 through 143B-225: Repealed by Session Laws 1991, c. 110, s. 3.

Cross References. — As to the Property Tax Commission, see now G.S. 105-288.

§§ 143B-226 through 143B-245: Reserved for future codification purposes.

Article 5.

Department of Military and Veterans Affairs.

Part 1. General Provisions.

§§ 143B-246 through 143B-251: Repealed by Session Laws 1977, c. 70, s. 33.

Cross References. — As to transfer of the Division of Veterans Affairs of the Department of Military and Veterans Affairs to the Department of Administration, see G.S. 143A-96.1.

Part 2. Veterans Affairs Commission.

§§ 143B-252, 143B-253: Transferred to §§ 143B-399, 143B-400 by Session Laws 1977, c. 70, ss. 24, 25.

Part 3. Energy Division.

§§ 143B-254, 143B-255: Repealed by Session Laws 1977, c. 23, s. 3.

Cross References. — As to reporting and data collection regarding stocks of coal and petroleum fuels, see G.S. 143-345.13 et seq.

§§ 143B-256 through 143B-259: Reserved for future codification purposes.

Article 6.

Department of Correction.

Part 1. General Provisions.

§ 143B-260. Department of Correction — creation.

There is hereby created and established a department to be known as the Department of Correction with the organization, powers, and duties hereafter defined in the Executive Organization Act of 1973. (1973, c. 1262, s. 2.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 20.1, provides: "In conjunction with the closing of small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located or any private for-profit or nonprofit firm about the possibility of converting that unit to other use. Consistent with existing law, the Department may provide for the lease of any of these units to counties, municipalities, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from medium security to minimum security, where that conversion would be cost-effective.

"The Department of Correction shall report quarterly to the Joint Legislative Corrections Oversight Committee on the conversion of these units to other use."

CASE NOTES

Suits Against Department. — The State Prison Department (now Department of Correction) was created as the State's agency for the performance of an essentially governmental function, and a suit against the Department eo nomine is essentially a suit against the State. Hence, absent constitutional or legislative authority therefor, one cannot maintain such a suit. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960), decided under former § 148-1.

Applied in Hamilton v. Freeman, 147 N.C. App. 195, 554 S.E.2d 856, 2001 N.C. App. LEXIS 1147 (2001).

§ 143B-261. Department of Correction — duties.

It shall be the duty of the Department to provide the necessary custody, supervision, and treatment to control and rehabilitate criminal offenders and thereby to reduce the rate and cost of crime and delinquency. (1973, c. 1262, s. 3; 1999-423, s. 7.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.10 provides the Departments of Transportation and Correction shall report, quarterly beginning October 1, 1994, to the Joint Legislative Transportation Oversight Committee on the implementation of the recommendations of the Inmate Labor Subcommittee.

CASE NOTES

Secretary Immune from Suit. — The Secretary of the Department of Correction is a public official, and is immune from suit for allegedly negligent acts committed within the scope of his or her authority. Harwood v. Johnson, 92 N.C. App. 306, 374 S.E.2d 401 (1988), aff'd in part and rev'd in part, 326 N.C. 231, 388 S.E.2d 439 (1990).

Cited in Harwood v. Johnson, 326 N.C. 231, 388 S.E.2d 439 (1990).

§ 143B-261.1. Department of Correction — rules and regulations.

The Department of Correction shall adopt rules and regulations related to the conduct, supervision, rights and privileges of persons in its custody or under its supervision. Such rules and regulations shall be filed with and published by the office of the Attorney General and shall be made available by the Department for public inspection. The rules and regulations shall include a description of the organization of the Department. A description or copy of all forms and instructions used by the Department, except those relating solely to matters of internal management, shall also be filed with the office of the Attorney General. (1975, c. 721, s. 2.)

CASE NOTES

Rights and privileges of mental health patients who are in the custody of the Department of Correction are determined by the rules and regulations adopted by the Department of Correction pursuant to this section. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412 (1982).

With respect to the rights of prisoners receiving care in facilities operated by the Department of Human Resources, this section and the regulations adopted pursuant thereto would apply, rather than former G.S. 122-36 and 122-55.2(d), as they do to those prisoners who remain in prison for their mental health care. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412 (1982).

§ 143B-261.2. Repair or replacement of personal property.

(a) The Secretary of Correction may adopt rules governing repair or replacement of personal property items excluding private passenger vehicles that belong to employees of State facilities within the Department of Correction and that are damaged or stolen by inmates of the State facilities provided that the item is determined by the Secretary to be damaged or stolen on or off facility grounds during the performance of employment and necessary for the employee to have in his possession to perform his assigned duty.

(b) Reimbursement for items damaged or stolen shall not be granted in instances in which the employee is determined to be negligent or otherwise at fault for the damage or loss of the property. Negligence shall be determined by the superintendent of the facility.

(c) The superintendent of the facility shall determine if the person seeking reimbursement has made a good faith effort to recover the loss from all other non-State sources and has failed before reimbursement is granted.

(d) Reimbursement shall be limited to the amount specified in the rules and shall not exceed a maximum of two hundred dollars ($200.00) per incident. No employee shall receive more than five hundred dollars ($500.00) per year in reimbursement. Reimbursement is subject to the availability of funds.

(e) The Secretary of Correction shall establish by rule an appeals process consistent with Chapter 150B of the General Statutes. (1987, c. 639, s. 1; 1989, c. 189, s. 2.)

§ 143B-262. Department of Correction — functions.

(a) The functions of the Department of Correction shall comprise except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina all functions of the executive branch of the State in relation to corrections and the rehabilitation of adult offenders, including detention, parole, and aftercare supervision, and further including those prescribed powers, duties, and functions enumerated in Article 14 of Chapter 143A of the General Statutes and other laws of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in the Department of Social Rehabilitation and Control and any agency enumerated in Article 14 of Chapter 143A of the General Statutes and laws of this State are hereby transferred to and vested in the Department of Correction except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

(1) The State Department of Correction and Commission of Correction,
(2) Repealed by Session Laws 1999-423, s. 8, effective July 1, 1999.
(3) The State Probation Commission,
(4) The State Board of Paroles,
(5) The Interstate Agreement on Detainers, and
(6) The Uniform Act for Out-of-State Parolee Supervision.

(c) The Division of Community Corrections of the Department shall establish rules for intensive supervision consistent with the requirements specified in G.S. 15A-1340.11(5).

(d) The Department shall establish a Substance Abuse Program. This Program shall include an intensive term of inpatient treatment, normally four to six weeks, for alcohol or drug addiction in independent, residential facilities for approximately 100 offenders per facility.

(e) The Department, in consultation with the Domestic Violence Commission, and in accordance with established best practices, shall establish a domestic violence treatment program for offenders sentenced to a term of imprisonment in the custody of the Department and whose official record includes a finding by the court that the offender committed acts of domestic violence.

The Department shall ensure that inmates, whose record includes a finding by the court that the offender committed acts of domestic violence, complete a domestic violence treatment program prior to the completion of the period of incarceration, unless other requirements, deemed critical by the Department, prevent program completion. In the event an inmate does not complete the program during the period of incarceration, the Department shall document, in the inmate's official record, specific reasons why that particular inmate did not or was not able to complete the program. (1973, c. 1262, s. 4; 1983, c. 682, s. 1; 1987, c. 479; c. 738, s. 111(a); 1989 (Reg. Sess., 1990), c. 994; 1997-57, s. 1; 1999-423, s. 8; 2001-487, s. 47(f); 2004-186, s. 1.2; 2009-372, s. 6.)

Cross References. — As to department of corrections authority to establish regulations for continuous alcohol monitoring systems, see G.S. 15A-1343.3.

Editor's Note. — Session Laws 1987, c. 738, s. 111(c) provided: "The Substance Abuse Program established by subsection (a) of this section shall be offered in a medium custody facility, or a portion of a medium custody facility that is self-contained, so that the residential and program space is separate from any other programs or inmate housing, and shall be operational by January 1, 1988, at such unit as the Secretary may designate."

Section 111(c) of Session Laws 1987, c. 738, also provided, inter alia:

"Admission priorities shall be established as follows:

"(1) Court recommendation.
"(2) Evaluation and referral from reception and diagnostic centers.
"(3) General staff referral.
"(4) Self-referral.

"The Program shall include extensive follow-up after the period of intensive treatment. There will be specific plans for each departing inmate for follow-up, including active involvement with Alcoholics Anonymous, community resources, and personal sponsorship."

Article 14 of Chapter 143A, referred to in this section, was repealed by Session Laws 1973, c. 1262, s. 10. The same 1973 act enacted this Article.

Session Laws 2005-276, s. 17.7, as amended by Session Laws 2006-66, s. 16.2, provides: "The Department of Correction may convert contract medical positions to permanent State medical positions if the Department can document in each request submitted to the Office of State Budget and Management that the total savings generated will exceed the total cost of the new positions.

"The Department of Correction shall report by April of each year to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on all conversions made pursuant to this section, by type of position and location, and on the savings generated."

Session Laws 2009-372, s. 19 is a severability clause.

Effect of Amendments. — Session Laws 2009-372, s. 6, effective December 1, 2009, and applicable to offenses committed on or after that date, rewrote subsection (c).

§ 143B-262.1. Department of Correction — Substance Abuse Program.

(a) The Substance Abuse Program established by subsection (d) of § 143B-262 shall be offered in a correctional facility, or a portion of a correctional facility that is self-contained, so that the residential and program space is separate from any other programs or inmate housing, and shall be operational by January 1, 1988, at such unit as the Secretary may designate.

(b) An Assistant Secretary for Substance Abuse shall be employed and shall report directly to the Office of the Secretary of Correction. The duties of the Assistant Secretary shall include the following:

(1) Administer and coordinate all substance abuse programs, grants, contracts, and related functions in the Department of Correction;
(2) Develop and maintain working relationships and agreements with agencies and organizations that will assist in developing and operating a Substance Abuse Program in the Department of Correction;

(3) Develop and coordinate the use of volunteers in the Substance Abuse Program;
(4) Develop and present training programs related to substance abuse for employees and others at all levels in the agency;
(5) Develop programs that provide effective treatment for inmates, probationers, and parolees with substance abuse problems;
(6) Maintain contact with key leaders in the substance abuse field and active supporters of the Correction Program;
(7) Supervise directly the directors of treatment units, specialized personnel, and programs that exist or may be developed in the Department of Correction; and
(8) Develop employee assistance programs for employees with substance abuse problems.

(c), (d) Repealed by Session Laws 2002-126, s. 17.7, effective July 1, 2002.

(e) In the unit there shall be a unit superintendent under the Division of Prisons and other custodial, administrative, and support staff as required for a medium custody facility for approximately 100 inmates. The unit superintendent shall be responsible for all matters pertaining to custody and administration of the unit. The Assistant Secretary shall designate an employee to administer the inpatient treatment program under the direction of the Assistant Secretary for Substance Abuse.

(f) Extensive use may be made of inmates working in the role of ancillary staff, peer counselors, role models, or group leaders as the program manager determines. Additional resource people who may be required for specialized treatment activities, presentations, or group work may be employed on a fee or contractual basis.

(g) Repealed by Session Laws 2002-126, s. 17.7, effective July 1, 2002.

(h) Admission priorities shall be established as follows:
(1) Repealed by Session Laws 2003-141, s. 3, effective December 1, 2003, and applicable to offenses committed on or after that date.
(2) Evaluation and referral from reception and diagnostic centers.
(3) General staff referral.
(4) Self-referral.

(i) The Program shall include extensive follow-up after the period of intensive treatment. There will be specific plans for each departing inmate for follow-up, including active involvement with Alcoholics Anonymous, community resources, and personal sponsorship. (1987, c. 738, s. 111(c); 1987 (Reg. Sess., 1988), c. 1086, s. 126.1(a); 2002-126, s. 17.7; 2003-141, s. 3.)

§ 143B-262.2. Pilot program on sexual assault.

(a) The Department of Correction shall establish pilot programs on sexual assault for inmates at three units of the State prison system. The Department shall select units with greater than average levels of inmate violence for participation in these pilot programs.

(b) Each pilot program shall operate as follows:
(1) The Department shall provide, as part of every inmate's orientation, a program on sexual assault, with a goal to complete that program within seven days of commitment to the Department of Correction. The program shall provide inmates with at least the following information:
  a. An accurate presentation pertaining to sexual assault violence;
  b. Information on preventing and reducing the risk of sexual assault;
  c. Information on available counseling for victims of sexual assault; and
  d. The procedure for victims of sexual assault to request counseling.

(2) The department shall provide sexual assault counseling on-site at the prison unit to any prisoner requesting it. Counselors shall be granted reasonable access to Department of Correction institutions and prisoners for the purpose of providing confidential sexual assault counseling.

(3) Unless the Director of the Division of Prisons finds a particular item to be unsuitable, the Department shall allow the distribution of materials on sexual assault and rape trauma syndrome developed or sponsored by community rape crisis centers or nonprofit organizations with expertise in sexual assault. Any such material provided to a correctional institution shall be made available to inmates in places where they may make use of them privately and without attracting undue attention, such as in the library, law library, medical clinic, recreation hall, mental health offices, and educational lobby areas.

(4) The Department shall post notices of the availability of any community-based rape crisis counselors who are willing to provide confidential counseling. Communications between prisoners and rape crisis counselors are confidential. The Department shall cooperate with community rape crisis centers seeking to identify and provide counseling to former inmates who were the victims of sexual assault.

(5) The Department shall collect statistical data of all known, reported, or suspected incidents of sexual aggression or sexually motivated violence occurring at units participating in the pilot programs. The Department shall compile this data on a quarterly and annual basis.

(6) The Department shall develop and implement employee training on the identification and prevention of sexual assault among inmates, in coordination with the Department's employee basic training program. The training shall be provided to new employees at orientation and shall also be part of annual employee training.

(7) The Department shall evaluate and classify each prisoner with respect to the probable risk of sexual assault. When feasible, incoming inmates shall be handled separately until this classification is made. The classification shall be prominently displayed in the inmate's confidential file, and the Department shall consider the prisoner's classification when making housing assignments.

(8) The Department shall also rate prisoners as potential sexual assault offenders based upon (i) criminal history; (ii) incidents occurring during confinement; and (iii) reports of incidents that the Department determines to be credible. The Department shall take the prisoners' potential for sexual assault into consideration when making housing assignments.

(9) The Department shall ensure that prisoners rated vulnerable or highly vulnerable to sexual assault and prisoners rated as potential assaulters are not housed in the same cell or room holding four or fewer inmates or placed in the showers at the same time to the extent that it is practicable. Any exceptions to this policy shall be reported to the Secretary within three days. (1997-288, ss. 1, 2.)

§ 143B-262.3. Reports to the General Assembly.

(a) The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees in Justice and Public Safety on their efforts to provide effective treatment to offenders with substance abuse problems. The report shall include:

(1) Details of any new initiatives and expansions or reduction of programs;

(2) Details on any treatment efforts conducted in conjunction with other departments;

(3) Utilization of the DART/DWI program;

(4), (5) Repealed by Session Laws 2007-323, s. 17.3(a), effective July 1, 2007.

(6) Statistical information on the number of current inmates with substance abuse problems that require treatment, the number of treatment slots, the number who have completed treatment, and a comparison of available treatment slots to actual utilization rates. The report shall include this information for each DOC funded program; and

(7) Evaluation of each substance abuse treatment program funded by the Department of Correction. Evaluation measures shall include reduction in alcohol and drug dependency, improvements in disciplinary and infraction rates, recidivism (defined as return-to-prison rates), and other measures of the programs' success.

(b) Repealed by Session Laws 2007-323, s. 17.3(a), effective July 1, 2007. (1998-212, s. 17.12(d); 2003-284, s. 16.19; 2007-323, s. 17.3(a).)

Cross References. — As to reports on vacant positions in the Judicial Department and three other departments, see G.S. 120-12.1.

Federal Grant Reporting. — Session Laws 2009-451, s. 19.2, provides: "The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant."

For prior similar provisions, see Session Laws 2003-284, s. 16.1, Session Laws 2005-276, s. 17.1 and, Session Laws 2007-323, s. 17.5.

Pilot Programs to Determine Cost-Effectiveness of Placing All Inmates On Work Release. — Session Laws 1998-212, s. 17.25, as amended by Session Laws 1999-237, s. 18.17, provides: "(b) The Department of Correction shall establish a pilot program for determining the benefits of work-release prison units by placing all eligible inmates in the Union Correctional Center, except those needed for Department of Transportation road squads, on work release to the extent possible. The Department shall provide a progress report on this pilot program to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by June 30, 2000. The Department shall provide a final report to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by March 1, 2001, on the cost-effectiveness of the program."

Report on Probation and Parole Caseloads. — Session Laws 2009-451, s. 19.12(a)-(c), provides: "(a) The Department of Correction shall report by March 1 of each year to the chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on caseload averages for probation and parole officers. The report shall include:

"(1) Data on current caseload averages and district averages for probation/parole officer positions;

"(2) Data on current span of control for chief probation officers;

"(3) An analysis of the optimal caseloads for these officer classifications;

"(4) An assessment of the role of surveillance officers;

"(5) The number and role of paraprofessionals in supervising low-risk caseloads;

"(6) An update on the Department's implementation of the recommendations contained in the National Institute of Correction study conducted on the Division of Community Corrections in 2004 and 2008;

"(7) The process of assigning offenders to an appropriate supervision level based on a risk assessment and an examination of other existing resources for assessment and case planning, including the Sentencing Services Program in the Office of Indigent Defense Services and the range of screening and assessment services provided by the Division of Mental Health, Developmental Disability, and Substance Abuse Services in the Department of Health and Human Services; and

"(8) Data on cases supervised solely for the collection of court-ordered payments.

"(b) The Department of Correction shall conduct a study of probation/parole officer workload. The study shall include analysis of the type of offenders supervised, the distribution of the probation/parole officers' time by type of activity, the caseload carried by the officers, and comparisons to practices in other states. The study shall be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of the offenders supervised and the time required to supervise those offenders.

"(c) The Department of Correction shall report the results of the study and recommendations for any adjustments to caseload goals to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by January 1, 2011."

For prior similar provisions, see Session Laws 2003-284, s. 16.18(a)-(c), Session Laws 2005-276, s. 17.20(a)-(c), and Session Laws 2007-323, s. 17.16(a)-(c), as amended by Session Laws 2008-107, s. 17.4.

Session Laws 2009-451, s. 19.12(d), provides: "The Department of Correction shall report by March 1 of each year to the Chairs of the House and Senate Appropriations Committees, the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the following:

"(1) The number of sex offenders enrolled on active and passive GPS monitoring.

"(2) The caseloads of probation officers assigned to GPS-monitored sex offenders.

"(3) The number of violations.

"(4) The number of absconders.

"(5) The projected number of offenders to be enrolled by the end of the 2009-2010 fiscal year and the end of the 2010-2011 fiscal year.

"(6) The total cost of the program, including a per-offender cost."

For prior similar provisions, see Session Laws 2007-323, s. 17.14.

Community Service Work Program. — Session Laws 2005-276, s. 17.21 provides: "The Department of Correction shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1 of each year on the integration of the Community Service Work Program into the Division of Community Corrections, including the Department's ability to monitor the collection of offender payments from unsupervised offenders sentenced to community service. The Department shall also report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1 of each year on the average caseloads of Community Service Work Program coordinators, by district, division, and statewide. The report shall also include the money collected, the type and value of the work performed, and the number of offenders in the Community Service Work Program, by type of referral (i.e. parole, supervised probation, unsupervised probation or community punishment, DWI, or any other agency referrals)."

Session Laws 2007-323, s. 17.17, provides: "The Department of Correction shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by February 1 of each year on the integration of the Community Service Work Program into the Division of Community Corrections, including the Department's ability to monitor the collection of offender payments from unsupervised offenders sentenced to community service. The Department shall also report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by February 1 of each year on the average caseloads of Community Service Work Program coordinators, by district, division, and statewide. The report shall also include the money collected, the type and value of the work performed, and the number of offenders in the Community Service Work Program, by type of referral (i.e. parole, supervised probation, unsupervised probation or community punishment, DWI, or any other agency referrals)."

Mutual Agreement Parole Program. — Session Laws 2009-451, s. 19.8(d), provides: "The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates enrolled in the mutual agreement parole program, the number completing the program and being paroled, and the number who enrolled but were terminated from the program. The information should be based on the previous calendar year."

For prior similar provisions, see Session Laws 2007-323, s. 17.1.

Editor's Note. — The former text of this section was designated as subsection (a), and the second and third sentences of Session Laws 2003-284, s. 16.19, were codified as subsection (b) at the direction of the Revisor of Statutes. In the section catchline, "Reports" was substituted for "Report" at the direction of the Revisor of Statutes.

Session Laws 1998-212, s. 17.12(d) was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1998-212, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations and Capital Improvement Appropriations Act of 1998'."

Session Laws 1998-212, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1998-99 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1998-99 fiscal year."

Session Laws 1998-212, s. 30.5, contains a severability clause.

Session Laws 1999-237, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvement Appropriations Act of 1999'."

Session Laws 1999-237, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium."

Session Laws 1999-237, s. 30.4, contains a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-323, s. 17.3(b), provides: "During the 2007-2009 fiscal biennium, the Department of Correction evaluation effort shall focus mainly on evaluation of the long-term residential programs operated by the Department of Correction through private contract and those operated directly by the Department of Correction. The evaluation component of the March 1, 2008, annual report shall be primarily a status report and provide only preliminary information on the evaluation of the residential program. The final evaluation report shall be included in the March 1, 2009, annual report."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 19.8(e), provides: "The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates proposed for release, considered for release, and granted release under Chapter 84B of Chapter 15A of the General Statutes, providing for the medical release of inmates who are either permanently and totally disabled, terminally ill, or geriatric."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143B-262.4. Community service program.

(a) The Department of Correction may conduct a community service program. The program shall provide oversight of offenders placed under the supervision of the Division of Community Corrections and ordered to perform community service hours for criminal violations, including driving while impaired violations under G.S. 20-138.1. This program shall assign offenders, either on supervised or on unsupervised probation, to perform service to the local community in an effort to promote the offender's rehabilitation and to provide services that help restore or improve the community. The program shall provide appropriate work site placement for offenders ordered to perform community service hours. The Department may adopt rules to conduct the program. Each offender shall be required to comply with the rules adopted for the program.

(a1) The Secretary of Correction may assign one or more employees to each district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's compliance with the requirements of the program. Each county shall provide office space in the courthouse or other convenient place, for the use of the employees assigned to that county.

(b) A fee of two hundred twenty-five dollars ($225.00) shall be paid by all persons who participate in the program or receive services from the program staff. Only one fee may be assessed for each sentencing transaction, even if the person is assigned to the program on more than one occasion, or while on deferred prosecution, or while serving a sentence for the offense. A sentencing transaction shall include all offenses considered and adjudicated during the same term of court. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which the person is convicted, regardless of whether the person is participating in the program as a condition of probation imposed by the court or pursuant to the exercise of authority delegated to the probation officer pursuant to G.S. 15A-1343.2(e) or (f). If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. If the person is participating in the program as a condition of parole, the fee shall be paid to the clerk of the county in which the person is released on parole. Persons participating in the program for any other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full before the person may participate in the community service program, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before the person pays the fee by the court in which the person is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin community service before the fee is paid by the official or agency representing the State in the agreement.

(3) A person performing community service as a condition of parole may be given an extension of time to pay the fee by the Post-Release Supervision and Parole Commission. No person shall be required to pay the fee before beginning the community service unless the Commission orders the person to do so in writing.

(4) A person performing community service as ordered by a probation officer pursuant to authority delegated by G.S. 15A-1343.2 may be given an extension of time to pay the fee by the probation officer exercising the delegated authority.

(c) Repealed by Session Laws 2009-372, s. 17, effective December 1, 2009, and applicable to offenses committed on or after that date.

(d) A person is not liable for damages for any injury or loss sustained by an individual performing community or reparation service under this section unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, "person" includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is supervising the individual, or for whom the individual is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of the person's employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection shall be furnished to the individual at the time of assignment of community service work by the judicial service coordinator.

(e) Repealed by Session Laws 2009-372, s. 17, effective December 1, 2009, and applicable to offenses committed on or after that date.

(f) The community service staff shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community service, including a willful failure to pay any moneys due the State under any court order or payment schedule adopted by the Division of Community Corrections. The community service staff shall give notice of the hearing to determine if there is a willful failure to comply to the person who was ordered to perform the community service. This notice shall be given by either personal delivery to the person to be notified or by depositing the notice in the United States mail in an envelope with postage prepaid, addressed to the person at the last known address available to the preparer of the notice and reasonably believed to provide actual notice to the person. The notice shall be mailed at least 10 days prior to any hearing and shall state the basis of the alleged willful failure to comply. The court shall then conduct a hearing, even if the person ordered to perform the community service fails to appear, to determine if there is a willful failure to complete the work as ordered by the community service staff within the applicable time limits. The hearing may be held in the county in which the probation judgment or deferred prosecution requiring the performance of community service was imposed, the county in which the violation occurred, or the county of residence of the person. If the court determines there is a willful failure to comply, it shall revoke any drivers license issued to the person and notify the Division of Motor Vehicles to revoke any drivers license issued to the person until the community service requirement has been met. In addition, if the person is present, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation. (1983 (Reg. Sess., 1984), c. 1034, s. 102; 1985, c. 451; 1985 (Reg. Sess., 1986), c. 1012, s. 4; 1987 (Reg. Sess., 1988), c. 1037, s. 118; 1989, c. 752, s. 109; 1995, c. 330, s. 2; c. 507, s. 20(a); 1997-234, s. 2; 1998-217, s. 34; 2001-487, ss. 91(a), (b); 2002-126, s. 29A.1(c); 2009-372, s. 17; 2009-411, s. 2; 2009-451, s. 19.26(c), (e); 2009-575, s. 16A.)

Editor's Note. — This section was formerly G.S. 143B-475.1. It was recodified by Session Laws 2001-487, s. 91(a), effective December 16, 2001.

Session Laws 2009-372, s. 19 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-372, s. 17, as amended by Session Laws 2009-451, s. 19.26(e), effective December 1, 2009, and applicable to offenses committed on or after that date, rewrote the section.

Session Laws 2009-411, s. 2, effective December 1, 2009, substituted "last known address available to the preparer of the notice and reasonably believed to provide actual notice to the person" for "address shown on the records of the community service staff" at the end of the third sentence in subsection (f).

Session Laws 2009-451, s. 19.26(c), as amended by Session Laws 2009-575, s. 16A, effective September 1, 2009, and applicable to persons ordered to perform community service on or after that date, substituted "two hundred twenty-five dollars ($225.00)" for "two hundred dollars ($200.00)" in the first sentence of the introductory language of subsection (b).

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 417(1998).

§ 143B-262.5. Security Staffing.

(a) The Department of Correction shall conduct:

(1) On-site postaudits of every prison at least once every three years;

(2) Regular audits of postaudit charts through the automated postaudit system; and

(3) Other staffing audits as necessary.

(b) The Department of Correction shall update the security staffing relief formula at least every three years. Each update shall include a review of all annual training requirements for security staff to determine which of these requirements should be mandatory and the appropriate frequency of the training. The Department shall survey other states to determine which states use a vacancy factor in their staffing relief formulas. (2002-126, s. 17.5(a), (b); 2005-276, s. 17.4(a).)

Editor's Note. — Session Laws 2002-126, s. 17.5(a) and (b), effective July 1, 2002, were codified as subsections (a) and (b) of this section, respectively, at the direction of the Revisor of Statutes.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s, 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2003-284, s. 16.4(a)-(c), as amended by Session Laws 2004-124, s. 17.2, provides: "(a) The Department of Correction shall conduct annual security staffing postaudits of each prison.

"(b) The Department of Correction shall annually update the security staffing relief formula. Each update shall include a review of all annual training requirements for security staff to determine which of these requirements should be mandatory and the appropriate frequency of the training.

"(c) The Department of Correction shall report on its progress in implementing the staffing recommendations of the National Institute of Corrections to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1, 2005. The report shall include a status report on the implementation of a centralized postaudit control system and the automation of leave records. The report shall also provide an updated staffing relief formula and the methodology used to develop the updated formula."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

§ 143B-263. Department of Correction — head.

The Secretary of Correction shall be the head of the Department. (1973, c. 1262, s. 5.)

CASE NOTES

Immunity from Suit. — The Secretary of the Department of Correction is a public official, and is immune from suit for allegedly negligent acts committed within the scope of his or her authority. Harwood v. Johnson, 92 N.C. App. 306, 374 S.E.2d 401 (1988), aff'd in part and rev'd in part, 326 N.C. 231, 388 S.E.2d 439 (1990).

§ 143B-264. Department of Correction — organization.

The Department of Correction shall be organized initially to include the Post-Release Supervision and Parole Commission, the Board of Correction, the Division of Prisons, the Division of Adult Probation and Parole, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973.

The Department shall establish a Substance Abuse Program. All substance abuse programs established or in existence shall be administered by the Department of Correction under the Substance Abuse Program. (1973, c. 1262, s. 6; 1987, c. 738, s. 111(b); 1993, c. 538, s. 41; 1994, Ex. Sess., c. 24, s. 14(b); 2001-95, s. 7.)

Editor's Note. — Session Laws 2001-424, s. 26.11, provides: "Effective January 1, 2002, the Community Service Work Program of the Division of Victims and Justice Services of the Department of Crime Control and Public Safety shall be merged with the Division of Community Corrections of the Department of Correction. The merger shall have all the elements of a Type I transfer, as defined in G.S.143A-6. All (i) statutory authority, powers, duties, and functions, including rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Community Service Work Program of the Division of Victims and Justice Services of the Department of Crime Control and Public Safety shall be transferred to and vested in the Department of Correction.

"The following positions shall be terminated no later than January 1, 2002:

"(1) The four regional managers;

"(2) The 21 district managers in the area of community service work;

"(3) The Director of the Division of Victim and Justice Services;

"(4) The administrative assistant of the Division of Victim and Justice Services.

"The Department of Correction and the Department of Crime Control and Public Safety shall make every effort to place the employees whose positions have been terminated in existing vacancies with those departments."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

CASE NOTES

Suit Against Officials and Employees of Parole Commission as Suit Against State. — A suit against the secretary of the North Carolina Department of Correction, the chairman and the members of the Parole Commission, and a parole case analyst, in their official capacities, as public officials and a public employee of the Parole Commission acting pursuant to its direction, is a suit against the State. Since the State has not consented to being sued for violations by the Parole Commission, such a suit cannot be maintained. Harwood v. Johnson, 326 N.C. 231, 388 S.E.2d 439 (1990).

OPINIONS OF ATTORNEY GENERAL

Agency Cannot Disregard Statute Setting Preferences for Hiring Treatment Counselors. — Commission for Mental Health, Mental Retardation and Substance Abuse Services cannot in adopting standards disregard provision of N.C. Sess. Laws 1987, c. 758 that says "Preferences shall be accorded to qualified recovering alcoholics and substance abusers in the employment of treatment counselors." See opinion of Attorney General to Substance Abuse Council, 60 N.C.A.G. 27 (May 11, 1990).

Part 2. Board of Correction.

§ 143B-265. Board of Correction — duties and responsibilities; members; selection; compensation; meetings; quorum; services.

(a) The Board of Correction shall consider and advise the Secretary of Correction upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Correction in the development of major programs and recommend priorities for the programs within the Department.

The Board of Correction shall have such other responsibilities and shall perform such other duties as may be specifically given to it by the Secretary of Correction.

(b) The Board of Correction shall consist of one voting member from each of the 13 congressional districts, appointed by the Governor to serve at his pleasure. One member shall be a psychiatrist or a psychologist, one an attorney with experience in the criminal courts, one a judge in the General Court of Justice and nine members appointed at large. The Secretary of Correction shall be an additional nonvoting member and chairman ex officio. The terms of office of the nine members presently serving on the Board shall continue, but any vacancy occurring on or after July 1, 1983, shall be filled by the Governor in compliance with the requirement of membership from the various congressional districts.

(c) Members of the Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

The Board of Correction shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of its chairman.

A majority of the Board shall constitute a quorum for the transaction of business.

(d) All clerical and other services required by the Board shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 7; 1983, c. 709, s. 2; 1991 (Reg. Sess., 1992), c. 1038, s. 18; 2001-486, s. 2.15.)

Part 3. Parole Commission.

§ 143B-266. Post-Release Supervision and Parole Commission — creation, powers and duties.

(a) There is hereby created a Post-Release Supervision and Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State as provided in Chapter 148 of the General Statutes and laws of the State of North Carolina, except that persons sentenced under Article 81B of Chapter 15A of the General Statutes are not eligible for parole but may be conditionally released into the custody and control of United States Immigration and Customs Enforcement pursuant to G.S. 148-64.1. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the Executive Organization Act of 1973) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency. The Commission shall also have authority to revoke and terminate persons on post-release supervision, as provided in Article 84A of Chapter 15A of the General Statutes.

(b) All releasing authority previously resting in the Commissioner and Commission of Correction with the exception of authority for extension of the limits of the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to the Post-Release Supervision and Parole Commission. Specifically, such releasing authority includes work release (G.S. 148-33.1), indeterminate-sentence release (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the individual considered for work release or indeterminate-sentence release shall have been recommended for release by the Secretary of Correction or his designee. No recommendation for release is required for conditional release pursuant to G.S. 148-64.1.

(c) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. All rules and regulations heretofore adopted by the Board of Paroles shall remain in full force and effect unless and until repealed or superseded by action of the Post-Release Supervision and Parole Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Correction.

(d) The Commission is authorized and empowered to impose as a condition of parole or post-release supervision that restitution or reparation be made by the prisoner in accordance with the provisions of G.S. 148-57.1. The Commission is further authorized and empowered to make restitution or reparation a condition of work release in accordance with the provisions of G.S. 148-33.2.

(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of satellite-based monitoring as provided by G.S. 14-208.43. The Commission may grant or deny those requests in compliance with G.S. 14-208.43. (1973, c. 1262, s. 8; 1975, c. 220; 1977, c. 614, s. 5; c. 732, s. 5; 1993, c. 538, s. 42; 1994, Ex. Sess., c. 21, s. 6; c. 24, s. 14(b); 2006-247, s. 15(i); 2007-213, s. 14; 2008-199, s. 2.)

Report On Inmates Eligible For Parole. — Session Laws 2001-424, s. 25.21, as amended by Session Laws 2002-126, s. 17.3, provides: "The Post-Release Supervision and Parole Commission shall report by January 15 and July 15 of each year to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on inmates eligible for parole. These reports shall include at least the following:

"(1) The total number of Fair Sentencing and Pre-Fair Sentencing inmates that were parole-eligible during the previous quarter and the total number of those inmates that were paroled. The report should group these inmates by offense type, custody classification, and type of parole;

"(2) The average time served, by offense class, of Fair Sentencing and Pre-Fair Sentencing inmates compared to inmates sentenced under Structured Sentencing; and

"(3) The projected number of parole-eligible inmates to be paroled or released by the end of the 2002-2003 fiscal year and by the end of the 2003-2004 fiscal year."

Session Laws 2003-284, s. 16.20, as amended by Session Laws 2004-124, s. 17.9, provides: "The Post-Release Supervision and Parole Commission shall report by January 15 and July 15 of each year to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on inmates eligible for parole. These reports shall include at least the following:

"(1) The total number of Fair Sentencing and Pre-Fair Sentencing inmates that were parole-eligible during the current fiscal year and the total number of those inmates that were paroled. The report should group these inmates by offense type, custody classification, and type of parole. The report should also include a more specific analysis of those inmates who were parole-eligible and assigned to minimum custody classification but not released;

"(2) The average time served, by offense class, of Fair Sentencing and Pre-Fair Sentencing inmates compared to inmates sentenced under Structured Sentencing; and

"(3) The projected number of parole-eligible inmates to be paroled or released by the end of the 2003-2004 fiscal year and by the end of each of the next five fiscal years, beginning with the 2004-2005 fiscal year."

Session Laws 2005-276, s. 17.24, provides: "The Post-Release Supervision and Parole Commission shall report by January 15 and July 15 of each year to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on inmates eligible for parole. These reports shall include at least the following:

"(1) The total number of Fair Sentencing and Pre-Fair Sentencing inmates that were parole-eligible during the current fiscal year and the total number of those inmates that were paroled. The report should group these inmates by offense type, custody classification, and type of parole. The report should also include a more specific analysis of those inmates who were parole-eligible and assigned to minimum custody classification but not released;

"(2) The average time served, by offense class, of Fair Sentencing and Pre-Fair Sentencing inmates compared to inmates sentenced under Structured Sentencing; and

"(3) The projected number of parole-eligible inmates to be paroled or released by the end of the 2007-2008 fiscal year and by the end of each of the next five fiscal years, beginning with the 2008-2009 fiscal year."

Mutual Agreement Parole Program. — Session Laws 2009-451, s. 19.8(d), provides: "The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates enrolled in the mutual agreement parole program, the number completing the program and being paroled, and the number who enrolled but were terminated from the program. The information should be based on the previous calendar year."

For prior similar provisions, see Session Laws 2007-323, s. 17.1.

Editor's Note. — Section 148-42, referred to in subsection (b) of this section, was repealed by Session Laws 1977, c. 711, s. 33.

Section 148-49.8, referred to in subsection (b) of this section, was repealed by Session Laws 1977, c. 732, s. 1. For present provisions covering the subject matter of the repealed section, see G.S. 148-49.15.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-247, s. 1(a) provides: "This act shall be known as 'An Act To Protect North Carolina's Children/Sex Offender Law Changes.'"

Session Laws 2006-247, s. 15(*l*), provides: "Unless otherwise provided in the section, this section is effective when it becomes law and applies to offenses committed on or after that date. This section also applies to any person sentenced to intermediate punishment on or after that date and to any person released from prison by parole or post-release supervision on or after that date. This section also applies to any person who completes his or her sentence on or after the effective date of this section who is not on post-release supervision or parole. However, the requirement to enroll in a satellite-based program is not mandatory until January 1, 2007, when the program is established."

Session Laws 2006-247, s. 21, contains a severability clause.

Session Laws 2006-247, s. 22, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2009-451, s. 19.8(e), provides: "The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates proposed for release, considered for release, and granted release under Chapter 84B of Chapter 15A of the General Statutes, providing for the medical release of inmates who are either permanently and totally disabled, terminally ill, or geriatric."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-199, s. 2, effective August 8, 2008, inserted "but may be conditionally released into the custody and control of United States Immigration and Customs Enforcement pursuant to G.S. 148-64.1" in subsection (a); and added the last sentence in subsection (b).

CASE NOTES

Immunity from Suit. — The members and chairman of the Parole Commission are public officials, and are immune from suit for allegedly negligent acts committed within the scope of their authority. Harwood v. Johnson, 92 N.C. App. 306, 374 S.E.2d 401 (1988), aff'd in part and rev'd in part, 326 N.C. 488, 388 S.E.2d 439 (1990).

Releasing Authority for Work-Release Privileges. — Under former G.S. 148-33.1(b), read in conjunction with subsection (b) of this section, all releasing authority for work-release privileges for any inmate serving a term greater than five years rests ultimately in the Parole Commission. State v. Walker, 31 N.C. App. 199, 228 S.E.2d 772 (1976).

Cited in Harwood v. Johnson, 326 N.C. 231, 388 S.E.2d 439 (1990).

§ 143B-267. Post-Release Supervision and Parole Commission — members; selection; removal; chairman; compensation; quorum; services.

Effective August 1, 2005, the Post-Release Supervision and Parole Commission shall consist of one full-time member and two half-time members. The three members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of any members serving on the Commission on June 30, 2005, shall expire on that date. The terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a member of the Commission to serve as chair of the Commission at the pleasure of the Governor.

The granting, denying, revoking, or rescinding of parole, the authorization of work-release privileges to a prisoner, or any other matters of business coming before the Commission for consideration and action shall be decided by majority vote of the full Commission.

The members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6. Notwithstanding any other provision of law, the half-time members of the Commission shall not be subject to the provisions of G.S. 135-3(8)(c).

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 9; 1977, c. 704, s. 1; 1979, c. 2; 1983, c. 709, s. 3; c. 717, s. 80; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1993, c. 337, s. 1; c. 538, s. 43; 1994, Ex. Sess., c. 14, s. 63; c. 24, s. 14(b); 1999-237, s. 18.2; 2005-276, s. 17.25(a); 2006-264, s. 89(a).)

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

CASE NOTES

Immunity from Suit. — The members and chairman of the Parole Commission are public officials, and are immune from suit for allegedly negligent acts committed within the scope of their authority. Harwood v. Johnson, 92 N.C. App. 306, 374 S.E.2d 401 (1988), aff'd in part and rev'd in part, 326 N.C. 488, 388 S.E.2d 439 (1990).

§ 143B-268: Reserved for future codification purposes.

Part 4. Black Mountain Advancement Center for Women.

§ 143B-269: Repealed by Session Laws 2007-252, s. 1, effective July 1, 2007.

Part 5. Substance Abuse Advisory Council.

§ 143B-270. Substance Abuse Advisory Council.

(a) There is created a Substance Abuse Advisory Council to consult with the Secretary of the Department of Correction in the administration of the Substance Abuse Program.

(b) The Council shall be composed of nine members. Three members shall be appointed by the Speaker of the House of Representatives, three members by the President Pro Tempore of the Senate, and three members by the Governor. Of each set of three members, the appointing authority shall appoint one person who is a member of the recovering community, one other person who is a professional in the field of substance abuse services, and one other person who is a member of the public at large. Vacancies shall be filled by the office making the initial appointment and for the remainder of the unexpired term only. The Council shall elect its chairman annually.

(c) Members appointed shall hold office for a term of four years beginning on October 1, 1987, except that three of the initial appointees and these three appointees' immediate successors shall serve a term of two years, with the immediate successors' terms expiring on September 30, 1991.

(d) The Council shall meet at least once each quarter and at the call of the Secretary.

(e) Council members who are members of the General Assembly shall receive travel and subsistence allowances as provided in G.S. 120-3.1. Council members who are not members of the General Assembly shall receive travel and subsistence as provided in G.S. 138-5. (1987, c. 738, s. 111(d); 1991, c. 405, s. 2; 1995, c. 490, s. 55; 2000-140, s. 33.)

OPINIONS OF ATTORNEY GENERAL

Legislative Intent. — Although Substance Abuse Advisory Council was not given any rule making authority of its own, the clear intent of General Assembly was to give Council active role in formulation of policy governing substance abuse program. Thus, Council was directed to give advice to Secretary of Correction as to any rules and regulations and on any other matters pertaining to program; however, 1987 legislation did not impose duty upon Commission for Mental Health, Mental Retardation and Substance Abuse Services to consult directly with Council; Commission's responsibility as set out in G.S. 148-19(d) was left untouched and is fulfilled by giving Secretary of Correction opportunity to review and comment on proposed standards for delivery of substance abuse services to inmates. Secretary of Correction should then consult with the Council under this section and G.S. 143B-271 in order to effectuate legislatively intended role of Council. See opinion of Attorney General to Substance Abuse Council, 60 N.C.A.G. 27 (May 11, 1990).

§ 143B-271. Powers and duties of the Council.

The Substance Abuse Advisory Council shall advise the Secretary of the Department of Correction on the administration of the Substance Abuse Program. The Council shall also give advice as to any rules and regulations to be adopted and on any other matters pertaining to the Substance Abuse Program. (1987, c. 738, s. 111(d).)

OPINIONS OF ATTORNEY GENERAL

Legislative Intent. — Although Substance Abuse Advisory Council was not given any rule making authority of its own, the clear intent of General Assembly was to give Council active role in formulation of policy governing substance abuse program. Thus, Council was directed to give advice to Secretary of Correction as to any rules and regulations and on any other matters pertaining to program; however, 1987 legislation did not impose duty upon Commission for Mental Health, Mental Retardation and Substance Abuse Services to consult directly with Council; Commission's responsibility as set out in G.S. 148-19(d) was left untouched and is fulfilled by giving Secretary of Correction opportunity to review and comment on proposed standards for delivery of substance abuse services to inmates. Secretary of Correction should then consult with Council under G.S. 143B-270 and this section in order to effectuate legislatively intended role of Council. See opinion of Attorney General to Substance Abuse Council, — N.C.A.G. — (May 11, 1990).

§ 143B-272: Reserved for future codification purposes.

ARTICLE 6A.

North Carolina State-County Criminal Justice Partnership Act.

§ 143B-273. Short title.

This Article is the "North Carolina State-County Criminal Justice Partnership Act of 1993" and may be cited by that name. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.

§ 143B-273.1. Legislative policy.

The policy of the General Assembly with respect to the State-county criminal justice partnership is:

(1) To support the implementation of the recommendations of the North Carolina Sentencing and Policy Advisory Commission by providing supplemental community-based corrections programs which appropriately punish criminal behavior and which provide effective rehabilitative services;
(2) To expand sentencing options by adding community-based corrections programs for offenders receiving a nonincarcerative sentence;
(3) To promote coordination between State and county community-based corrections programs; and
(4) To improve public confidence in the criminal justice system by educating the public on the role of community-based corrections programs. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.1.

§ 143B-273.2. Definitions.

The following definitions apply in this Article:

(1) Account. — The State-County Criminal Justice Partnership Account.
(2) County Board. — A County Criminal Justice Partnership Advisory Board.
(3) Department. — The Department of Correction.
(4) Multi-County Board. — A Multi-County Criminal Justice Partnership Advisory Board.
(5) Plan. — A Community-Based Corrections Plan.
(6) Program. — A Community-Based Corrections Program.
(7) Secretary. — The Secretary of the Department of Correction.
(8) State Board. — The State Criminal Justice Partnership Advisory Board. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.2.

§ 143B-273.3. Goals of community-based corrections programs funded under this Article.

The goals of community-based programs funded under this Article include:

(1) To reduce recidivism;
(2) To reduce the number of probation revocations;
(3) To reduce alcoholism and other drug dependencies among offenders; and
(4) To reduce the cost to the State and the counties of incarceration. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.3.

§ 143B-273.4. Eligible population.

(a) An eligible offender is an adult offender who was convicted of a misdemeanor or a felony offense and:

(1) Received a nonincarcerative sentence of a community punishment, if the Division of Community Corrections determines that the offender would benefit from program participation, based upon the results of a risk assessment;

(2) Received a nonincarcerative sentence of an intermediate punishment; or

(3) Is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall be offenders sentenced to intermediate punishments. (1993, c. 534, s. 1; 1997-443, s. 19.8(b); 2005-276, s. 17.23(f); 2009-349, s. 1.)

Effect of Amendments. — Session Laws 2009-349, s. 1, effective December 1, 2009, rewrote subsection (a).

§ 143B-273.5. State-County Criminal Justice Partnership Account established.

The State-County Criminal Justice Partnership Account is created within the Department of Correction. Revenue in the Account may be used only to make grants to counties for supplementary community-based correctional programs for eligible offenders in accordance with this Article. Revenue appropriated to the Account does not revert at the end of the fiscal year; it remains in the Account for expenditures in the following fiscal year. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.5.

§ 143B-273.6. State Criminal Justice Partnership Advisory Board; members; terms; chairperson.

(a) There is created the State Criminal Justice Partnership Advisory Board. The State Board shall act as an advisory body to the Secretary with regards to this Article. The State Board shall consist of 22 members as follows:

(1) A member of the Senate.

(2) A member of the House of Representatives.

(3) A judge of the Superior Court.

(4) A judge of the district court.

(5) A district attorney.

(6) A criminal defense attorney.

(7) A county sheriff.

(8) A chief of a city police department.

(9) Two county commissioners, one from a predominantly urban county and one from a predominantly rural county.

(10) A representative of an existing community-based corrections program.

(11) A member of the public who has been the victim of a crime.

(12) A rehabilitated ex-offender.

(13) A member of the business community.

(14) Three members of the general public, one of whom is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services.
(15) A victim service provider.
(16) A member selected from each of the following service areas: mental health, substance abuse, and employment and training.
(17) A clerk of superior court.

(b) The membership of the State Board shall be selected as follows:
(1) The Governor shall appoint the following members: the county sheriff, the chief of a city police department, the member of the public who has been the victim of a crime, a rehabilitated ex-offender, the members selected from each of the service areas.
(2) The Lieutenant Governor shall appoint the following members: the member of the business community, one member of the general public who is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services, the victim service provider.
(3) The Chief Justice of the North Carolina Supreme Court shall appoint the following members: the superior court judge, the district court judge, the district attorney, the clerk of superior court, the criminal defense attorney, the representative of an existing community-based corrections program.
(4) The President Pro Tempore of the Senate shall appoint the following members: the member of the Senate, the county commissioner from a predominantly urban county, one member of the general public.
(5) The Speaker of the House shall appoint the following members: the member of the House of Representatives, the county commissioner from a predominantly rural county, one member of the general public.

In appointing the members of the State Board, the appointing authorities shall make every effort to ensure fair geographic representation of the State Board membership and that minority persons and women are fairly represented.

(c) The initial members shall serve staggered terms, one-third shall be appointed for a term of one year, one-third shall be appointed for a term of two years, and one-third shall be appointed for a term of three years. The members identified in subdivisions (1) through (7) of subsection (a) of this section shall be appointed initially for a term of one year. The members identified in subdivisions (8) through (13) in subsection (a) of this section shall be appointed initially for a term of two years. The members identified in subdivisions (14) through (16) of subsection (a) of this section shall each be appointed for a term of three years. The additional member identified in subdivision (17) in subsection (a) of this section shall be appointed initially for a term of three years.

At the end of their respective terms of office their successors shall be appointed for terms of three years. A vacancy occurring before the expiration of the term of office shall be filled in the same manner as original appointments for the remainder of the term. Members may be reappointed without limitation.

(d) Each appointing authority shall have the power to remove a member it appointed from the State Board for misfeasance, malfeasance, or nonfeasance.

(e) The members of the State Board shall, within 30 days after the last initial appointment is made, meet and elect one member as chairman and one member as vice-chairman.

(f) The State Board shall meet at least quarterly and may also hold special meetings at the call of the chairman. For purposes of transacting business, a majority of the membership shall constitute a quorum.

(g) Any member who has an interest in a governmental agency or unit or private nonprofit agency which is applying for a State-County Criminal Justice Partnership grant or which has received a grant and which is the subject of an inquiry or vote by a grant oversight committee, shall publicly disclose that interest on the record and shall take no part in discussion or have any vote in regard to any matter directly affecting that particular grant applicant or grantee. "Interest" in a grant applicant or grantee shall mean a formal and direct connection to the entity, including, but not limited to, employment, partnership, serving as an elected official, board member, director, officer, or trustee, or being an immediate family member of someone who has such a connection to the grant applicant or grantee.

(h) The members of the State Board shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses. (1993, c. 534, s. 1; 1998-170, s. 2.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.6.

§ 143B-273.7. Duties of State Criminal Justice Partnership Advisory Board.

The State Criminal Justice Partnership Advisory Board has the following duties:

(1) To recommend community-based corrections program priorities;
(2) To review the application process and procedures for funding community-based corrections programs, including the format for comprehensive community-based corrections plans;
(3) To review the criteria for monitoring and evaluating community-based corrections programs;
(4) To distribute an annual plan which describes the community-based corrections program priorities, and the application process and procedures for funding community-based corrections programs, including the format for comprehensive community-based corrections plans. The annual plan must also announce the amount of funds appropriated to the State-County Criminal Justice Partnership Account;
(5) To coordinate community-based corrections programs administered by the state agencies and programs funded under this Article;
(6) To review plans of participating counties and, based on the State Board's annual plan, to make recommendations to the Secretary to provide grant funding to counties for implementing and operating community-based corrections programs; and
(7) To review the minimum program standards, policies, and rules for community-based corrections programs.
(8) To evaluate the effects of categories of programs funded by this Article and prepare a written report. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.7.

§ 143B-273.8. Duties of Department of Correction.

(a) In addition to those otherwise provided by law, the Department of Correction shall have the following duties:

(1) To provide technical assistance to applicants in developing, implementing, monitoring, evaluating, and operating community-based corrections programs.

(2) To enter into contractual agreements with county boards for the operation of community-based corrections programs and monitor compliance with those agreements.
(3) To act as an information clearinghouse regarding community-based corrections programs.
(4) To review plans of participating counties and to approve grants based on applications to assist them in the implementation and operation of community-based corrections programs.
(5) To develop policies and procedures for the disbursement of grant funds to participating counties on a reimbursement basis.
(6) To develop the minimum program standards, policies, and rules for community-based corrections programs.
(7) In instances of substantial noncompliance, the Secretary shall notify the board or boards of county commissioners, the county community corrections advisory board, and the chief administrator of the program in writing of the allegations and allow 60 days for a response. If an agreement is reached concerning a remedy, then the Secretary shall allow 30 days following that agreement for the remedy to be implemented. If the deficiencies are not corrected within this period, then the Secretary may, upon written notice, suspend any or all of the grant funds until compliance is achieved.

(b) The Department of Correction shall report by February 1 of each year to the Chairs of the Senate and House Appropriations Committees, the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the Criminal Justice Partnership Program. The report shall include the following information:
(1) The amount of funds carried over from the prior fiscal year;
(2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;
(3) Any counties the Department anticipates will submit requests for new implementation grants;
(4) The number of counties submitting offender participation data via the electronic reporting system;
(4a) Details of personnel, travel, contractual, operating, and equipment expenditures for each program type;
(4b) For counties whose expenditures deviate proportionally from the average percentage expenditure for each program type, an explanation of the variance shall be included;
(5) An analysis of offender participation data received; and
(6) An update on efforts to ensure that all counties make use of the electronic reporting system. (1993, c. 534, s. 1; 1999-237, s. 18(d); 2000-67, s. 16; 2001-138, s. 2; 2009-349, s. 2.1.)

Criminal Justice Partnership. — Session Laws 2009-451, s. 19.11(a)-(e), provides: "(a) Notwithstanding any other provision of law, a county may use funds appropriated pursuant to the Criminal Justice Partnership Act, Article 6A of Chapter 143B of the General Statutes, to provide more than one community-based corrections program.

"(b) Effective July 1, 2009, the Department of Correction shall recalculate the county allocation funding formula mandated under G.S. 143B-273.15 using updated data.

"(c) Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

"(d) The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

"(e) The Department of Correction shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

"(1) The amount of funds carried over from the prior fiscal year;

"(2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;

"(3) Any counties the Department anticipates will submit requests for new implementation grants;

"(4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;

"(5) An analysis of offender participation data received, including data on each program's utilization and capacity;

"(6) An analysis of comparable programs prepared by the Division of Research and Planning, Department of Correction, including a comparison of programs in each program type on selected outcome measures developed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Division of Research and Planning, and a summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards;

"(7) A review of whether each sentenced offender program is meeting established program goals developed by the Division of Community Corrections in consultation with the Division of Research and Planning and the State Criminal Justice Partnership Advisory Board;

"(8) The number of community offenders and intermediate offenders served by each county program;

"(9) The amount of Criminal Justice Partnership funds spent on community offenders and intermediate offenders; and

"(10) A short description of the services and programs provided by each partnership, including who the service providers are and the amount of funds each service provider receives."

For prior similar provisions, see Session Laws 2001-424, s. 25.16(d), Session Laws 2005-276, s. 17.23(d), and Session Laws 2007-323, s. 17.15(a)-(d).

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.8.

Session Laws 1999-237, s. 18(d), as amended by Session Laws 2000-67, s. 16, was codified as subsection (b) of this section and the existing provisions designated as subsection (a) at the direction of the Revisor of Statutes.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-349, s. 2.1, effective December 1, 2009, added subdivisions (b)(4a) and (b)(4b).

§ 143B-273.9. Election to apply for funding.

A county may elect to apply for funding under this Article by a vote of the board of county commissioners approving the decision to apply, and by appointing a county criminal justice partnership advisory board. Two or more counties, by vote of the board of county commissioners of each county, may agree to create a multicounty board instead of a county board. A multicounty board shall perform the same functions as a county board for each county that participates in establishing the multicounty board. The board or boards of county commissioners shall notify the Secretary of the intent to apply for funds within 60 days of receiving notification of the availability of funds and may request technical assistance to develop the community-based corrections plan. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.9.

§ 143B-273.10. County Criminal Justice Partnership Advisory Boards; members; terms; chairperson.

(a) A county board or a multicounty board shall consist of not less than 10 members and shall, to the greatest extent possible, include the following:

(1) A county commissioner. In the case of a multicounty community corrections advisory board, one county commissioner from each participating county shall serve as a member.
(2) A county manager, or the county manager's designee.
(3) A judge of the superior court.
(4) A judge of the district court.
(5) A district attorney, or the district attorney's designee.
(6) A criminal defense attorney.
(7) A public defender.
(8) A county sheriff, or the sheriff's designee.
(9) A chief of a city police department, or the police chief's designee.
(10) A probation officer.
(11) A judicial service coordinator.
(12) One member selected from each of the following service areas which are available in the county or counties: mental health, public health, substance abuse, employment and training, community-based corrections programs, victim services programs.
(13) A member of the business community.
(14) A member of the community who has been a victim of a crime.
(15) Members at large, including persons who are recovering from chemical dependency or are previous consumers of substance abuse treatment services.

(b) In the case of a single county board, the board of county commissioners shall appoint the members. In the case of a multicounty board, the board of county commissioners from the participating counties shall each appoint one commissioner as a member. These members shall appoint the other members. The board of county commissioners may designate an existing board which meets the requirements of this section to serve as the County Criminal Justice Partnership Advisory Board. A member may be removed, with cause, by the group authorized to make the initial appointment.

(c) Before an appointment is made under this section, the appointing authority shall publish advance notice of the appointments and shall request that the names of persons interested in being considered for appointment be submitted to the appointing authority. In appointing the members of a county board, the county shall make every effort to ensure that minority persons and women are fairly represented.

(d) The initial members of the county board appointed by the board or boards of county commissioners shall serve staggered terms, one-third shall be appointed for a term of one year, one-third shall be appointed for a term of two years, and one-third shall be appointed for a term of three years. Members appointed by virtue of their office serve only while holding the office or position held at the time of appointment. A vacancy occurring before the expiration of the term of office shall be filled in the same manner as original appointments for the remainder of the term. Members may be reappointed without limitation.

(e) The members of the county board shall, within 30 days after the last initial appointment is made, meet and elect one member as chairman and one member as vice-chairman and appoint a secretary-treasurer who need not be a member. For purposes of transacting business, a majority of the membership constitutes a quorum.

(f) The county board shall meet at least quarterly and may also hold special meetings at the call of the Chairman.

(g) Any member who has an interest in a governmental agency or unit or private nonprofit agency which is applying for a State-County Criminal Justice Partnership Act grant or which has received a grant and which is the subject of an inquiry or vote by a grant oversight committee shall publicly disclose that interest on the record and shall take no part in discussion or have any vote in regard to any matter directly affecting that particular grant applicant or grantee. "Interest" in a grant applicant or grantee shall mean a formal and direct connection to the entity, including, but not limited to, employment, partnership, serving as an elected official, board member, director, officer or trustee, or being an immediate family member of someone who has such a connection to the grant applicant or grantee.

(h) The board or boards of county commissioners shall provide necessary assistance and appropriations to the county board established for that county or counties. (1993, c. 534, s. 1; 2009-372, s. 18.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.10.

Session Laws 2009-372, s. 19 is a severability clause.

Effect of Amendments. — Session Laws 2009-372, s. 18, effective December 1, 2009, and applicable to offenses committed on or after that date, substituted "judicial" for "community" in subdivision (a)(11).

§ 143B-273.11. County Criminal Justice Partnership Advisory Boards; powers and duties.

The County Criminal Justice Partnership Advisory Board shall have the following powers and duties:

(1) To participate in a planning process to develop a Community-Based Corrections Plan. The purpose of this planning process is to:
  a. Examine the local criminal justice system;
  b. Identify problem areas;
  c. Identify offender groups for programs;
  d. Propose strategies for improving the local criminal justice system;
  e. Identify a specific community-based program that is needed;
  f. Plan a method for integrating the needed community-based program into the existing local criminal justice system;
  g. Develop criteria for evaluating the impact of the community-based program; and
  h. Improve coordination at the local level between State and county community-based corrections programs.

(2) To submit the plan to the boards of county commissioners for approval within one year of the last appointment to the county board. This plan shall include all of the elements required by this section.

(3) To review and revise the plan and make a formal recommendation to the board or boards of county commissioners at least annually concerning the plan and its implementation and operation during the ensuing year.

(4) To monitor and evaluate the impact of the community-based corrections program and prepare a written report. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.11.

§ 143B-273.12. Community-Based Corrections Plan.

(a) The Community-Based Corrections Plan shall include the following:

(1) A flowchart of the criminal justice system which describes processing steps from the point of arrest through conviction, to post-release supervision after completing an active sentence of imprisonment. The flowchart shall identify all decision points, decision makers and options;

(2) Number and rate of arrest, convictions, admissions to probation, jail, prison, and post-release supervision;

(3) Arrest practices and data, including the use of citations;

(4) Pretrial release practices and data on type of release and bond amounts;

(5) Procedures for assignment of indigent counsel;

(6) Court procedures for reducing bond amounts;

(7) Jail capacity and population data by type of offender;

(8) The jail population by type of offender, type of offenses, and average length of stay;

(9) Existing State and county community-based corrections programs (pretrial, sentenced, and post-release) including target population, program activities, profile of offenders entering and released from the programs, length of stay, and completion rates;

(10) Education, vocation/employment, health, mental health, housing, and other social services which are available to offenders; and

(11) Number of offenders who received an active sentence in the past two years, including type of offense, length of sentence, and actual time served.

(b) Based on the information collected in subsection (a) of this section, the plan shall include a detailed description of the need for the proposed community-based corrections program, the offender population the proposed program will target, the changes that are planned in local policies and procedures to accommodate the proposed program, and how the proposed program will be integrated into the criminal justice system.

(c) The proposed program shall target eligible offenders as defined in G.S. 143B-273.4.

(d) Technical assistance to complete the plan shall be provided either by the Department, or the Department shall grant funds to the county for technical assistance. If a county receives technical assistance funds, the county must provide twenty-five percent (25%) of the grant amount. (1993, c. 534, s. 1; 1997-443, s. 19.8(c).)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.12.

§ 143B-273.13. Application for implementation funding.

(a) Upon approving the Community-Based Corrections Plan, the board or boards of county commissioners shall submit the plan and an application for implementation funding. The application shall contain the following:

(1) A description of the problem, including specific data and information concerning the population the proposed community-based corrections program is to serve.

(2) A description of the program's goal, objective, activities and how it relates to the annual plan distributed by the State Board.
(3) A description of the operation of the program, including an outline of the approach, implementation steps and phases of the program, its administrative structure, staffing pattern, staff training, financing, degree of community involvement, and offender participation.
(4) A description of the program's monitoring criteria, outlining the documentation and records to be maintained.
(5) A description of the method for evaluating the impact of the program.
(6) The identity of any designated contractor.
(7) In the case of a multicounty community-based corrections plan, provisions for the appointment of a fiscal agent to coordinate the financial activities pertaining to the grant award.
(8) A detailed budget for the program.

(b) The Secretary shall complete the review of the plan within 90 days of submission. Failure to disapprove or recommend amendment to the plan within 90 days shall constitute approval. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.13.

§ 143B-273.14. Fundable programs; community-based corrections programs.

(a) Fundable programs under this Article shall include community-based corrections programs which are operated under a county community-based corrections plan and funded by the State subsidy provided in this Article. Based on the prioritized populations in G.S. 143B-273.4, the programs may include, but are not limited to, the following:
(1) For offenders who receive community or intermediate punishments:
    a. Residential facilities;
    b. Day reporting centers;
    c. Restitution centers;
    d. Substance abuse services;
    e. Employment services;
(2) For offenders who are appropriate for release from jail prior to trial:
    a. Pretrial monitoring services;
    b. Pretrial electronic surveillance;
(3) For offenders who are serving a term of post-release supervision after completing active sentences of imprisonment:
    a. Aftercare support services.

(b) Community-based corrections funds may be used to operate programs and may also be used to construct, acquire, or renovate community facilities established to provide the programs and services set forth in subsection (a) of this section. Construction and renovation funds may not be used for jails. Construction and renovation funds may not be used to reimburse expenses for any facilities renovated before the effective date of this Article.

(c) When a county receives more than fifty thousand dollars ($50,000) in community-based corrections funds, then that county shall use at least fifty percent (50%) of those funds to develop programs for offenders who receive intermediate punishments. (1993, c. 534, s. 1; 2005-276, s. 17.23(e), (i); 2009-349, s. 2.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.14.

As originally enacted, subsection (c) was set out preceding subsection (b). These subsections were reordered at the direction of the Revisor of Statutes.

Session Laws 2005-276, s. 17.23(e), effective July 1, 2005, added the former last sentence in subsection (c), which read: "No county shall use more than twenty-five percent (25%) of its funds to serve offenders released from jail prior to trial." Session Laws 2005-276, s. 17.23(i) provided for the expiration of s. 17.23(e) on July 1, 2006.

Effect of Amendments. — Session Laws 2009-349, s. 2, effective December 1, 2009, inserted "community or" in the introductory language of subdivision (a)(1).

§ 143B-273.15. Funding formula.

(a) To determine the grant amount for which a county or counties may apply, the granting authority shall apply the following formula:

(1) Twenty-five percent (25%) based on a fixed equal dollar amount for each county;

(2) Fifty percent (50%) based on the county share of the State population; and

(3) Twenty-five percent (25%) based on the intermediate punishment entry rate for the county, using the total of the three most recent years of data available divided by the average county population for that same period.

The sum of the amounts in subdivisions (1), (2), and (3) is the total amount of the funding that a county may apply for under this subsection.

Grants to participating counties are for a period of one fiscal year with unobligated funds being returned to the Account at the end of the grant period. Funds are provided to participating counties on a reimbursement basis unless a county documents a need for an advance of grant funds. The data used for this funding formula shall be updated at least once every three years.

(b) Each year that the Department of Correction updates the data for the funding formula pursuant to subsection (a) of this section, the Department of Correction shall send a written notification by January 15 to each program participating in the State-County Criminal Justice Partnership of the amount of the grant that the program will receive pursuant to the revised formula for the fiscal year beginning July 1 of that year subject to funds being appropriated by the General Assembly. (1993, c. 534, s. 1; 1995, c. 324, s. 19; 2001-424, s. 25.16(a); 2005-276, s. 17.23(g); 2008-107, s. 17.7(a).)

Criminal Justice Partnership. — Session Laws 2009-451, s. 19.11(a)-(e), provides: "(a) Notwithstanding any other provision of law, a county may use funds appropriated pursuant to the Criminal Justice Partnership Act, Article 6A of Chapter 143B of the General Statutes, to provide more than one community-based corrections program.

"(b) Effective July 1, 2009, the Department of Correction shall recalculate the county allocation funding formula mandated under G.S. 143B-273.15 using updated data.

"(c) Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

"(d) The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

"(e) The Department of Correction shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

"(1) The amount of funds carried over from the prior fiscal year;

"(2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;

"(3) Any counties the Department anticipates will submit requests for new implementation grants;

"(4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;

"(5) An analysis of offender participation data received, including data on each program's utilization and capacity;

"(6) An analysis of comparable programs prepared by the Division of Research and Planning, Department of Correction, including a comparison of programs in each program type on selected outcome measures developed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Division of Research and Planning, and a summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards;

"(7) A review of whether each sentenced offender program is meeting established program goals developed by the Division of Community Corrections in consultation with the Division of Research and Planning and the State Criminal Justice Partnership Advisory Board;

"(8) The number of community offenders and intermediate offenders served by each county program;

"(9) The amount of Criminal Justice Partnership funds spent on community offenders and intermediate offenders; and

"(10) A short description of the services and programs provided by each partnership, including who the service providers are and the amount of funds each service provider receives."

For prior similar provisions, see Session Laws 2001-424, s. 25.16(d), Session Laws 2005-276, s. 17.23(d), and Session Laws 2007-323, s. 17.15(a)-(d).

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.15.

Session Laws 2001-424, s. 25.16(b), as amended by Session Laws 2001-513, s. 11, provides: "Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 17.13(d), provides: "Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2003-284, s. 16.16 (a)-(d), as amended by Session Laws 2004-124, s. 17.11, provides: "(a) It is the intent of the General Assembly that State Criminal Justice Partnership Program funds not be used to fund case manager positions when those services can be reasonably provided by Division of Community Corrections personnel or by the Treatment Alternatives to Street Crime (TASC) Program in the Department of Health and Human Services.

"(b) Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

"(c) The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

"(d) The Department of Correction shall report by February 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees, the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

"(1) The amount of funds carried over from the prior fiscal year;

"(2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;

"(3) Any counties the Department anticipates will submit requests for new implementation grants;

"(4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;

"(5) An analysis of offender participation data received, including data on each program's utilization and capacity;

"(6) An analysis of comparable programs, prepared by the Research and Planning Division of the Department of Correction, and a summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards; and

"(7) An evaluation of Criminal Justice Partnership programs based upon evaluation standards designed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Department of Correction, Division of Research and Planning.

"(e) Notwithstanding the provisions of G.S. 143B-273.15, funding to programs for the 2004-2005 fiscal year shall be established according to the amounts appropriated for the 2003-2004 fiscal year. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, in consultation with the Sentencing and Policy Advisory Commission and the Department of Correction, Division of Research and Planning, shall review the Criminal Justice Partnership Program funding formula and recommend any necessary changes in that formula to the 2005 General Assembly."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2005-276, s. 17.23(h), as amended by 2006-66, s. 16.11, which was added by 2006-221, s. 16, provides: "For the 2005-2006 fiscal year, notwithstanding the formula in G.S. 143B-273.15, each county's formula allocation shall be capped at no less than ninety-nine percent (99%) and no greater than one hundred twenty percent (120%) of the funds allocated to that county for the 2004-2005 fiscal year. Funding caps shall be accomplished by the redistribution of three hundred forty-four thousand four hundred ninety-one dollars ($344,491) that was spent on case management services in day reporting centers prior to 2002. No funds shall be used to fund programs that did not participate in the Criminal Justice Partnership Program in fiscal year 2004-2005.

"For the 2006-2007 fiscal year, notwithstanding the formula in G.S. 143B-273.15, each county's formula allocation shall be capped at no less than ninety-five percent (95%) and no greater than one hundred twenty percent (120%) of the funds allocated to that county for the 2004-2005 fiscal year."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 17.7(a), effective July 1, 2008, designated the introductory language as subsection (a); and added subsection (b).

§ 143B-273.15A. Reallocation of unspent or unclaimed funds.

Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership in an effort to maintain the level of services realized in previous fiscal years. A program may apply for a grant from the reallocated funds at least semiannually beginning July 1 of each year. (2008-107, s. 17.7(b).)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143B-273.16. Continued eligibility.

(a) To continue to receive funding under this Article, a county shall submit an updated application for implementation funding to the Secretary at the beginning of each fiscal year.

(b) To remain eligible for funding, a county shall:

(1) Comply with its community-based corrections plan;
(2) Submit monitoring reports as required by the Department; and
(3) Comply with the minimum standards adopted.

(c) If the Secretary suspends any or all of the grant funds, the county may request a hearing in accordance with Chapter 150B of the General Statutes. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.16.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 17.13(a), provides: "Notwithstanding the provisions of G.S. 143B-273.16, Caswell and Union Counties shall not receive implementation funding for the Criminal Justice Partnership Program for the 2002-2003 fiscal year. However, those counties will be eligible to reapply for funding in future years."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 143B-273.17. Termination of participation in program.

A county receiving financial aid under this Article may terminate its participation by delivering a resolution of the board or boards of county commissioners to the Secretary at the beginning of any calendar quarter. Upon withdrawal from the program, the board or boards of county commissioners may adopt a resolution stating that it is in the best interests of the county that the county community corrections advisory board be dissolved, whereupon the county commissioners shall pay and discharge any debts or liabilities of the advisory board, collect and distribute assets of the advisory board under the laws of North Carolina, and pay over any remaining proceeds or property to the proper fund. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.17.

§ 143B-273.18. Private nonprofit agencies participating in program.

After the county criminal justice partnership advisory board has developed a plan and the board or boards of county commissioners has reviewed it, if the county decides that it does not intend to operate the proposed program, the county criminal justice partnership advisory board shall recommend the appropriate deliverer of services and the county may contract for services. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.18.

§ 143B-273.19. Prohibited uses of funds.

(a) Counties may not use funds received under this Article to supplant or replace existing funds or other resources from the federal, State, or county government for existing community-based corrections programs.

(b) Counties may not use funds received under this Article for indirect costs associated with a program. (1993, c. 534, s. 1.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 534, s. 1, having been G.S. 143B-272.19.

§ 143B-274: Reserved for future codification purposes.

Article 7.

Department of Environment and Natural Resources.

Part 1. General Provisions.

§§ 143B-275 through 143B-279: Repealed by Session Laws 1989, c. 727, s. 2.

Cross References. — For present provisions relating to the Department of Environment and Natural Resources, see G.S. 143B-279.1 et seq.

Editor's Note. — Session Laws 1997-443, s. 11A.4, rewrote the name of Article 7 of Chapter 143B of the General Statutes to read: "Department of Environment and Natural Resources."

§ 143B-279.1. Department of Environment and Natural Resources — creation.

(a) There is hereby created and constituted a department to be known as the Department of Environment and Natural Resources, with the organization, powers, and duties defined in this Article and other applicable provisions of law.

(b) The provisions of Article 1 of this Chapter not inconsistent with this Article shall apply to the Department of Environment and Natural Resources. (1989, c. 727, s. 3; 1997-443, s. 11A.119(a).)

Cross References. — As to the Minority Health Advisory Council, see G.S. 130A-33.43.

State Government Reorganization. — As to abolition of the Department of Natural Resources and Community Development and the transfer of its divisions, agencies, functions, etc. to the Department of Environment Health, and Natural Resources [now Department of Environment and Natural Resources], see Session Laws 1989, c. 727.

Session Laws 1989, c. 727, s. 225, provided: "(a) The Environmental Review Commission may continue the study of environmental agency consolidation and reorganization. The study of environmental agency consolidation shall include, but is not limited to:

"(1) Monitoring the implementation of this act;

"(2) Evaluation of the organization, programs, and operation of the Department of Environment, Health, and Natural Resources [now the Department of Environment and Natural Resources];

"(3) Evaluation of the organization, functions, powers, and duties of the components of the Department of Environment, Health, and Natural Resources [now the Department of Environment and Natural Resources], including boards, commissions, councils, and regional offices; and

"(4) Recodification of the General Statutes relating to the environment and environmental agencies.

"(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation made by the Environmental Review Commission may be introduced and considered during any session of the General Assembly."

Session Laws 1997-443, s. 11A.120, provides that references in the Session Laws to any department, division, or other agency that is transferred by that Part of the act shall be considered to refer to the successor department, division, or other agency. Every Session Law that refers to any department, division, or other agency to which that Part applies that relates to any power, duty, function, or obligation of any department, division, or agency and that continues in effect after that Part shall be construed so as to be consistent with that Part.

Session Laws 1997-443, s. 11A.124, provides that all statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of any agency which are transferred pursuant to this Part shall be transferred in their entirety.

Session Laws 1997-443, s. 11A.125, provides that unless specifically provided to the contrary or unless a contrary intent is clear from the context, any official designation of any agency transferred by this Part as the State agency for any function, including specifically purposes of federal programs, shall be considered to be a designation of the successor agency.

Session Laws 1997-443, s. 11A.126, provides that no later than 30 days after the effective date of this Part, the Department of Health and Human Services and the Department of Environment and Natural Resources shall enter into a Memorandum of Agreement that provides for coordination between the departments as to any functions shared by the departments as a result of the passage of this Part. This Memorandum shall require that the Department of Environment and Natural Resources provide staff to the Commission for Health Services [now the Commission for Public Health] for the Commission's duties under Articles 8, 9, 10, 11, and 12 of Chapter 130A of the General Statutes. Until a Memorandum of Agreement has been entered into by the departments, the Department of Health and Human Services shall provide all clerical and other services required by the Commission for Health Services [now the Commission for Public Health]. All statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of any agency which are transferred pursuant to this Part shall be transferred in their entirety.

Session Laws 1997-443, s. 11A.127, as amended by Session Laws 1998-76, s. 1, provides that pending action by the General Assembly on the recommendation of the Environmental Review Commission resulting from the study to be undertaken by the Environmental Review Commission as provided in this Part, on-site wastewater functions, public drinking water programs, and environmental health programs shall remain in the Department of Environment and Natural Resources, the Division of Environmental Health, shall remain intact in the Department of Environment and Natural Resources, and the Department of Environment and Natural Resources shall not consolidate on-site wastewater functions or drinking water programs in the Division of Water Quality.

Session Laws 1997-443, s. 11A.130, effective July 1, 1997, provides that the Departments by agreement and at the direction of the Office of State Budget and Management (now the Office of State Budget, Planning, and Management) shall undertake certification, revisions, and transfer of budget funds and financial records so that State fiscal year financial records, reports, and accounting are maintained as if this Part had become effective July 1, 1997.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4 is a severability clause.

Session Laws 1998-225, s. 5.3, provides: "Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules."

One-Stop Environmental Permit Application Assistance and Tracking System Pilot Program. — Session Laws 2000-67, s. 13.7(a)-(f), directs the Department of Environment and Natural Resources to establish a one-stop environmental permit application assistance and tracking system pilot project for one year in at least two regional offices, and to expand this program, to more than two offices during the 2000-2001 fiscal year if resources are available, and to a statewide program as soon as possible after the 2000-2001 fiscal year. As part of the project, the Department is to provide each person who submits an application for an environmental permit to one of the regional offices participating in the pilot project a time frame within which that applicant may expect a final decision regarding issuance or denial or a permit. The Department is to track the time required to process each complete environmental permit application received on or after July 1, 2000, as part of the pilot project and is to identify each permit that was issued or denied more than 90 days after receipt of a complete application and document reasons for delayed action. The Department is to issue a report, with recommendations, regarding permit time frames for all major permits issued by the Department to the Senate and House Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission by April 1, 2001. The Department may adopt temporary rules to implement s. 13.7.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Same — Continuance. — Session Laws 2001-424, s. 19.6(a)-(c), provides: "(a) The Department of Environment and Natural Resources shall continue the one-stop environmental permit application assistance and tracking system pilot project established under Section 13.7 of S.L. 2000-67 during the 2001-2003 fiscal biennium. It is the intent of the General Assembly that the Department of Environment and Natural Resources expand this pilot program to a statewide program effective in all of the Department's regional offices if the resources are available to do so during the 2001-2003 fiscal biennium. The provisions of Section 13.7(a) through (d) of S.L. 2000-67 apply to the pilot program under this section [s. 19.6 of Session Laws 2001-424].

"(b) The Department of Environment and Natural Resources shall report to the Appropriations Subcommittees on Natural and Economic Resources in both the Senate and the House of Representatives, the Fiscal Research Division, and the Environmental Review Commission no later than April 1, 2002, and again no later than April 1, 2003, regarding the results of the pilot project continued under this section [s. 19.6 of Session Laws 2001-424]. This report shall include the number of environmental permits in the pilot project that took more than 90 days to issue or deny; the types of permits those were; the reasons for the extended processing time of those permits; how the time within which the permit was actually issued or denied compared with the projected time frame provided to the applicant by the Department; based on the data gathered in the pilot project, any recommendations regarding what the permit time frames should be for all major permits issued by the Department; and to what extent, if any, the program has been expanded to a statewide program under this section [s. 19.6 of Session Laws 2001-424].

"(c) The Department of Environment and Natural Resources may adopt temporary rules to implement this section [s. 19.6 of Session Laws 2001-424]."

Session Laws 2001-424, s. 19.9, provides: "The Secretary of Environment and Natural Resources shall designate from existing staff within the Department of Environment and Natural Resources a staff position to be responsible for managing the Submerged Lands Program. By November 1, 2001, the Secretary shall report to both the Senate and House of Representatives Cochairs of the Appropriations Subcommittees on Natural and Economic Resources what position will manage the Program."

Expand One-Stop Permit Assistance Pilot Program Statewide. — Session Laws 2004-124, s. 12.12(a), enacted G.S. 143B-279.12, establishing a one-step environmental permit application and tracking system.

Session Laws 2004-124, s. 12.12(b) and (c) provides: "The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the one-stop environmental permit application assistance and tracking system pilot project established under Section 13.7 of S.L. 2000-67 for those environmental permits that were subject to this pilot program, and the provisions of G.S. 143B-12 [G.S. 143B-279.12], as enacted by subsection (a) of this section, shall apply to this statewide program.

"Any positions that were used by the Department of Environment and Natural Resources to staff the one-stop environmental permit application assistance and tracking system pilot project established under Section 13.7 of S.L. 2000-67 shall be used for the 2004-2005 fiscal year to staff the statewide one-stop environmental permit application assistance and tracking system program under G.S. 143B-279.12, as enacted in subsection (a) of this section. The Department of Environment and Natural Resources shall use available funds for the 2004-2005 fiscal year to continue and support these positions, and the Department of Environment and Natural Resources shall use funds appropriated in this act to the Department only for the purposes of implementing the statewide one-stop environmental permit application assistance and tracking system and establishing and supporting four positions to staff this statewide program for the 2004-2005 fiscal year."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

Transfer of Prairie Ridge Land to Department of Environment and Natural Resources. — Session Laws 2008-107, s. 27.7C, provides: "The land currently allocated to the Department of Administration and used for the Prairie Ridge Ecostation for Wildlife and Learning is hereby reallocated to the Department of Environment and Natural Resources."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Legal Periodicals. — For article, "The Evolution of Modern North Carolina Environmental and Conservation Policy Legislation," see 29 Campbell L. Rev. 535 (2007).

CASE NOTES

Cited in Crowell Constructors, Inc. v. State, 342 N.C. 838, 467 S.E.2d 675 (1996).

§ 143B-279.2. Department of Environment and Natural Resources — duties.

It shall be the duty of the Department:

(1) To provide for the protection of the environment;

(1a) To administer the State Outer Continental Shelf (OCS) Task Force and coordinate State participation activities in the federal outer continental shelf resource recovery programs as provided under the OCS Lands Act Amendments of 1978 (43 USC §§ 1801 et seq.) and the OCS Lands Act Amendments of 1986 (43 USC §§ 1331 et seq.).

(1b) To provide for the protection of the environment and public health through the regulation of solid waste and hazardous waste management and the administration of environmental health programs.

(2) Repealed by Session Laws 1997-443, s. 11A.5, effective August 28, 1997.

(2a) To provide and keep a museum or collection of the natural history of the State and to maintain the North Carolina Biological Survey; and

(3) To provide for the management of the State's natural resources.

(4) No later than February 1 of each odd-numbered year, to review all fees charged under any program under its authority to determine whether any of these fees should be changed and submit a report to the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division that includes all of the following:

a. The most recent Biennial Fee Report submitted by the Department to the Office of State Budget and Management.

b. A list of each fee charged under any program under the Department's authority that, for each fee, identifies the program, if any, and the division of the Department, if any, that is supported by the fee; the total expenditures for each program supported by fees; an evaluation of any inflationary change since the last change to the amount of the fee; and any other information deemed relevant to this review.

c. The Department's findings resulting from its review under this subdivision and any recommendations to increase or decrease any of these fees. (1989, c. 727, s. 3; 1993, c. 321, s. 28(c); c. 561, s. 116(e); 1997-443, s. 11A.5; 2009-451, s. 13.1A.)

School Bus Diesel Emissions Reduction Account. — Session Laws 2007-465, ss. 1 through 5, provide: "1. Legislative Findings. — The General Assembly makes the following findings:

"(1) Diesel emissions, due in large part to their high concentrations of particulate matter, are associated with severe and multiple health risks to the citizens of North Carolina, including increased risk of cancer, decreased lung function, aggravated asthma, heart attacks, and premature death.

"(2) The United States Environmental Protection Agency, recognizing the harmful effects of diesel emissions, issued new fuel and engine emission standards that will reduce particulate matter emissions from new engines ninety percent (90%) below previous levels, beginning with vehicle model year 2007.

"(3) The same technology that makes ninety percent (90%) reductions in diesel emissions possible for new engines can be retrofitted onto existing engines.

"(4) The Safe Accountable, Flexible, Efficient Transportation Equity Act — A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59, 119 Stat. 1144, 23 U.S.C. § 149, clarified eligibility for diesel matter retrofit projects from federal congestion mitigation and air quality improvement program funds apportioned to the State by the United States pursuant to 23 U.S.C. § 104(b)(2) and establishes those projects as a priority for funding. North Carolina should act now to position itself to maximize eighty percent (80%) federal matching dollars available through this program as provided in 23 U.S.C. § 120.

"2.(a) Pilot Program to Retrofit Certain School Buses. — The Department of Environment and Natural Resources, in consultation with the Department of Public Instruction, the Department of Transportation, and stakeholders, shall develop a pilot program, to be administered by the Department of Environment and Natural Resources, to award grants to retrofit school buses in order to reduce diesel emissions from school buses in any county that is located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter. A local school administrative unit may submit an application to the Department of Environment and Natural Resources for a grant to have any eligible school bus retrofitted in order to utilize an appropriate verified diesel emission control device as determined by the Department of Environment and Natural Resources. A school bus is eligible to have a diesel retrofit using grant funds if the school bus: (i) has a model year 1994 through model year 2006 engine; (ii) is registered in a county that is located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter; (iii) is capable of operating on diesel fuel and; (iv) is used for the transportation of public school students. The Department of Environment and Natural Resources may adopt guidelines and engineering standards as needed to implement this act. The Department of Environment and Natural Resources shall develop grant application procedures, the criteria and priorities for selecting grant recipients and further selection of which school buses of these grant recipients may use grant funds for diesel retrofits under this pilot program, and procedures for distribution of grant funds and federal-aid funds reimbursed under Section 7 of this act to a local school administrative unit selected as a grant recipient. The criteria that may be considered in grant recipient selection includes the remaining useful life of a school bus and the accumulated mileage and years of service of a school bus. Priority designation for selection of school buses for retrofits using grant funds may be given for a diesel retrofit that results in the greatest particulate matter reduction, considering the costs of operating, maintaining, and repairing the verified diesel emission control device, for the longest remaining useful life of the school bus.

"(b) Definitions. — As used in this act, the following definitions apply:

"(1) Diesel retrofit. — Defined in Chapter 149 of Title 23 of the United States Code.

"(2) Level 1 Control. — A verified diesel emission control device that achieves a particulate matter emission reduction of twenty-five percent (25%) or more but less than fifty percent (50%) from uncontrolled engine emissions levels.

"(3) Level 2 Control. — A verified diesel emission control device that achieves a particulate matter emission reduction of fifty percent (50%) or more but less than eighty-five percent (85%) from uncontrolled engine emissions levels.

"(4) Level 3 Control. — A verified diesel emission control device that achieves a particulate matter emission reduction of eighty-five percent (85%) or more from uncontrolled engine emission levels, or that reduces emissions to less than or equal to 0.01 grams of particulate matter per brake horsepower-hour. Level 3 Control includes repowering or replacing the existing diesel engine with an engine that meets the United States Environmental Protection Agency 2007 Heavy Duty Highway Diesel Standards set out in the Final Rule published on 18 January 2001 in the Federal Register, Volume 66, Number 12, Pages 5002 through 5193. Level 3 Control also includes new diesel engines for the 2007 model year or later that meet the emissions standards that achieve particulate matter emissions reductions that are ninety percent (90%) less than particulate matter emissions standards for diesel engines in the 2006 model year.

"(5) Verified diesel emission control device. — An emission control device or strategy that has been verified by the United States Environmental Protection Agency or the California Air Resources Board; the replacement or repowering of the vehicle with an engine that is certified to specific particulate matter emissions performance by the United States Environmental Protection Agency or the California Air Resources Board; or a device that reduces crankcase emissions by ninety percent (90%) or more from uncontrolled crankcase emissions levels, whether or not the device is verified by United States Environmental Protection Agency or the California Air Resources Board as an emission control device or strategy.

"(c) Appropriate Retrofit Technology. — Within one year of the effective date of this section, the Secretary of Environment and Natural Resources, in consultation with the Department of Public Instruction, may make a written finding that a model, model year, or any other category concerning the type or use of a school bus that is eligible for a grant under subsection (a) of this section cannot be retrofitted with Level 3 Control, and that the category may use grant funds to be retrofitted with Level

2 Control, if it is available and appropriate for the category, installed, and operational. Within one year of the effective date of this section, the Secretary of Environment and Natural Resources, in consultation with the Department of Public Instruction, may make a written finding that a model, model year, or any other category concerning the type or use of a school bus that is eligible for a grant under subsection (a) of this section cannot be retrofitted with Level 2 Control, and that the category may use grant funds to be retrofitted with Level 1 Control, if it is available and appropriate for the category, installed, and operational. The Secretary of Environment and Natural Resources may require additional emissions control to be used for those school buses retrofitted with Level 1 Control using grant funds. Within one year of the effective date of this section, the Secretary of Environment and Natural Resources, in consultation with the Department of Public Instruction, may make a written finding regarding: the comparative economic impact, health benefits, and technological feasibility of using Level 1 Control, Level 2 Control, Level 3 Control, or other verified diesel emission control device under this pilot program; which device results in the greatest emissions reductions, considering the cost of operating, maintaining, and repairing the devices over their anticipated useful life; recommendations regarding the appropriate verified diesel emission control device to be used for retrofits under this pilot program consistent with these findings. In addition to any other issues of retrofit technology considered when making any finding under this subsection, the Secretary of Environment and Natural Resources and the Department of Public Instruction may consider the remaining useful life of a school bus and the accumulated mileage and years of service of a school bus.

"(d) Coordination Among Departments. — The Department of Environment and Natural Resources shall coordinate with the Department of Public Instruction, the Department of Transportation, and the Department of Administration to determine if the effective and efficient implementation of this pilot program requires any of these departments to have a role beyond any role specified in this act, and if so, the Department of Public Instruction, the Department of Transportation, and the Department of Administration, as applicable, may adopt guidelines and engineering standards as needed to implement this section. The Department of Transportation may amend its Transportation Improvement Program and otherwise satisfy any other requirement under federal law so that school bus retrofits under this pilot program qualify for reimbursement of federal-aid funds as provided under Section 6 of this act.

"3.(a) School Bus Diesel Emissions Reduction Account Established. — The School Bus Diesel Emissions Reduction Account is established as a nonreverting account within the Department of Environment and Natural Resources. The Account shall consist of funds appropriated to it by the General Assembly and any contributions or grants from public or private sources.

"(b) Permissible Uses of the School Bus Diesel Emissions Reduction Account. — The Department of Environment and Natural Resources shall distribute funds in the School Bus Diesel Emissions Reduction Account as grants to local school administrative units for retrofitting school buses under this pilot program. The distributed funds shall be in an amount that is equal to twenty percent (20%) of the costs of purchasing a diesel retrofit for each school bus selected for retrofitting, based upon the costs of purchasing a diesel retrofit for a school bus as determined by the Department of Environment and Natural Resources. The funds shall be used by the local school unit to match the federal-aid funds that are to be reimbursed under Section 6 of this act, provided the Metropolitan Planning Organization for the area in which that local school administrative unit seeking grant funds under this pilot program has amended its Transportation Improvement Program and has otherwise satisfied any requirement under federal law so that the diesel retrofit as it applies to this local school administrative unit qualifies for reimbursement of federal-aid funds as provided under Section 6 of this act. Funds in the School Bus Diesel Emissions Reduction Account shall not be used for any costs associated with any school bus retrofit in excess of the sum of the twenty-percent (20%) share the local school administrative unit received in grant funds under this section for each diesel retrofit and the eighty-percent (80%) share in federal-aid funds for each diesel retrofit. Costs associated with any school bus retrofit in excess of this sum, if any, shall be borne by the local school administrative unit that operates the school bus. Any funds in the School Bus Diesel Emissions Reduction Account that have not been used or obligated as of 1 July 2008 in accordance with this section may be used to make grants to local school administrative units for one hundred percent (100%) of the costs for purchasing a diesel retrofit for a school bus as determined by the Department of Environment and Natural Resources. Funds in the School Bus Diesel Emissions Reduction Account shall not be used for any costs associated with any school bus retrofit in excess of one hundred percent (100%) of the costs for purchasing a diesel retrofit for a school bus as determined by the Department of Environment and Natural Resources, and excess costs associated with any school bus retrofit, if any, shall be borne by the local school administrative unit that operates the school bus.

"(c) Prohibited Uses of the School Bus Diesel Emissions Reduction Account. — Funds in the School Bus Diesel Emissions Reduction Account shall not be used for any school bus with tampered, nonconforming, or defective emission control components.

"4.(a) Transfer of Information. — On or before 1 August 2008, the Department of Public Instruction shall submit to the Department of Environment and Natural Resources the following information:

"(1) The total number of school buses that are eligible for grants under Section 2(a) of this act.

"(2) The number of school buses that are equipped with an engine certified to the applicable United States Environmental Protection Agency standard for particulate matter as set out in 40 Code of Federal Regulations §§ 86.007-11 (1 July 2006 Edition).

"(b) Annual Report Required. — On or before 1 September 2008, and again on or before 1 September 2009, the Department of Environment and Natural Resources shall submit a report to the Department of Public Instruction, the Department of Transportation, and the Environmental Review Commission on the pilot program under this act. This report shall include the information submitted under subsection (a) of this section and shall also include:

"(1) The total number of school buses that have the retrofit technology installed and operational under this pilot program, including a breakdown by location, vehicle model year, engine year, and the type of verified diesel emission control device used for each school bus.

"(2) The anticipated emissions reductions based on the emissions certification of the verified diesel emission control devices used and the annual miles the school buses are expected to drive.

"(3) Any recommendations to further reduce diesel emissions from school buses and whether the program to retrofit certain school buses registered in a county that is located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter is accomplishing its purpose to reduce diesel emissions, improve air quality, and protect students' health.

"(4) The feasibility and the cost of expanding the funding for this pilot program for all eligible school buses for local school administrative units in counties that are located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter.

"(5) The feasibility and the cost of expanding this pilot program statewide.

"5. Credit for Emissions Reductions. — The Department of Environment and Natural Resources shall work together with federal, State, and local air quality and transportation agencies to determine how emissions reductions achieved through implementation of this act may be quantified and credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the State Implementation Plan or Transportation Conformity determinations."

Session Laws 2007-465, s. 6, provides: "Reimbursement of Federal-Aid Funds. — The Department of Transportation may reimburse up to two million dollars ($2,000,000) for the 2007-2008 fiscal year from the federal congestion mitigation and air quality improvement program funds apportioned to the State of North Carolina by the United States pursuant to 23 U.S.C. § 104(b)(2), to the Department of Environment and Natural Resources for the costs of purchasing diesel retrofits for school buses under the pilot program under this act. This reimbursement may provide the eighty percent (80%) in federal-aid funds, as provided in 23 U.S.C. § 120, for the costs of purchasing diesel retrofits for school buses to supplement the funds awarded as grants under Section 3(b) of this act. The Department of Transportation and the Department of Environment and Natural Resources may enter into a contract that provides for the terms and method by which the Department of Environment and Natural Resources bills the Department of Transportation for reimbursement of eligible costs of purchasing diesel retrofits for school buses and submits itemized invoices with proper supporting documentation. This contract may provide a reimbursement schedule." Funding was provided for 2007-2008 fiscal year.

Editor's Note. — Session Laws 2007-107, s. 5.1(a), provides: "The Division of Information Technology Services of the Department of Environment and Natural Resources, in collaboration with the Division of Emergency Management of the Department of Crime Control and Public Safety, shall establish a Tier II Hazardous Chemicals Inventory Database and Web-based access application that will accept uploads of Tier II data from local government systems acting as partners in the project and from the University of Texas at Dallas E-Plan repository until all Tier II hazardous chemical inventory is in the database. The database shall include data on sites listed in the planned Toxic Release Inventory exchange and the Department's existing Facilities Registry System. The Facilities Registry System is a database of facilities for which the Department has environmental concerns, including facilities that are subject to an environmental permit for water, air, waste, land quality, wetlands, public water supply, wastewater treatment, and other environmental permits. The database shall be connected via Web services to the North Carolina Exchange Node. The purposes of this database are to provide a one-stop, real-time information source for all hazardous and toxic materials release sites and all sites that are subject to an environmental permit in order to enhance the operational effectiveness of the Department of Environment and Natural Resources, the Division of Emergency Management of the Department of Crime Control and Public Safety, first responders and emergency management officials, local government officials, and any others with a role in emergency management or planning; to remove the burden of data reentry in multiple systems; to reduce the dependence on paper submissions for Tier II reporting; to extend the Network for the Exchange Node community; and to reuse information already deployed at the Department. The Tier II Hazardous Chemicals Inventory Database and Web-based access application shall be maintained by the Division of Emergency Management of the Department of Crime Control and Public Safety."

Session Laws 2007-550, s. 17, provides: "The Division of Waste Management and the Division of Pollution Prevention and Environmental Assistance of the Department of Environment and Natural Resources shall jointly develop a proposal for a recycling program for fluorescent lamps. The program will be developed so as to ensure that substantially all of the mercury contained in fluorescent lamps will be recovered so as to facilitate a phaseout of incandescent lamps without damage to public health and the environment from the increased use of mercury lamps as replacements for fluorescent lamps. The Department of Environment and Natural Resources shall report its findings and recommendations, including legislative proposals and cost estimates, to the Environmental Review Commission on or before 1 March 2008."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 13.1A, effective July 1, 2009, added subdivision (4).

§ 143B-279.3. Department of Environment and Natural Resources — structure.

(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

(1) Radiation Protection Section, Division of Health Service Regulation, Department of Health and Human Services.
(2), (3) Repealed by Session Laws 1997-443, s. 11A.6.
(4) Coastal Management Division, Department of Natural Resources and Community Development.
(5) Environmental Management Division, Department of Natural Resources and Community Development.
(6) Forest Resources Division, Department of Natural Resources and Community Development.
(7) Land Resources Division, Department of Natural Resources and Community Development.
(8) Marine Fisheries Division, Department of Natural Resources and Community Development.
(9) Parks and Recreation Division, Department of Natural Resources and Community Development.
(10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.
(11) Water Resources Division, Department of Natural Resources and Community Development.
(12) North Carolina Zoological Park, Department of Natural Resources and Community Development.
(13) Albemarle-Pamlico Study.
(14) Office of Marine Affairs, Department of Administration.
(15) Environmental Health Section, Division of Health Services, Department of Health and Human Services.

(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

(1) Repealed by Session Laws 1993, c. 501, s. 27.
(2) Radiation Protection Commission, Department of Health and Human Services.
(3) Repealed by Session Laws 1997-443, s. 11A.6.
(4) Water Treatment Facility Operators Board of Certification, Department of Health and Human Services.
(5) to (8) Repealed by Session Laws 1997-443, s. 11A.6.
(9) Coastal Resources Commission, Department of Natural Resources and Community Development.
(10) Environmental Management Commission, Department of Natural Resources and Community Development.
(11) Air Quality Council, Department of Natural Resources and Community Development.
(12) Wastewater Treatment Plant Operators Certification Commission, Department of Natural Resources and Community Development.
(13) Forestry Council, Department of Natural Resources and Community Development.
(14) North Carolina Mining Commission, Department of Natural Resources and Community Development.
(15) Advisory Committee on Land Records, Department of Natural Resources and Community Development.
(16) Marine Fisheries Commission, Department of Natural Resources and Community Development.
(17) Parks and Recreation Council, Department of Natural Resources and Community Development.
(18) Board of Trustees of the Recreation and Natural Heritage Trust Fund, Department of Natural Resources and Community Development.
(19) North Carolina Trails Committee, Department of Natural Resources and Community Development.
(20) Sedimentation Control Commission, Department of Natural Resources and Community Development.
(21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.
(22) North Carolina Zoological Park Council, Department of Natural Resources and Community Development.
(23) Repealed by Session Laws 1997-286, s. 6.

(c)(1) Repealed by Session Laws 2002, ch. 70, s. 1, effective July 1, 2002.
(2) There is created a division within the environmental area of the Department of Environment and Natural Resources to be named the Division of Waste Management. All functions, powers, duties, and obligations of the Solid Waste Management Section of the Division of Health Services of the Department of Health and Human Services are transferred in their entirety to the Division of Waste Management of the Department of Environment and Natural Resources.
(3) There is created a division within the environmental areas of the Department of Environment and Natural Resources to be named the Division of Environmental Health. All functions, powers, duties and obligations of the Division of Environmental Health of the Department of Environment and Natural Resources are transferred in their entirety to the Division of Environmental Health, Department of Environment and Natural Resources. All functions, powers, duties, and obligations of the Division of Radiation Protection of the Department of Environment and Natural Resources are transferred in their

entirety to the Division of Environmental Health of the Department of Environment and Natural Resources.

(d) The Department of Environment and Natural Resources is vested with all other functions, powers, duties, and obligations as are conferred by the Constitution and laws of this State. (1989, c. 727, s. 3; 1989 (Reg. Sess., 1990), c. 1004, s. 31; 1991, c. 342, ss. 16(a), (b); 1993, c. 321, ss. 28(a), (b); c. 501, s. 27; 1995 (Reg. Sess., 1996), c. 743, s. 20; 1997-286, s. 6; 1997-443, ss. 11A.6, 11A.123; 2002-70, s. 1; 2007-182, s. 1.)

Administrative Rules Governing Sanitation of Hospitals, Nursing Homes, Rest Homes, and Other Institutions. — Session Laws 2002-160, ss. 1-5, effective October 17, 2002, provide: "Notwithstanding G.S. 150B-21.3(b), amendments to the following rules governing sanitation of hospitals, nursing homes, rest homes, and other institutions, adopted by the Commission for Health Services [now the Commission for Public Health] and approved by the Rules Review Commission on October 18, 2001, become effective March 1, 2003: 15A NCAC 18A.1301 (Definitions), 15A NCAC 18A.1302 (Approval of Plans), 15A NCAC 18A.1304 (Inspections), 15A NCAC 18A.1305 (Grading Residential Care Facilities in Institutions), 15A NCAC 18A.1306 (Public Display of Grade Card), 15A NCAC 18A.1307 (Reinspections), 15A NCAC 18A.1308 (Approved Institutions), 15A NCAC 18A.1309 (Floors), 15A NCAC 18A.1310 (Walls and Ceilings), 15A NCAC 18A.1312 (Toilet: Handwashing: Laundry: and Bathing Facilities), 15A NCAC 18A.1313 (Water Supply), 15A NCAC 18A.1314 (Drinking Water Facilities: Ice Handling), 15A NCAC 18A.1315 (Liquid Wastes), 15A NCAC 18A.1316 (Solid Wastes), 15A NCAC 18A.1317 (Vermin Control: Premises: Animal Maintenance), 15A NCAC 18A.1318 (Miscellaneous), 15A NCAC 18A.1319 (Furnishings and Patient Contact Items), 15A NCAC 18A.1320 (Food Service Utensils and Equipment), 15A NCAC 18A.1322 (Milk and Milk Products), 15A NCAC 18A.1323 (Food Protection), and 15A NCAC 18A.1324 (Employees).

"Notwithstanding G.S. 150B-21.3(b), 15A NCAC 18A.1327 (Incorporated Rules) adopted by the Commission for Health Services [now the Commission for Public Health] and approved by the Rules Review Commission on October 18, 2001 becomes effective March 1, 2003.

"Notwithstanding G.S. 150B-21.3(b), amendments to 15A NCAC 18A.1311 (Lighting, Ventilation and Moisture Control) and 15A NCAC 18A.1321 (Food Supplies) adopted by the Commission for Health Services [now the Commission for Public Health] and approved by the Rules Review Commission on November 15, 2001 become effective March 1, 2003.

"The Division of Environmental Health of the Department of Environment and Natural Resources, with the assistance of local health departments, shall field test the amended rules listed in Sections 1 through 3 of this act by conducting trial inspections of a representative sample of facilities subject to the amended rules throughout the State. Trial inspections under the amended rules shall be performed during the period 1 October 2002 through 1 February 2003 in conjunction with the regular inspection of the representative sample of facilities under rules in effect during the field test period. A facility that is subject to a trial inspection shall not be liable for an enforcement action for any violation of an amended rule that is observed during a trial inspection but may be liable for an enforcement action under rules in effect during the field test period. The purposes of the field test shall be to determine what expenditures, if any, will be required of facilities in order to comply with the amended rules and whether the amended rules will result in lower inspection grades for facilities. As a part of the field test, the Division shall also review the amended rules, giving particular attention to applicable federal regulations and to the incorporation by reference of any other rules or standards in the amended rules, to determine whether the amended rules will result in any duplication or conflict in applicable requirements or standards and whether the amended rules will result in duplicative or conflicting inspection or enforcement policies or procedures. The Division of Environmental Health shall compile and analyze field test data to determine whether any of the amended rules should be revised. The Division shall report the results of the field test required by this section, any recommendations to the Commission for Health Services [now the Commission for Public Health] regarding revisions to the amended rules, and the status of any recommended rule revisions to the Environmental Review Commission on or before March 1, 2003.

"The Division of Environmental Health of the Department of Environment and Natural Resources shall offer training to staff of facilities that are subject to the amended rules listed in Sections 1 through 3 of this act. Training shall be offered in the various regions of the State as appropriate and shall include information on the requirements of the amended rules, enforcement policies and procedures, and updated information as to any revisions to the amended rules that may be recommended as a result of the field test of the amended rules required by Section 4 of this act."

Advisory Committee for the Coordination of Waterfront Access. — Session Laws 2007-485, s. 2.1, provides: "There is established the Advisory Committee for the Coordination of Waterfront Access within the Department of Environment and Natural Resources. The Advisory Committee shall be composed of the following members:

"(1) The Secretary of Environment and Natural Resources or the Secretary's designee, Chair.

"(2) The Director of the Division of Coastal Management of the Department of Environment and Natural Resources or the Director's designee.

"(3) The Director of the Division of Parks and Recreation of the Department of Environment and Natural Resources or the Director's designee.

"(4) The Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources or the Director's designee.

"(5) The Director of the Division of Aquariums of the Department of Environment and Natural Resources or the Director's designee.

"(6) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.

"(7) A representative of the State Property Office appointed by the Secretary of Administration.

"(8) The Executive Director of North Carolina Sea Grant.

"(9) One local government representative appointed by the North Carolina League of Municipalities.

"(10) One local government representative appointed by the North Carolina Association of County Commissioners."

Session Laws 2007-485, s. 2.2, provides: "The Advisory Committee for the Coordination of Waterfront Access shall:

"(1) Develop a coordinated plan for providing greater waterfront access in the State. This plan shall specifically address geographic diversity of waterfront access, diversity of types of waterfront access, and funding for waterfront access. The entities represented on the Advisory Committee shall adhere to the plan to the maximum extent practicable.

"(2) Develop recommendations for increasing and improving waterfront access in the State."

Session Laws 2007-485, s. 2.3, provides: "The Advisory Committee shall report its progress in implementing this Part, including any recommendations developed pursuant to this Part, to the Joint Legislative Commission on Seafood and Aquaculture no later than October 1 of each year. The first report required by this section shall be submitted no later than October 1, 2008."

Administrative improvements to the North Carolina Zoological Park Operations — Session Laws 2009-329, s. 3.1, provides: "The Secretary of the Department of Environment and Natural Resources shall work with the North Carolina Zoological Park to do the following:

"(1) Examine all purchasing and contracting policies and procedures. The Department shall identify opportunities for delegating purchasing and contracting responsibilities to the Park where appropriate. For purchases and contracts involving promotion and advertising, the Department shall consider increasing the amount over which the Park must solicit competitive bids or quotes to five thousand dollars ($5,000).

"(2) Continue negotiations with the Office of Information Technology Services regarding the implementation of Article 3D of Chapter 147 of the General Statutes.

"(3) Identify and address any other administrative concerns of the Park."

Session Laws 2009-329, s. 3.2, provides: "The Secretary of the Department of Environment and Natural Resources shall review the current Memorandum of Understanding between the Department and the North Carolina Zoological Society. The Secretary shall work with the Society to make appropriate revisions to or replace the Memorandum, as needed."

Session Laws 2009-329, s. 4, provides: "The Department of Environment and Natural Resources shall report to the North Carolina Zoological Park Funding and Organization Study Committee and to the Fiscal Research Division of the Legislative Services Office on the progress and implementation of Parts I and III of this act no later than January 15, 2010." Parts I and III of Session Laws 2009-329 refer to purchasing and contracting authority on behalf of the North Carolina Zoological Park and administrative improvements to the North Carolina Zoological Park Operations.

Session Laws 2009-329, ss. 5.1 through 5.12, provide: "SECTION 5.1. Committee Established. — The North Carolina Zoological Park Funding and Organization Study Committee is hereby established.

"SECTION 5.2. Membership. — The Committee shall consist of 22 members as follows:

"(1) Five members of the Senate appointed by the President Pro Tempore of the Senate.

"(2) Five members of the House appointed by the Speaker of the House of Representatives.

"(3) The Secretary of Environment and Natural Resources, or the Secretary's designee.

"(4) The Director of the Zoological Park, or the Director's designee.

"(5) The Secretary of Commerce, or the Secretary's designee.

"(6) The Executive Director of the Division of Tourism, Film and Sports Development of the Department of Commerce, or the Executive Director's designee.

"(7) The Chair of the North Carolina Zoological Park Council, or the Chair's designee.

"(8) The Chair of the board of directors of the North Carolina Zoological Society, Inc., or the Chair's designee.

"(9) Two additional representatives of the Zoo Society Board, who may be comprised of current or former members, one appointed by the President Pro Tempore of the Senate upon recommendation of the Chair of the Zoo Society Board, one appointed by the Speaker of the House of Representatives upon recommendation of the Chair of the Zoo Society Board.

"(10) Two representatives from the public at large appointed by the President Pro Tempore of the Senate.

"(11) Two representatives from the public at large appointed by the Speaker of the House of Representatives.

"SECTION 5.3. Cochairs. — The Committee shall have three cochairs, one designated by the President Pro Tempore of the Senate and two designated by the Speaker of the House of Representatives from among their respective appointees. The Committee shall meet upon the call of the cochairs.

"SECTION 5.4. Quorum. — A quorum of the Committee shall consist of 10 members.

"SECTION 5.5. Vacancies. — Any vacancy on the Committee shall be filled by the original appointing authority.

"SECTION 5.6. Purpose and Duties. — The Committee shall study: (i) funding issues associated with the Zoological Park, including current and expected capital and operational needs, current sources of revenue, and potential funding mechanisms; and (ii) the current organizational structure of the Zoological Park, and other potential organizational structures, including, but not limited to, reorganization as an authority, as a private nonprofit corporation, or other entity to determine which organizational structure would most effectively achieve the mission of the Zoological Park.

"SECTION 5.7. Expenses of Members. — Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"SECTION 5.8. Staff. — Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Committee to aid in its work.

"SECTION 5.9. Consultants. — The Committee may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

"SECTION 5.10. Meetings. — The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

"SECTION 5.11. Report. — The Committee shall report its findings and recommendations to the 2010 Regular Session of the 2009 General Assembly and the Environmental Review Commission on or before May 1, 2010, at which time the Committee shall terminate.

"SECTION 5.12. Funding. — From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act."

Geographic Information Consolidation. — Session Laws 2009-451, s. 6.8, as amended by Session Laws 2009-575, s. 3C, provides: "(a) Findings. — The General Assembly finds that there is a critical need for consolidating the investments made in geographic information systems and developing common infrastructures in order for the State to reap all the potential benefits of geographic information systems at the lowest cost.

"(b) Implementation Plan. — The recommendations outlined in the 2008 legislative report prepared by the State Chief Information Officer, the Geographic Information Coordinating Council, and the Office of State Budget and Management, made pursuant to Section 6.13 of S.L. 2008-107, entitled 'State Geographic Information Consolidation Implementation Plan,' shall be implemented in four distinct work streams, as follows:

"(1) Transferring the Center for Geographic Information and Analysis to the Office of the State Chief Information Officer and establishing appropriated funding for staff activities supporting the Geographic Information Coordinating Council, statewide standards, and the coordination of data acquisition.

"(2) Reestablishing the professional services component and refocusing that effort toward current needs of the community while reducing those overhead costs.

"(3) Revitalizing the NC OneMap project by leveraging new technology in the market to reduce costs while increasing utility of the service.

"(c) Transfers of Agencies, Powers, Duties. — The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the State agencies and subunits listed in this subsection are transferred from those entities to the State Chief Information Officer, Office of Information Technology Services, with all of the elements of a Type II transfer as defined by G.S. 143A-6:

"(1) The North Carolina Geographic Information Coordinating Council.

"(2) The Center for Geographic Information and Analysis.

"The Center for Geographic Information and Analysis shall remain in its current office space unless the State Chief Information Officer determines otherwise.

"(d) Center for Geographic Information and Analysis Coordination. — The State Chief Information Officer shall coordinate a professional services component for geographic information systems coordination with the Center for Geographic Information and Analysis that is refocused toward current community needs.

"(e) North Carolina Geographic Information Coordinating Council Coordination. — The State Chief Information Officer, in cooperation with the North Carolina Geographic Information Coordinating Council, shall coordinate the refocusing of the NC OneMap geographic information systems infrastructure project to leverage new technology, to increase the utility of geographic information systems services, and to reduce geographic information systems data layer costs through singly managed contracts.

"(f) Information Technology Fund. — The Information Technology Fund shall be used for the purpose of acquiring and managing, at the lowest cost, data layers useful to multiple State and local organizations, according to the priorities set by the North Carolina Geographic Information Coordinating Council. The Information Technology Fund may receive private grants and may include State, federal, local, and matching funds. Any funding received for GIS may be used only for that purpose.

"(g) Geographic Information Systems Funding. — Of the funds appropriated in this act to the Information Technology Fund, the sum of seven hundred forty thousand dollars ($740,000) for the 2009-2010 fiscal year and the sum of seven hundred forty thousand dollars ($740,000) for the 2010-2011 fiscal year shall be used to effectuate the transfer of the Center for Geographic Information and Analysis, including the cost of moving personnel positions, as provided by this act.

"(h) ESRI License Funding. — The State Chief Information Officer (i) shall use up to the sum of six hundred thousand dollars ($600,000) from funding appropriated to the Information Technology Fund during the 2009-2010 fiscal year to support ESRI licenses for State agencies and (ii) may use anticipated carryforward from fiscal year 2009-2010 to provide the funding for those licensing fees. The State Chief Information Officer shall not charge subscription fees to fund ESRI licenses."

Editor's Note. — The name of the Air Quality Council, referred to in subdivision (b)(11), has been changed to the Small Business Environmental Advisory Panel by Session Laws 2005-386, s. 8.2, effective September 13, 2005.

Session Laws 2000-67, s. 23, effective July 1, 2000, consolidates the Office of State Budget and Management and the Office of State Planning into the Office of State Budget, Planning, and Management under the Office of the Governor. The Department of Environment and Natural Resources is to transfer the responsibility for development of topographic mapping through a cooperative agreement with the U.S. Geological Survey and funds to match federal funding under the agreement from the Division of Land Resources to the Office of State Budget, Planning, and Management.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2001-424, s. 12.3(a), provides: "The Center for Geographic Information Analysis/Geodetic Survey is transferred from the Office of State Budget and Management to the Department of Environment and Natural Resources, Division of Land Resources. This transfer has all of the elements of a Type I transfer as defined in G.S. 143A-6."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143B-279.4. The Department of Environment and Natural Resources — Secretary; Deputy Secretaries.

(a) The Secretary of Environment and Natural Resources shall be the head of the Department.

(b) The Secretary may appoint two Deputy Secretaries. (1989, c. 727, s. 3; 1989 (Reg. Sess., 1990), c. 1004, s. 19(a); 1997-443, s. 11A.119(a).)

Management of the Jordan Watershed, Scientific Advisory Board — Session Laws 2009-216, s. 4, provides: "(a) Scientific Advisory Board for Nutrient-Impaired Waters Established. — No later than July 1, 2010, the Secretary shall establish a Nutrient Sensitive Waters Scientific Advisory Board. The Scientific Advisory Board shall consist of no fewer than five and no more than 10 members with the following expertise or experience:

"(1) Representatives of one or more local governments in the Jordan Reservoir watershed. Local government representatives shall have experience in stormwater management, flood control, or management of a water or wastewater utility.

"(2) One member with at least 10 years of professional or academic experience relevant to the management of nutrients in impaired water bodies and possessing a graduate degree in a related scientific discipline, such as aquatic science, biology, chemistry, geology, hydrology, environmental science, engineering, economics, or limnology.

"(3) One professional engineer with expertise in stormwater management, hydrology, or flood control.

"(4) One representative of the Department of Transportation with expertise in stormwater management.

"(5) One representative of a conservation organization with expertise in stormwater management, urban landscape design, nutrient reduction, or water quality.

"(b) Duties. — No later than July 1, 2012, the Scientific Advisory Board shall do all of the following:

"(1) Identify management strategies that can be used by local governments to reduce nutrient loading from existing development.

"(2) Evaluate the feasibility, costs, and benefits of implementing the identified management strategies.

"(3) Develop an accounting system for assignment of nutrient reduction credits for the identified management strategies.

"(4) Identify the need for any improvements or refinements to modeling and other analytical tools used to evaluate water quality in nutrient-impaired waters and nutrient management strategies.

"(c) Report; Miscellaneous Provisions. — The Scientific Advisory Board shall also advise the Secretary on any other issue related to management and restoration of nutrient-impaired water bodies. The Scientific Advisory Board shall submit an annual report to the Secretary no later than July 1 of each year concerning its activities, findings, and recommendations. Members of the Scientific Advisory Board shall be reimbursed for reasonable travel expenses to attend meetings convened by the Department for the purposes set out in this section."

§ 143B-279.5. Biennial State of the Environment Report.

(a) The Secretary of Environment and Natural Resources shall report on the state of the environment to the General Assembly and the Environmental Review Commission no later than 15 February of each odd-numbered year. The report shall include:

(1) An identification and analysis of current environmental protection issues and problems within or affecting the State and its people;

(2) Trends in the quality and use of North Carolina's air and water resources;

(3) An inventory of areas of the State where air or water pollution is in evidence or may occur during the upcoming biennium;

(4) Current efforts and resources allocated by the Department to correct identified pollution problems and an estimate, if necessary, of additional resources needed to study, identify, and implement solutions to solve potential problems;

(5) Departmental goals and strategies to protect the natural resources of the State;

(6) Any information requested by the General Assembly or the Environmental Review Commission;
(7) Suggested legislation, if necessary; and
(8) Any other information on the state of the environment the Secretary considers appropriate.

(b) Other State agencies involved in protecting the State's natural resources and environment shall cooperate with the Department of Environment and Natural Resources in preparing this report. (1989, c. 727, s. 3; 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991 (Reg. Sess., 1992), c. 990, s. 5; 1997-443, s. 11A.123.)

CASE NOTES

Cited in Crowell Constructors, Inc. v. State, 342 N.C. 838, 467 S.E.2d 675 (1996).

§ 143B-279.6: Repealed by Session Laws 1997-443, s. 11A.2.

§ 143B-279.7. Fish kill response protocols; report.

(a) The Department of Environment and Natural Resources shall coordinate an intradepartmental effort to develop scientific protocols to respond to significant fish kill events utilizing staff from the Division of Water Quality, Division of Marine Fisheries, Department of Health and Human Services, Wildlife Resources Commission, the scientific community, and other agencies, as necessary. In developing these protocols, the Department of Environment and Natural Resources shall address the unpredictable nature of fish kills caused by both natural and man-made factors. The protocols shall contain written procedures to respond to significant fish kill events including:
(1) Developing a plan of action to evaluate the impact of fish kills on public health and the environment.
(2) Responding to fish kills within 24 hours.
(3) Investigating and collecting data relating to fish kill events.
(4) Summarizing and distributing fish kill information to participating agencies, scientists and other interested parties.

(b) The Secretary of Environment and Natural Resources shall take all necessary and appropriate steps to effectively carry out the purposes of this Part including:
(1) Providing adequate training for fish kill investigators.
(2) Taking immediate action to protect public health and the environment.
(3) Cooperating with agencies, scientists, and other interested parties, to help determine the cause of the fish kill.

(c) The Department of Environment and Natural Resources shall report annually to the Environmental Review Commission no later than December 1 of each year. This report shall include a summary of all fish kill activity within the last year, an overview of any trend analyses, a discussion of any new or modified methodologies or reporting protocols, and any other relevant information. (1995 (Reg. Sess., 1996), c. 633, s. 4; 1997-443, s. 11A.108A; 2001-452, s. 2.8; 2001-474, ss. 30, 31.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 633, s. 4, was codified as this section at the direction of the Revisor of Statutes.

§ 143B-279.8. Coastal Habitat Protection Plans.

(a) The Department shall coordinate the preparation of draft Coastal Habitat Protection Plans for critical fisheries habitats. The goal of the Plans shall be the long-term enhancement of coastal fisheries associated with each coastal habitat identified in subdivision (1) of this subsection. The Department shall use the staff of those divisions within the Department that have jurisdiction over marine fisheries, water quality, and coastal area management in the preparation of the Coastal Habitat Protection Plans and shall request assistance from other federal and State agencies as necessary. The plans shall:

(1) Describe and classify biological systems in the habitats, including wetlands, fish spawning grounds, estuarine or aquatic endangered or threatened species, primary or secondary nursery areas, shellfish beds, submerged aquatic vegetation (SAV) beds, and habitats in outstanding resource waters.

(2) Evaluate the function, value to coastal fisheries, status, and trends of the habitats.

(3) Identify existing and potential threats to the habitats and the impact on coastal fishing.

(4) Recommend actions to protect and restore the habitats.

(b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall each appoint two members of the commission he or she chairs to a six-member review committee. The six-member review committee, in consultation with the Department, shall review the draft Plan and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the six-member review committee, shall then be submitted to the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission, each of which shall independently consider the Plan for adoption. If any of the three commissions is unable to agree to any aspect of a Plan, the chair of each commission shall refer that aspect of the Plan to a six-member conference committee to facilitate the resolution of any differences. The six-member conference committee shall be appointed in the same manner as a six-member review committee and may include members of the six-member review committee that reviewed the Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions adopted by all three commissions. The three commissions shall review and revise each Coastal Habitat Protection Plan at least once every five years.

(c) In carrying out their powers and duties, the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall ensure, to the maximum extent practicable, that their actions are consistent with the Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and does not oblige any commission to modify any rule adopted, permit decision made, or other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan by the three commissions. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall adopt rules to implement Coastal Habitat Protection Plans in accordance with Chapter 150B of the General Statutes.

(d) If any of the three commissions concludes that another commission has taken an action that is inconsistent with a Coastal Habitat Protection Plan, that commission may request a written explanation of the action from the other commission. A commission shall provide a written explanation: (i) upon the written request of one of the other two commissions, or (ii) upon its own motion if the commission determines that it must take an action that is inconsistent with a Coastal Habitat Protection Plan.

(e) The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Coastal Habitat Protection Plans, including the extent to which the actions of the three commissions are consistent with the Plans, on or before 1 September of each year.

(f) The Secretary of Environment and Natural Resources shall report to the Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture shall concurrently review each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted by the Secretary. The Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary. (1997-400, s. 3.1; 1997-443, s. 11A.119(b).)

Editor's Note. — Session Laws 1997-400, s. 6.9, as amended by Session Laws 2003-111, s. 1, effective July 1, 1998, provides that all of the Coastal Habitat Protection Plans required by G.S. 143B-279.8 shall be adopted no later than December 31, 2004; that the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall make the first report on progress on or before September 1, 1999; and that the Secretary of Environment, Health, and Natural Resources [Secretary of Environment and Natural Resources] shall make the first report on Fishery Management Plans on or before September 1, 1999.

Session Laws 1997-400, s. 6.10, provides that, unless otherwise expressly provided, every agency to which the act applies shall adopt rules to implement the provisions of that act only in accordance with the provisions of Chapter 150B of the General Statutes, that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, that every agency to which the act applies that is authorized to adopt rules to implement the provisions of the act may adopt temporary rules to implement the provisions of the act, and that s. 6.10 of that act shall continue in effect until all rules necessary to implement the provisions of the act have become effective as either temporary rules or permanent rules.

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 443(1998).

§ 143B-279.9. Land-use restrictions may be imposed to reduce danger to public health at contaminated sites.

(a) In order to reduce or eliminate the danger to public health or the environment posed by the presence of contamination at a site, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site where the contamination is located if the restrictions meet the requirements of this section. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial action plan in accordance with standards that the Secretary determines to be applicable to the site. Except as provided in subsection (b) of this section, if the remedial action is risk-based or will not require that the site meet unrestricted use standards, the remedial action plan must include an agreement by the owner, operator, or other responsible party to record approved land-use restrictions that meet the requirements of this section as provided in G.S. 143B-279.10 or G.S. 143B-279.11, whichever applies. Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner of the land, operator of the facility, or other party responsible for the contaminated site. Any land-use restriction may also be enforced by the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the site. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction.

(b) The definitions set out in G.S. 143-215.94A apply to this subsection. A remedial action plan for the cleanup of environmental damage resulting from a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes must include an agreement by the owner, operator, or other party responsible for the discharge or release of petroleum to record a notice of any applicable land-use restrictions that meet the requirements of this subsection as provided in G.S. 143B-279.11. All of the provisions of this section shall apply except as specifically modified by this subsection and G.S. 143B-279.11. Any restriction on the current or future use of real property pursuant to this subsection shall be enforceable only with respect to: (i) real property on which the source of contamination is located and (ii) any real property on which contamination is located at the time the remedial action plan is approved and that was owned or controlled by any owner or operator of the underground storage tank or other responsible party at the time the discharge or release of petroleum is discovered or reported or at any time thereafter. No restriction on the current or future use of real property shall apply to any portion of any parcel or tract of land on which contamination is not located. This subsection shall not be construed to require any person to record any notice of restriction on the current or future use of real property other than the real property described in this subsection. For purposes of this subsection and G.S. 143B-279.11, the Secretary may restrict current or future use of real property only as set out in any one or more of the following subdivisions:

(1) Where soil contamination will remain in excess of unrestricted use standards, the property may be used for a primary or secondary residence, school, daycare center, nursing home, playground, park, recreation area, or other similar use only with the approval of the Department.

(2) Where soil contamination will remain in excess of unrestricted use standards and the property is used for a primary or secondary residence that was constructed before the release of petroleum that resulted in the contamination is discovered or reported, the Secretary may approve alternative restrictions that are sufficient to reduce the risk of exposure to contaminated soils to an acceptable level while allowing the real property to continue to be used for a residence.

(3) Where groundwater contamination will remain in excess of unrestricted use standards, installation or operation of any well usable as a source of water shall be prohibited.

(4) Any restriction on the current or future use of the real property that is agreed upon by both the owner of the real property and the Department.

(c) This section does not alter any right, duty, obligation, or liability of any owner, operator, or other responsible party under any other provision of law.

(d) As used in this section:

(1) "Unrestricted use standards" means generally applicable standards, guidance, or established methods governing contaminants that are established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Public Health, or the Department. Cleanup or remediation of real property to unrestricted use standards means that the property is restored to a condition such that the property and any use that is made of the property does not pose a danger or risk to public health, the environment, or users of the property that is significantly greater than that posed by use of the property prior to its having been contaminated.

(2) "Risk-based", when used in connection with cleanup, remediation, or similar terms, means cleanup or remediation of contamination of real property to a level that, although not in compliance with unrestricted use standards, does not pose a significant danger or risk to public health, the environment, or users of the real property so long as the property remains in the condition and is used in a manner that is consistent with the assumptions as to the condition and use of the property on which the determination that the level of risk is acceptable is based. (1999-198, s. 1; 2000-51, s. 1; 2001-384, ss. 1, 12; 2002-90, s. 1; 2007-182, s. 2.)

Editor's Note. — Session Laws 2002-90, s. 8, which rewrote subsection (b), provides in part: "This act applies retroactively to any cleanup of a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes except that land-use restrictions and recordation of residual contamination are not required with respect to a discharge or release of petroleum for which the Department of Environment and Natural Resources issued a determination that no further action is required prior to 1 September 2001."

§ 143B-279.10. Recordation of contaminated sites.

(a) The owner of the real property on which a site is located that is subject to current or future use restrictions approved as provided in G.S. 143B-279.9(a) shall submit to the Department a survey plat as required by this section within 180 days after the owner is notified to do so. The survey plat shall identify areas designated by the Department, shall be prepared and certified by a professional land surveyor, and shall be entitled "NOTICE OF CONTAMINATED SITE". Where a contaminated site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

(1) The location and dimensions of any disposal areas and areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of contamination known to the owner of the site to exist on the site.

(3) Any restriction approved by the Department on the current or future use of the site.

(b) The Department shall review the proposed Notice to determine whether the Notice meets the requirements of this section and rules adopted to implement this section, and shall provide the owner of the site with a notarized copy of the approved Notice. After the Department approves the Notice, the owner of the site shall file a notarized copy of the approved Notice in the register of deeds office in the county or counties in which the land is located within 15 days of the date on which the owner receives approval of the Notice from the Department.

(c) The register of deeds shall record the notarized copy of the approved Notice and index it in the grantor index under the names of the owners of the land.

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file the Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, the owner may recover the reasonable costs thereof from any responsible party.

(e) When a contaminated site that is subject to current or future land-use restrictions is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property is a contaminated site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Contaminated Site filed pursuant to this section shall, at the request of the owner of the land, be cancelled by the Secretary after the contamination has been eliminated or remediated to unrestricted use standards. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the contamination has been eliminated, or that the contamination has been remediated to unrestricted use standards, and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice and on the grantee index in the name "Secretary of Environment and Natural Resources". The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) This section does not apply to the cleanup pursuant to a remedial action plan that addresses environmental damage resulting from a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes.

(h) The definitions set out in G.S. 143B-279.9 apply to this section. (1999-198, s. 1; 2000-51, s. 2; 2001-384, s. 2; 2002-90, s. 2.)

Editor's Note. — Session Laws 2002-90, s. 8, which deleted "risk based" preceding "remedial action" in subsection (g), provides in part: "This act applies retroactively to any cleanup of a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes except that land-use restrictions and recordation of residual contamination are not required with respect to a discharge or release of petroleum for which the Department of Environment and Natural Resources issued a determination that no further action is required prior to 1 September 2001."

§ 143B-279.11. Recordation of residual petroleum from an underground storage tank.

(a) The definitions set out in G.S. 143-215.94A and G.S. 143B-279.9 apply to this section. This section applies only to a cleanup pursuant to a remedial action plan that addresses environmental damage resulting from a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes.

(b) The owner, operator, or other person responsible for a discharge or release of petroleum from an underground storage tank shall prepare and submit to the Department a proposed Notice that meets the requirements of this section. The proposed Notice shall be submitted to the Department (i) before the property is conveyed, or (ii) when the owner, operator, or other person responsible for the discharge or release requests that the Department issue a determination that no further action is required under the remedial action plan, whichever first occurs. The Notice shall be entitled "NOTICE OF RESIDUAL PETROLEUM". The Notice shall include a description that would be sufficient as a description in an instrument of conveyance of the (i) real property on which the source of contamination is located and (ii) any real property on which contamination is located at the time the remedial action plan is approved and that was owned or controlled by any owner or operator of the underground storage tank or other responsible party at the time the discharge or release of petroleum is discovered or reported or at any time thereafter. The Notice shall identify the location of any residual petroleum known to exist on the real property at the time the Notice is prepared. The Notice shall also identify the location of any residual petroleum known, at the time the Notice is prepared, to exist on other real property that is a result of the discharge or release. The Notice shall set out any restrictions on the current or future use of the real property that are imposed by the Secretary pursuant to G.S. 143B-279.9(b) to protect public health, the environment, or users of the property.

(c) If the contamination is located on more than one parcel or tract of land, the Department may require that the owner, operator, or other person responsible for the discharge or release prepare a composite map or plat that shows all parcels or tracts. If the contamination is located on one parcel or tract of land, the owner, operator, or other person responsible for the discharge or release may prepare a map or plat that shows the parcel but is not required to do so. A map or plat shall be prepared and certified by a professional land surveyor, shall meet the requirements of G.S. 47-30, and shall be submitted to the Department for approval. When the Department has approved a map or plat, it shall be recorded in the office of the register of deeds and shall be incorporated into the Notice by reference.

(d) The Department shall review the proposed Notice to determine whether the Notice meets the requirements of this section and rules adopted to implement this section and shall provide the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank with a notarized copy of the approved Notice. After the Department approves the Notice, the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank shall file a notarized copy of the approved Notice in the register of deeds office in the county or counties in which the real property is located (i) before the property is conveyed or (ii) within 30 days after the owner, operator, or other person responsible for the discharge or release receives notice from the Department that no further action is required under the remedial action plan, whichever first occurs. If the owner, operator, or other person responsible for the discharge or release fails to file the Notice as required by this section, any determination by the Department that no further action is required is void. The owner, operator, or other person responsible for the discharge or release, may record the Notice required by this section without the agreement of the owner of the real property. The owner, operator, or other person responsible for the discharge or release shall submit a certified copy of the Notice as filed in the register of deeds office to the Department.

(e) The register of deeds shall record the notarized copy of the approved Notice and index it in the grantor index under the names of the owners of the real property.

(f) In the event that the owner, operator, or other person responsible for the discharge or release fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file the Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of the real property who is not a responsible party submits and files the Notice required by this section, the owner may recover the reasonable costs thereof from any responsible party.

(g) A Notice filed pursuant to this section shall, at the request of the owner of the real property, be cancelled by the Secretary after the residual petroleum has been eliminated or remediated to unrestricted use standards. If requested in writing by the owner of the land, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the residual petroleum has been eliminated, or that the residual petroleum has been remediated to unrestricted use standards, and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the real property as shown in the Notice and on the grantee index in the name "Secretary of Environment and Natural Resources". The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record, the register of deeds shall not be required to make a marginal entry. (2001-384, s. 3; 2002-90, ss. 3-5.)

Editor's Note. — Session Laws 2002-90, s. 8, provides in part: "This act applies retroactively to any cleanup of a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes except that land-use restrictions and recordation of residual contamination are not required with respect to a discharge or release of petroleum for which the Department of Environment and Natural Resources issued a determination that no further action is required prior to 1 September 2001."

§ 143B-279.12. One-stop permits for certain environmental permits.

(a) The Department of Environment and Natural Resources shall establish a one-stop environmental permit application assistance and tracking system program for all its regional offices. The Department shall provide to each person who submits an application for any environmental permit subject to this section to any regional office a time frame within which that applicant may expect a final decision regarding the issuance or denial of the permit. The Department shall identify the environmental permits that are subject to this section. The procedure regulating the time frame estimates and sanction for failing to honor the time frame shall be as set out in subsections (b) and (c) of this section.

(b) Upon receipt of a complete application for an environmental permit, the Department of Environment and Natural Resources shall provide to the applicant a good faith estimate of the date by which the Department expects to make the final decision of whether to issue or deny the permit.

(c) Unless otherwise provided by law, when an applicant has provided to the Department of Environment and Natural Resources the information and documentation required and requested by the Department and the Department fails to issue or deny the permit within 60 days of the date projected by the Department for the final decision of whether to issue or deny the permit, the permit shall be automatically granted to the applicant. This subsection does not apply when an applicant submits a substantial amendment to its application after the Department has provided the applicant the projected time frame as required by this section. This subsection does not apply when an applicant agrees to receive a final decision from the Department more than 60 days from the date projected by the Department under subsection (b) of this section.

(d) The Department of Environment and Natural Resources shall track the time required to process each complete environmental permit application that is subject to this section. The Department shall compare the time in which the permit was issued or denied with the projected time frame provided to the applicant by the Department as required by this section. The Department shall identify each permit that was issued or denied more than 90 days after receipt of a complete application by the Department and shall document the reasons for the delayed action.

(e) Repealed by Session Laws 2008-198, s. 10.1, effective August 8, 2008.

(f) The Department may adopt temporary rules to implement this section. (2004-124, s. 12.12(a); 2006-79, s. 14; 2008-198, s. 10.1.)

Expand One-Stop Permit Assistance Pilot Program Statewide. — Session Laws 2004-124, which enacted this section, in ss. 12.12(b) and (c) provide: "(b) The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the one-stop environmental permit application assistance and tracking system pilot project established under Section 13.7 of S.L. 2000-67 for those environmental permits that were subject to this pilot program, and the provisions of G.S. 143B-12 [G.S. 143B-279.12], as enacted by subsection (a) of this section, shall apply to this statewide program.

"(c) Any positions that were used by the Department of Environment and Natural Resources to staff the one-stop environmental permit application assistance and tracking system pilot project established under Section 13.7 of S.L. 2000-67 shall be used for the 2004-2005 fiscal year to staff the statewide one-stop environmental permit application assistance and tracking system program under G.S. 143B-279.12, as enacted in subsection (a) of this section. The Department of Environment and Natural Resources shall use available funds for the 2004-2005 fiscal year to continue and support these positions, and the Department of Environment and Natural Resources shall use funds appropriated in this act to the Department only for the purposes of implementing the statewide one-stop environmental permit application assistance and tracking system and establishing and supporting four positions to staff this statewide program for the 2004-2005 fiscal year."

Effect of Amendments. — Session Laws 2008-198, s. 10.1, effective August 8, 2008, deleted subsection (e) regarding the time frames for environmental permit issuance or denial.

§ 143B-279.13. Express permit and certification reviews.

(a) The Department of Environment and Natural Resources shall develop an express review program to provide express permit and certification reviews in all of its regional offices. Participation in the express review program is voluntary, and the program is to become supported by the fees determined pursuant to subsection (b) of this section. The Department of Environment and Natural Resources shall determine the project applications to review under the express review program from those who request to participate in the program. The express review program may be applied to any one or all of the permits, approvals, or certifications in the following programs: the erosion and sedimentation control program, the coastal management program, and the water quality programs, including water quality certifications and stormwater management. The express review program shall focus on the following permits or certifications:

(1) Stormwater permits under Part 1 of Article 21 of Chapter 143 of the General Statutes.
(2) Stream origination certifications under Article 21 of Chapter 143 of the General Statutes.
(3) Water quality certification under Article 21 of Chapter 143 of the General Statutes.
(4) Erosion and sedimentation control permits under Article 4 of Chapter 113A of the General Statutes.
(5) Permits under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

(b) The Department of Environment and Natural Resources may determine the fees for express application review under the express review program. Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged under subsection (a) of this section for the express review of a project application requiring all of the permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed five thousand five hundred dollars ($5,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged for the express review of a project application requiring all of the permits under subdivisions (1) through (4) of subsection (a) of this section shall not exceed four thousand five hundred dollars ($4,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee charged for the express review of a project application for any other combination of permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed four thousand dollars ($4,000). Express review of a project application involving additional permits or certifications issued by the Department of Environment and Natural Resources other than those under subdivisions (1) through (5) of subsection (a) of this section may be allowed by the Department, and, notwithstanding G.S. 143-215.3D or any other statute or rule that sets a permit fee, the maximum permit application fee charged for the express review of a project application shall not exceed four thousand dollars ($4,000), plus one hundred fifty percent (150%) of the fee that would otherwise apply by statute or rule for that particular permit or certification. Additional fees, not to exceed fifty percent (50%) of the original permit application fee under this section, may be charged for subsequent reviews due to the insufficiency of the permit applications. The Department of Environment and Natural Resources may establish the procedure by which the amount of the fees under this subsection is determined, and the fees and procedures are not rules under G.S. 150B-2(8a) for the express review program under this section.

(c) Repealed by Session Laws 2008-198, s. 10.2, effective August 8, 2008. (2005-276, s. 12.2(a); 2008-198, s. 10.2.)

Expand Express Review Program Statewide. — Session Laws 2005-276, s. 12.2(b), provides: "The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 and expanded by Section 12.9 of S.L. 2004-124, and the provisions of G.S. 143B-279.13, as enacted by subsection (a) of this section, shall apply to this statewide program."

Editor's Note. — Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-198, s. 10.2, effective August 8, 2008, deleted subsection (c) regarding the requirement for the Department of Environment and Natural Resources to report findings to the Fiscal Research Division.

§ 143B-279.14. Express Review Fund.

The Express Review Fund is created as a special nonreverting fund. All fees collected under G.S. 143B-279.13 shall be credited to the Express Review Fund. The Express Review Fund shall be used for the costs of implementing the express review program under G.S. 143B-279.13 and the costs of administering the program, including the salaries and support of the program's staff. If the express review program is abolished, the funds in the Express Review Fund shall be credited to the General Fund. (2005-276, s. 12.2(a).)

Expand Express Review Program Statewide. — Session Laws 2005-276, s. 12.2(b), provides: "The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 and expanded by Section 12.9 of S.L. 2004-124, and the provisions of G.S. 143B-279.13, as enacted by subsection (a) of this section, shall apply to this statewide program."

Editor's Note. — Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

§ 143B-279.15. Report on One-Stop Permitting Program and Express Permitting Program.

No later than 1 March of each year, the Department of Environment and Natural Resources shall report to the Fiscal Research Division of the General Assembly and the Environmental Review Commission on the One-Stop for Certain Environmental Permits Program established by G.S. 143B-279.12 and the Express Permit and Certification Reviews Program established by G.S. 143B-279.13. The report shall include:

(1) The number of environmental permits subject to G.S. 143B-279.12 that took more than 90 days to issue or deny, the types of permits those were, the reasons for the extended processing time of those permits, and how the time within which the permit was actually issued or denied compared with the projected time frame provided to the applicant by the Department as provided by G.S. 143B-279.12. Based on the data gathered in this subdivision, the Department shall include recommendations regarding permit time frames for all major permits issued by the Department.

(2) Findings on the success of the Express Permit and Certification Reviews program established by G.S. 143B-279.13 and any other findings or recommendations, including any legislative proposals that it deems pertinent. (2008-198, s. 10.3.)

Editor's Note. — Session Laws 2008-198, s. 12, made this section effective August 8, 2008.

Part 2. Board of Natural Resources and Community Development.

§ 143B-280: Repealed by Session Laws 1989, c. 727, s. 2.

Part 3. Wildlife Resources Commission.

§ 143B-281: Repealed by Session Laws 1989, c. 727, s. 2.

§ 143B-281.1. Wildlife Resources Commission — transfer; independence preserved; appointment of Executive Director and employees.

The Wildlife Resources Commission, as established by Chapters 75A, 113, and 143 of the General Statutes and other applicable laws of this State, is hereby transferred to the Department of Environment and Natural Resources by a Type II transfer as defined in G.S. 143A-6. The Wildlife Resources Commission shall exercise all its prescribed statutory powers independently of the Secretary of Environment and Natural Resources and, other provisions of this Chapter notwithstanding, shall be subject to the direction and supervision of the Secretary only with respect to the management functions of coordinating and reporting. Any other provisions of this Chapter to the contrary notwithstanding, the Executive Director of the Wildlife Resources Commission shall be appointed by the Commission and the employees of the Commission shall be employed as now provided in G.S. 143-246. (1989, c. 727, s. 4; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1989, c. 727, s. 4 originally enacted this section as G.S. 143B-279.6; it was recodified as G.S. 143B-281.1 at the direction of the Revisor of Statutes.

Part 4. Environmental Management Commission.

§ 143B-282. Environmental Management Commission — creation; powers and duties.

(a) There is hereby created the Environmental Management Commission of the Department of Environment and Natural Resources with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have all of the following powers and duties:

a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution.

b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been established.

c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. 143-215.108(c)(5).

d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. 143-215.3.

e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. 143-215.3.

f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. 143-215.111.
g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. 143-215.112.
h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. 143-215.112.
i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. 143-215.3.
j. To render advice and assistance to local government regarding floodways pursuant to G.S. 143-215.56.
k. To declare and delineate and modify capacity use areas pursuant to G.S. 143-215.13.
l. To grant permits for water use within capacity use areas pursuant to G.S. 143-215.15.
m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. 143-215.19.
n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. 143-215.29.
o. To halt dam construction pursuant to G.S. 143-215.29.
p. To grant final approval of dam construction work pursuant to G.S. 143-215.30.
q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. 143-215.31.
r. To direct the inspection of dams pursuant to G.S. 143-215.32.
s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107.
t. To have jurisdiction and supervision over oil pollution and dry-cleaning solvent use, contamination, and remediation pursuant to Article 21A of Chapter 143 of the General Statutes.
u. To administer the State's authority under 33 U.S.C. § 1341 of the federal Clean Water Act.
v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(2) The Environmental Management Commission shall adopt rules:
a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107.
b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215.
c. To implement water and air quality reporting pursuant to Part 7 of Article 21 of Chapter 143 of the General Statutes.
d. To be applied in capacity use areas pursuant to G.S. 143-215.14.
e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.15 and G.S. 143-215.16.
f. Repealed by Session Laws 1983, c. 222, s. 3.
g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.
h. Governing underground tanks used for the storage of oil or hazardous substances pursuant to Articles 21, 21A, or 21B of

Chapter 143 of the General Statutes, including inspection and testing of these tanks and certification of persons who inspect and test tanks.

i. To implement the provisions of Part 2A of Article 21 of Chapter 143 of the General Statutes.

j. To implement the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes.

k. To implement basinwide water quality management plans developed pursuant to G.S. 143-215.8B.

(3) The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for water and air resources purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(4) The Commission shall make rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(5) The Environmental Management Commission shall have the power to adopt rules with respect to any State laws administered under its jurisdiction so as to accept evidence of compliance with corresponding federal law or regulation in lieu of a State permit, or otherwise modify a requirement for a State permit, upon findings by the Commission, and after public hearings, that there are:

a. Similar and corresponding or more restrictive federal laws or regulations which also require an applicant to obtain a federal permit based upon the same general standards or more restrictive standards as the State laws and rules require; and

b. That the enforcement of the State laws and rules would require the applicant to also obtain a State permit in addition to the required federal permit; and

c. That the enforcement of the State laws and rules would be a duplication of effort on the part of the applicant; and

d. Such duplication of State and federal permit requirements would result in an unreasonable burden not only on the applicant, but also on the citizens and resources of the State.

(6) The Commission may establish a procedure for evaluating renewable energy technologies that are, or are proposed to be, employed as part of a renewable energy facility, as defined in G.S. 62-133.8; establish standards to ensure that renewable energy technologies do not harm the environment, natural resources, cultural resources, or public health, safety, or welfare of the State; and, to the extent that there is not an environmental regulatory program, establish an environmental regulatory program to implement these protective standards.

(b) The Environmental Management Commission shall submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission. The Environmental Management Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Environmental Management Commission shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

(c) The Environmental Management Commission shall implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired waters and by developing appropriate total maximum daily loads of pollutants for those impaired waters. The Commission shall incorporate those total maximum daily loads approved by the United States Environmental Protection Agency into its continuing basinwide water quality planning process.

(d) The Environmental Management Commission may adopt rules setting out strategies necessary for assuring that water quality standards are met by any point or nonpoint source or by any category of point or nonpoint sources that is determined by the Commission to be contributing to the water quality impairment. These strategies may include, but are not limited to, additional monitoring, effluent limitations, supplemental standards or classifications, best management practices, protective buffers, schedules of compliance, and the establishment of and delegations to intergovernmental basinwide groups.

(e) In appointing the members of the Commission, the appointing authorities shall make every effort to ensure fair geographic representation of the Commission. (1973, c. 1262, s. 19; 1975, c. 512; 1977, c. 771, s. 4; 1983, c. 222, s. 3; 1985, c. 551, s. 1; 1989, c. 652, s. 2; c. 727, s. 218(128); 1989 (Reg. Sess., 1990), c. 1036, s. 1; 1991 (Reg. Sess., 1992), c. 990, s. 1; 1993, c. 348, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 27.4(b); 1997-392, s. 2(a), (b); 1997-400, s. 3.2; 1997-443, s. 11A.119(a); 1997-458, ss. 8.4, 8.5; 1997-496, s. 16; 1998-212, s. 14.9H(f); 1999-328, s. 4.13; 2001-424, s. 19.13(a); 2002-165, s. 1.9; 2007-397, s. 2(c).)

Emission of Nitrogen Oxides. — Session Laws 1999-328, s. 4.9, provides that the Environmental Management Commission shall initiate rule making to regulate the emissions of nitrogen oxides (NOx) from complex sources pursuant to G.S. 143-215.109 no later than 1 October 1999. The Environmental Management Commission shall report on the progress of this rule making as a part of each quarterly report the Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

Session Laws 1999-328, s. 5.1, provides that this act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to that agency.

Session Laws 1999-328, s. 5.3 contains a severability clause.

Water Quality for the Cape Fear, Catawba and Tar-Pamlico River Basins. — Session Laws 1999-329, s. 7.1, provides that, notwithstanding G.S. 150B-21.1(a)(2) and Section 8.6 of S.L. 1997-458, the Environmental Management Commission may adopt temporary rules to protect water quality standards and uses as required to implement basinwide water quality management plans for the Cape Fear, Catawba, and Tar-Pamlico River Basins pursuant to G.S. 143-214.1, 143-214.7, 143-215.3, and 143B-282. The Commission is to provide notice and the opportunity for a hearing prior to the adoption of a temporary rule under this subsection. Section 7.2 provides that Section 7.1 is to continue in effect until July 1, 2001. Section 7.3 provides that this Part is not to be construed to invalidate any development and implementation of basinwide water quality management plans by the Environmental Management Commission and the Department of Environment and Natural Resources occurring prior to the effective date of the Part (July 21, 1999).

Catawba River Basin. — Session Laws 2001-418, s. 4(a), as amended by Session Laws 2003-340, s. 5, provides: "Notwithstanding G.S. 150B-21.1(d), temporary rules 15A NCAC 2B.0243 and 15A NCAC 2B.0244, which were adopted pursuant to Section 7.1 of S.L. 1999-329 and which became effective on or before 1 July 2001, shall continue in effect until 1 September 2004 in order to provide sufficient time for the Environmental Management Commission to further consult with businesses and industries, local governments, landowners, and other interested or potentially affected persons in the upper and lower Catawba River Basin as to the appropriate scope of permanent rules to protect water quality and riparian buffers in that river basin. In developing permanent rules, the Commission shall consider whether riparian buffers on the mainstem of the Catawba River and on lake shorelines are adequate to protect water quality in the river and whether riparian buffer protection requirements should or should not be extended to some or all of the tributary streams in the river basin, taking into account the sources of water quality degradation in the river, the topography of the land in the river basin, and other relevant factors."

Session Laws 2001-418, s. 4(b), provides: "Vested rights recognized or established under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 shall include the right, as provided in this subsection, to undertake and complete development in the

Catawba River Basin without application of temporary rule 15A NCAC 2B.0243. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0243 to development with vested rights recognized or established under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to 1 July 2001. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0243 to development with vested rights recognized or established under the common law prior to the date this section [s. 4 of Session Laws 2001-418] becomes effective if the Commission has issued a certification pursuant to G.S. 143B-282(a)(1)u. prior to 1 July 2001. The Commission shall not adopt or enforce rules that confer or restrict a vested right to undertake or complete development. It is the intent of the General Assembly that this subsection [s. 4(b)] apply only to the particular circumstances that are the subject of this section [s. 4 of Session Laws 2001-418]. This subsection [s. 4(b)] does not establish a precedent as to the application of vesting under a zoning or land-use planning program administered by a local government or to any other environmental program."

Session Laws 2001-416, s. 4(c), provides: "Notwithstanding G.S. 150B-21.3(a), this section [s.4 of Session Laws 2001-416] shall not be construed to authorize the adoption of additional temporary rules related to protection of water quality and riparian buffers."

Municipal and Domestic Wastewater Collection. — Session Laws 1999-329, s. 11.1, directs the Environmental Management Commission to develop engineering standards governing municipal and domestic wastewater collection systems that will allow interconnection of these systems on a regional basis and, further, to report on its progress in developing the engineering standards required by this section as a part of each quarterly report the Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

Session Laws 2001-452, s. 1.1, effective October 28, 2001, repealed Session Laws 1999-329, s. 11.2, which had directed the Environmental Management Commission to develop and implement a permit program for municipal and domestic wastewater collection systems on a systemwide basis over a five-year period beginning 1 July 2000, and had required the Commission to make a quarterly report on its progress.

Tar-Pamlico River Basin-Nutrient Sensitive Waters Management Strategy. — Session Laws 2001-355, ss. 1 to 6 provide for the implementation of the Tar-Pamlico River Basin-Nutrient Sensitive Waters Management Strategy: Agricultural Nutrient Control Strategy, as adopted by the Environmental Management Commission on October 12, 2000 and approved by the Rules Review Commission on November 20, 2000, to become effective on September 1, 2001. A Local Advisory Committee is to be appointed in each county or watershed, as specified in the Basin Oversight Committee, within the Tar-Pamlico River Basin; these committees terminate upon a finding by the Environmental Management Commission that the long-term maintenance of nutrient loads is assured. Under the act, the Soil and Water Commission is to approve best management practices for pasture-based production or management of livestock, including a point system applicable thereto. Harvesting of trees is also addressed. Furthermore, the Basin Oversight Committee is to develop a nutrient loading accounting methodology, to be approved by the Environmental Management Commission no later than 1 March 2003. The Environmental Management Commission may adopt and revise a temporary rule incorporating the provisions of the act until a permanent rule can be adopted. Session Laws 2001-355, s. 7, provides that ss. 2 and 3 of the act expire when the temporary rule becomes effective, and s. 4 expires upon a finding that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured.

Administrative Rule Reclassification of Portions of Swift Creek and Sandy Creek in the Tar-Pamlico River Basin. — Session Laws 2003-433, ss. 1 to 3 provide: "Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B.0225 (Outstanding Resource Waters) and 15A NCAC 2B.0316 (Tar-Pamlico River Basin), as adopted by the Environmental Management Commission on 11 July 2002 and approved by the Rules Review Commission on 15 August 2002, are approved effective 1 August 2003 with respect to all waters and lands that are located west of Nash County State Road 1003 (Red Oak Road).

"With respect to all waters and lands that are located east of Nash County State Road 1003 (Red Oak Road), 15A NCAC 2B.0225 (Outstanding Resource Waters) and 15A NCAC 2B.0316 (Tar-Pamlico River Basin), as adopted by the Environmental Management Commission on 11 July 2002 and approved by the Rules Review Commission on 15 August 2002, shall not become effective as provided in G.S. 150B-21.3(b) and shall become effective only as the 2004 Regular Session of the 2003 General Assembly may provide by law.

"The Environmental Review Commission may identify and evaluate options to protect water quality and endangered species in the portion of Swift Creek and its watershed in the Tar-Pamlico River Basin that are located east of Nash County State Road 1003 (Red Oak Road). The Environmental Review Commission may report its findings, together with any recommended legislation, to the 2004 Regular Session of the 2003 General Assembly."

Administrative Rule Reclassification of Entire Watersheds of All Creeks Draining to the North Shore of Fontana Lake. — Session Laws 2005-97, ss. 1 and 2, provide: "The Environmental Management Commission shall initiate a rule-making proceeding no later than 1 September 2005 to adopt rules to reclassify the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks, as outstanding resource waters pursuant to G.S. 143-214.1.

"Pending the outcome of the rule-making proceeding required by Section 1 of this act, the minimum management strategies set out in 15A NCAC 2B.0225(c) shall apply to the watersheds described in Section 1 of this act."

Water Quality in Drinking Water Supply Reservoirs. — Session Laws 2005-190, s. 1, effective July 15, 2005, provides: "Legislative findings. — The General Assembly finds that:

"(1) Drinking water supply reservoirs are an essential source of water needed to meet municipal, industrial, and agricultural needs.

"(2) Drinking water supply reservoirs provide recreational opportunities and wildlife habitat and, if properly managed, improve water quality.

"(3) Management and protection of the quality and quantity of water in drinking water supply reservoirs are essential to the economic vitality of North Carolina.

"(4) Excessive nutrients are a major source of impairment of water quality in drinking water supply reservoirs.

"(5) It would be beneficial for the State to study the condition of drinking water supply reservoirs and to develop nutrient control criteria to prevent drinking water supply reservoirs from becoming impaired.

"(6) It would be beneficial for the State to develop calibrated nutrient response models and nutrient management strategies to ensure that drinking water supply reservoirs that are showing evidence of impairment are protected, as envisioned by Part 1 of Article 21 of Chapter 143 of the General Statutes and S.L. 1997-458, the Clean Water Responsibility and Environmentally Sound Policy Act."

Session Laws 2005-190, s. 2(a), effective July 15, 2005, provides: "Study of drinking water supply reservoirs. — The Environmental Management Commission shall study the water quality in the drinking water supply reservoirs in the State to determine whether the reservoirs meet current water quality standards. The Commission shall analyze existing data and report its findings and recommendations to the Environmental Review Commission by 1 May 2006."

Session Laws 2005-190, s. 2(b), effective July 15, 2005, provides: "Nutrient control criteria. — Based on the results of the study of drinking water supply reservoirs and an evaluation of current water quality standards, the Environmental Management Commission shall identify any nutrient control criteria necessary to prevent excess nutrient loading in each drinking water supply reservoir in order to protect public health and other designated uses by 1 January 2009. The Commission shall adopt final nutrient control criteria for each drinking water supply reservoir by 1 May 2010. If the Commission finds that the nutrient control criteria for any drinking water supply reservoir are not being achieved, the Commission shall develop and implement a plan for enhanced water quality monitoring in that drinking water supply reservoir within one year of the determination. The Commission shall report its progress in implementing this section, including its findings and recommendations, to the Environmental Review Commission as a part of each quarterly report it makes pursuant to G.S. 143B-282(b)."

Session Laws 2005-190, s. 3, as amended by Session Laws 2006-259, s. 31, and as amended by Session Laws 2009-486, s. 2, provides: "(a) Applicability of section to certain reservoirs. — This section applies only to drinking water supply reservoirs that meet all of the following criteria as of 1 July 2005:

"(1) The reservoir serves a population greater than 300,000 persons.

"(2) The Environmental Management Commission has classified all or any part of the water in the reservoir as a nutrient sensitive water (NSW).

"(3) Water quality monitoring data indicates that water quality in the reservoir violates the chlorophyll A standard

"(4) The Division of Water Quality of the Department of Environment and Natural Resources has not prepared or updated a calibrated nutrient response model for the reservoir since 1 July 2002.

"(b) Temporary limitation on increased nutrient loading. — If the Environmental Management Commission determines either that water quality in all or in any part of a drinking water supply reservoir to which this section applies does not meet current water quality standards or that it is likely that water quality will not meet water quality standards at any time prior to 1 July 2010, the Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into that reservoir. This limitation on new or increased nutrient loading allocation shall not be construed to prohibit a person who holds a permit for a wastewater discharge into a drinking water supply reservoir from purchasing a nutrient loading allocation from another person who holds a permit for a wastewater discharge into the same drinking water supply reservoir. This subsection expires with respect to a drinking water supply reservoir when permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective.

"(c) Nutrient management strategy. — The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 15 January 2011. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. In developing the nutrient management strategy, the Commission shall consider the effectiveness of measures previously implemented in the watershed and the cost of the proposed measures in relation to their effectiveness. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to nondischarge treatment technologies, measures to address nutrient inputs from on-site wastewater treatment systems, control of atmospheric deposition, allowing the sale and purchase of nutrient offsets, allowing trading of nutrient loading allocations and credits for nutrient reductions, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy.

"(d) Eligibility under the Clean Water Revolving Loan and Grant Act. — The definitions set out in G.S. 159G-3 apply to this subsection. The operator of a wastewater treatment works that is owned by an agency of the State may apply for a loan or grant under Chapter 159G of the General Statutes on the same basis as any other applicant if the operator is a local government unit and if the local government unit operates the wastewater treatment works pursuant to a contract with the State agency that contemplates that the local government unit will eventually acquire ownership of the wastewater treatment works.

"(e) Implementation; rulemaking. — The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 15 January 2011. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective. The rules shall require that stormwater management programs to reduce nutrient loading from new development be implemented no later than 30 months after the rules become effective.

"(f) Reports. — The Environmental Management Commission shall report its progress in implementing this section to the Environmental Review Commission as a part of each quarterly report it makes pursuant to G.S. 143B-282(b).

"(g) Compensatory mitigation for riparian buffer loss; nutrient offset purchases. — Compensatory mitigation for riparian buffer loss in the watershed of a drinking water supply to which this section applies must be performed in the watershed of the drinking water supply. The Environmental Management Commission may further limit the area in which compensatory mitigation for riparian buffer loss must be performed in the watershed of a drinking water supply to which this section applies. Any nutrient offset purchased to offset loading in the watershed of a drinking water supply to which this section applies may only be obtained from an offset project located in the watershed of the drinking water supply. The Environmental Management Commission may further limit the area from which nutrient offsets may be obtained in the watershed of a drinking water supply to which this section applies.

"(h) Additional standards for land-disturbing activities in the water supply watershed. — For purposes of this section, 'land-disturbing activity' does not include the land-disturbing activities set out in G.S. 113A-52.01. In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the water supply reservoir to which this section applies shall meet all of the following design standards for sedimentation and erosion control:

"(1) Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures set out in the United States Department of Agriculture Soil Conservation Service's 'National Engineering Field Manual for Conservation Practices' or according to procedures adopted by any other agency of the State or the United States or any generally recognized organization or association.

"(2) Sediment basins shall be planned, designed, and constructed so that the basin will have a settling efficiency of at least seventy percent (70%) for the 40-micron size soil particle transported into the basin by the runoff of the two-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's 'National Engineering Field Manual for Conservation Practices' or according to procedures adopted by any other agency of the State or the United States or any generally recognized organization or association.

"(3) Newly constructed open channels shall be planned, designed, and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit steeper slopes or where the slopes are stabilized by using mechanical devices, structural devices, or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

"(4) For an area of land-disturbing activity where grading activities have been completed, temporary or permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but in no case later than seven days after completion of grading. For an area of land-disturbing activity where grading activities have not been completed, temporary ground cover shall be provided as follows:

"a. For an area with no slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 14 days.

"b. For an area of moderate slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 10 days. For purposes of this subdivision, 'moderate slope' means an inclined area, the inclination of which is less than or equal to three units of horizontal distance to one unit of vertical distance.

"c. For an area of steep slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of seven days. For purposes of this subdivision, 'steep slope' means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance.

"(i) For purposes of this section, 'land-disturbing activity' does not include the land-disturbing activities set out in G.S. 113A-52.01. No later than December 31, 2011, the Sedimentation Control Commission shall adopt rules for the control of erosion and sedimentation resulting from land-disturbing activities in the watershed of the water supply reservoir to which this section applies. In developing the rules, the Commission shall consider the standards established pursuant to Section 3(h), as enacted by Section 2(b) of this act.

"(j) The Department of Environment and Natural Resources, in consultation with the Environmental Management Commission, shall identify improvements needed in the design, operation, and siting of septic tank systems in order to reduce excess nutrient loading from septic tank systems in the watershed of a drinking water supply to which this section applies. The Department shall report its findings and recommendations for specific changes to standards adopted by the Commission for Public Health pursuant to G.S. 130A-355 to the Commission for Public Health and to the Environmental Review Commission no later than March 1, 2010."

Other Drinking Water Supply Reservoirs. — Session Laws 2005-190, s. 4, as amended by Session Laws 2006-259, s. 31(c), effective July 15, 2005, provides: "The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April of each year beginning 1 April 2006."

Management of Water Quality in the Jordan Watershed. — For provisions pertaining to water quality rule-making for the Jordan Watershed pursuant to Session Laws 2009-216, ss. 1-8, as amended by Session Laws 2009-484, ss. 6-8, see the notes at G.S. 143-214.7 and G.S. 143-215.1.

Water Quality and Quantity in the Upper Neuse River Basin. — For provisions pertaining to protection and restoration of water quality and quantity in the Upper Neuse River Basin, Falls Lake, and other drinking supply reservoirs pursuant to Session Laws 2009-486, see the notes at G.S. 143-214.1 and G.S. 143-215.

Editor's Note. — Section 143-215.20, referred to in this section, was repealed by Session Laws 1987, c. 827, s. 173. Section 143-215.68, referred to in this section, was repealed by Session Laws 1987, c. 827, s. 188.

Subdivision (b)(5) of G.S. 143-215.108, referred to in subdivision (1)(c) of this section, is now codified as G.S. 143-215.108(c)(5).

Session Laws 1997-400, s. 6.10, provides that, unless otherwise expressly provided, every agency to which the act applies shall adopt rules to implement the provisions of that act only in accordance with the provisions of Chapter 150B of the General Statutes, that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, that every agency to which the act applies that is authorized to adopt rules to implement the provisions of the act may adopt temporary rules to implement the provisions of the act, and that s. 6.10 of that act shall continue in effect until all rules necessary to implement the provisions of the act have become effective as either temporary rules or permanent rules.

Session laws 2007-397, s. 15, contains a severability clause.

Session Laws 2007-397, s. 16, provides in part: "Sections 1, 2, 6, 7, and 8 of this act become effective 1 January 2008. The provisions of Section 2 of this act that provide for the recovery of costs incurred under Section 2 apply only to costs that are incurred on and after 1 January 2008."

Session Laws 2009-486, s. 3, provides: "Concurrent with the permanent rule making required by Section 3 of S.L. 2005-190, as amended by Section 31 of S.L. 2006-259 and Section 2(a) of this act, and pursuant to G.S. 143-215.8B, the Environmental Management Commission shall adopt temporary rules. The Commission shall adopt the temporary rules required by this section by January 15, 2011."

Session Laws 2009-486, s. 4, provides in part: "Section 3(h) of S.L. 2005-190, as enacted by Section 2(b) of this act, becomes effective January 1, 2010, applies to land-disturbing activities begun on or after January 1, 2010, and expires on the date that rules adopted pursuant to Section 3(i) of S.L. 2005-190, as enacted by Section 2(b) of this act, become effective."

Effect of Amendments. — Session Laws 2007-397, s. 2.(c), effective January 1, 2008, added subdivision (a)(6). For applicability provision, see Editor's Note.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For comment, "Legal Analysis of the Constitutionality of the Water Supply Watershed Protection Act of 1989 and the Hyde Bill," see 29 Wake Forest L. Rev. 1279 (1994).

For article, "The Evolution of Modern North Carolina Environmental and Conservation Policy Legislation," see 29 Campbell L. Rev. 535 (2007).

CASE NOTES

The duties of the Environmental Management Commission are administrative or executive in character and have no relation to the function of the legislative branch of government, which is to make laws. State ex rel. Wallace v. Bone, 304 N.C. 591, 286 S.E.2d 79 (1982).

Cited in In re Environmental Mgt. Comm'n, 80 N.C. App. 1, 341 S.E.2d 588 (1986).

§ 143B-282.1. Environmental Management Commission — quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Environmental Management Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Environmental Management Commission shall govern such proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the chairman of the Commission.

(2) Oral arguments by the parties may be allowed by the chairman of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the natural resources of the State arising from the violation of standards or limitations established to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
(2) The duration and gravity of the violation;
(3) The effect on ground or surface water quantity or quality or on air quality;
(4) The cost of rectifying the damage;
(5) The amount of money saved by noncompliance;
(6) Whether the violation was committed willfully or intentionally;
(7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and
(8) The cost to the State of the enforcement procedures.

(c) The chairman shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which he has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner;
(2) Whether the violator promptly abated continuing environmental damage resulting from the violation;
(3) Whether the violation was inadvertent or a result of an accident;
(4) Whether the violator had been assessed civil penalties for any previous violations;
(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations, and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) As used in this section, "Secretary" means the Secretary of Environment and Natural Resources. (1989 (Reg. Sess., 1990), c. 1036, s. 2; 1993 (Reg. Sess., 1994), c. 570, s. 5; 1995 (Reg. Sess., 1996), c. 743, s. 21; 1997-443, s. 11A.119(a).)

CASE NOTES

Multiple Fines. — The trial court properly applied the whole record test, where it found that the North Carolina Department of Environment and Natural Resources and the Environmental Management Commission did not exceed their discretion and authority under G.S. 143-211(c), 143-215.107(a)(1), (3), and 143-215.114A(a)(1) in finding that the contractor had open burning piles within 1,000 feet from a dwelling. MW Clearing & Grading, Inc. v. N.C. Dep't of Env't & Natural Res., 171 N.C. App. 170, 614 S.E.2d 568, 2005 N.C. App. LEXIS 1210 (2005), cert. denied, 360 N.C. 65, 623 S.E.2d 585 (2005), rev'd in part, 360 N.C. 392, 628 S.E.2d 379 (2006) (as to finding violations rather than one).

§ 143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.

(a) The Environmental Management Commission shall consist of 13 members appointed by the Governor. The Governor shall select the members so that the membership of the Commission shall consist of:

(1) One who shall be a licensed physician with specialized training and experience in the health effects of environmental pollution;

(2) One who shall, at the time of appointment, be actively connected with the Commission for Public Health or local board of health or have experience in health sciences;

(3) One who shall, at the time of appointment, be actively connected with or have had experience in agriculture;

(4) One who shall, at the time of appointment, be a registered engineer with specialized training and experience in water supply or water or air pollution control;

(5) One who shall, at the time of appointment, be actively connected with or have had experience in the fish and wildlife conservation activities of the State;

(6) One who shall, at the time of appointment, have special training and scientific expertise in hydrogeology or groundwater hydrology;

(7) Three members interested in water and air pollution control, appointed from the public at large;

(8) One who shall, at the time of appointment, be actively employed by, or recently retired from, an industrial manufacturing facility and knowledgeable in the field of industrial air and water pollution control;

(9) One who shall, at the time of appointment, be actively connected with or have had experience in pollution control problems of municipal or county government;

(10) One who shall, at the time of appointment, have special training and scientific expertise in air pollution control and the effects of air pollution; and

(11) One who shall, at the time of appointment, have special training and scientific expertise in freshwater, estuarine, marine biological, or ecological sciences.

(b) Members appointed by the Governor shall serve terms of office of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Governor may reappoint a member of the Commission to an additional term if, at the time of the reappointment, the member qualifies for membership on the Commission under subsection (a) of this section.

(b1) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(b2) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(b3) A majority of the Commission shall constitute a quorum for the transaction of business.

(b4) All clerical and other services required by the Commission shall be supplied by the Secretary of Environment and Natural Resources.

(c) Nine of the members appointed by the Governor under this section shall be persons who do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Chapter. The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this section, giving due regard to the requirements of federal legislation, and for this purpose may promulgate rules, regulations or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

(d) In addition to the members designated by subsection (a) of this section, the General Assembly shall appoint six members, three upon the recommendation of the Speaker of the House of Representatives, and three upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members appointed by the General Assembly shall serve terms of two years. (1973, c. 1262, s. 20; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1158, ss. 5, 6; 1981 (Reg. Sess., 1982), c. 1191, s. 19; 1989, c. 315; c. 727, s. 218(129); 1995, c. 490, s. 18; 1997-381, s. 1; 1997-443, s. 11A.119(a); 1998-217, s. 17; 2000-172, ss. 4.1, 4.2; 2001-486, s. 2.16; 2007-182, s. 2.)

Legal Periodicals. — For survey of 1981 constitutional law, see 60 N.C.L. Rev. 1272 (1982).

For 1997 legislative survey, see 20 Campbell L. Rev. 443(1998).

CASE NOTES

Constitutionality of Former Version of Subsection (d). — Subsection (d) of this section, prior to its amendment by the 1981 (Reg. Sess., 1982) act, providing for the appointment of two representatives and two senators to membership on the Environmental Management Commission, violated N.C. Const., Art. I, § 6, the separation of powers provision. State ex rel. Wallace v. Bone, 304 N.C. 591, 286 S.E.2d 79 (1982).

The legislature cannot constitutionally create a special instrumentality of government to implement specific legislation and then retain some control over the process of implementation by appointing legislators to the governing body of the instrumentality. State ex rel. Wallace v. Bone, 304 N.C. 591, 286 S.E.2d 79 (1982).

Cited in Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002).

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Reappointment of Members. — This section does not prohibit the reappointment of members to the Environmental Management Commission. See opinion of Attorney General to Mr. William Holman, Secretary, North Carolina Department of Environment and Natural Resources, 2000 N.C. AG LEXIS 5 (5/9/2000).

§ 143B-284. Environmental Management Commission — officers.

The Environmental Management Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term whichever comes first. (1973, c. 1262, s. 21.)

§ 143B-285. Environmental Management Commission — meetings.

The Environmental Management Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 1262, s. 22.)

§§ 143B-285.1 through 143B-285.9: Reserved for future codification purposes.

Part 4A. Governor's Waste Management Board.

§§ 143B-285.10 through 143B-285.15: Repealed by Session Laws 1993, c. 501, s. 1.

Cross References. — As to creation of a Pollution Prevention Advisory Council, see Editor's Note under G.S. 143B-285.23.

§§ 143B-285.16 through 143B-285.19: Reserved for future codification.

Part 4B. Office of Environmental Education.

§ 143B-285.20. Short title.

This Part shall be known and cited as the Environmental Education Act of 1993. (1993, c. 501, s. 28.)

§ 143B-285.21. Declaration of purpose.

The purpose of this Part shall be to encourage, promote, and support the development of programs, facilities, and materials for the purpose of environmental education in North Carolina. (1993, c. 501, s. 28.)

§ 143B-285.22. Creation.

There is hereby created a North Carolina Office of Environmental Education (hereinafter referred to as "Office") within the Department of Environment and Natural Resources. (1993, c. 501, s. 28; 1997-443, s. 11A.119(a).)

§ 143B-285.23. Powers and duties of the Secretary of Environment and Natural Resources.

The Secretary of Environment and Natural Resources shall:

(1) Establish an Office of Environmental Education to:
  a. Serve as a clearinghouse of environmental information for the State.
  b. Plan for the Department's future needs for environmental education materials and programs.
  c. Maintain a computerized database of existing education materials and programs within the Department.

d. Maintain a speaker's bureau of environmental specialists to address environmental concerns and issues in communities across the State.
e. Evaluate opportunities for establishing regional environmental education centers.
f. Administer the Project Tomorrow Award Program to encourage school children to discover and explore ways to protect the environment.
g. Assist the Department of Public Instruction in integrating environmental education into course curricula.
h. Develop and implement a grants and award program for environmental education projects in schools and communities.

(2) Coordinate, through technical assistance and staff support and with participation of the Department of Public Instruction and other relevant agencies, institutions, and citizens, the planning and implementation of a statewide program of environmental education.
(3) Be responsible for such matters as the purchase of educational equipment, materials, and supplies; the construction or modification of facilities; and the employment of consultants and other personnel necessary to carry out the provisions of this Part.
(4) Encourage coordination between the various State and federal agencies, citizens groups, and the business and industrial community, in the dissemination of environmental information and education.
(5) Utilize existing programs, educational materials, or facilities, both public and private, wherever feasible. (1993, c. 501, s. 28; 1997-443, s. 11A.119(a).)

§ 143B-285.24. Grants and awards.

The objective of grants and awards made under the provisions of this Part shall be to promote the further development of local and regional environmental education and information dissemination to aid especially, but not be limited to, school-age children. The Office shall recommend each year to the Governor recipients for the Project Tomorrow Award, which the Governor shall award for outstanding environmental projects by elementary schools in North Carolina. (1993, c. 501, s. 28.)

§ 143B-285.25. Liaison between the Office of Environmental Education and the Department of Public Instruction.

The Superintendent of the Department of Public Instruction shall identify an environmental education liaison within the Office of Instructional Services of the Department of Public Instruction to:

(1) Coordinate environmental education within the State curriculum and among the Department and other State agencies.
(2) Conduct teacher training in environmental education topics in conjunction with Department and other State agencies.
(3) Coordinate and integrate topics within the various curriculum areas of the standard course of study.
(4) Promote awareness of environmental issues to the public and to the school communities, including students, teachers, and administrators.
(5) Establish a repository of environmental education instructional materials and disseminate information on the availability of these materials to schools.

(6) Promote and facilitate the sharing of information through electronic networks to all schools. (1993, c. 501, s. 28.)

Part 5. Marine Fisheries Commission.

§§ 143B-286 through 143B-289: Repealed by Session Laws 1987, c. 641, s. 1.

Part 5A. Marine Fisheries Commission.

§§ 143B-289.1 through 143B-289.12: Repealed by Session Laws 1997-400, s. 6.3.

Editor's Note. — Session Laws 1997-400, s. 6.3, effective September 1, 1997, provided: "Part 5A of Article 7 of Chapter 143B of the General Statutes is repealed, except that G.S. 143B-289.19, as amended by Section 2 of S.L. 1997-286, is not repealed but is recodified as G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes."

§§ 143B-289.13 through 143B-289.18: Reserved for future codification purposes.

Part 5B. Office of Marine Affairs.

§§ 143B-289.19 through 143B-289.23: Recodified as §§ 143B-289.40 through 143B-289.44 by Session Laws 1997-400, ss. 6, 6.3(b).

§§ 143B-289.24 through 143B-289.39: Reserved for future codification purposes.

Part 5C. Division of North Carolina Aquariums.

§ 143B-289.40. Division of North Carolina Aquariums — creation.

The Division of North Carolina Aquariums is created in the Department of Environment and Natural Resources. (1985, c. 202, s. 3; 1995, c. 509, s. 98; 1997-286, s. 2; 1997-400, s. 6.3(a), (b); 1997-443, s. 11A.119(b).)

Editor's Note. — This section is former G.S. 143B-390.1, as recodified by Session Laws 1995, c. 509, s. 98 as 143B-289.19. The historical citation to the former section has been added to this section as recodified. This section was subsequently recodified as 143B-289.40 by Session Laws 1997-400, s. 6.3.

§ 143B-289.41. Division of North Carolina Aquariums — organization; powers and duties.

(a) The Division of North Carolina Aquariums shall be organized as prescribed by the Secretary of Environment and Natural Resources and shall exercise the following powers and duties:

(1) Repealed by Session Laws 1991, c. 320, s. 3.

(1a) Establish and maintain the North Carolina Aquariums.

(1b) Administer the operations of the North Carolina Aquariums, such administrative duties to include, but not be limited to the following:

a. Adopt goals and objectives for the Aquariums and review and revise these goals and objectives periodically.

b. Review and approve requests for use of the Aquarium facilities and advise the Secretary of Environment and Natural Resources on the most appropriate use consistent with the goals and objectives of the Aquariums.

c. Continually review and evaluate the types of projects and programs being carried out in the Aquarium facilities and determine if the operation of the facilities is in compliance with the established goals and objectives.

d. Recommend to the Secretary of Environment and Natural Resources any policies and procedures needed to assure effective staff performance and proper liaison among Aquarium facilities in carrying out the overall purposes of the Aquarium programs.

e. Review Aquarium budget submissions to the Secretary of Environment and Natural Resources.

f. Recruit and recommend to the Secretary of Environment and Natural Resources candidates for the positions of directors of the Aquariums.

g. Create local advisory committees in accordance with the provisions of G.S. 143B-289.43.

(1c) Notwithstanding Article 3A of Chapter 143 of the General Statutes, and G.S. 143-49(4), dispose of any exhibit, exhibit component, or object from the collections of the North Carolina Aquariums by sale, lease, or trade. A sale, lease, or trade under this subdivision shall be conducted in accordance with generally accepted practices for zoos and aquariums that are accredited by the American Association of Zoos and Aquariums. After deducting the expenses attributable to the sale or lease, the net proceeds of any sale or lease shall be credited to the North Carolina Aquariums Fund.

(2), (3) Repealed by Session Laws 1993, c. 321, s. 28(e).

(4) to (6) Repealed by Session Laws 1991, c. 320, s. 3.

(7) Assume any other powers and duties assigned to it by the Secretary.

(b) The Secretary may adopt any rules and procedures necessary to implement this section. (1985, c. 202, s. 3; 1991, c. 320, s. 3; 1993, c. 321, ss. 28(d), 28(e); 1997-286, s. 3; 1997-400, s. 6.3(b), (c); 1997-443, ss. 11A.119(a), 11A.123; 1999-49, s. 1.)

Editor's Note. — This section was formerly G.S. 143B-390.2. It was recodified as 143B-289.20 by Session Laws 1993, c. 321, s. 28(d), effective July 1, 1993. This section was subsequently recodified as 143B-289.41 by Session Laws 1997-400, s. 6.3(b).

§ 143B-289.42. North Carolina Aquariums; purpose.

The purpose of establishing and maintaining the North Carolina Aquariums is to promote an awareness, understanding, and appreciation of the diverse natural and cultural resources associated with North Carolina's oceans, estuaries, rivers, streams, and other aquatic environments. (1991, c. 320, s. 4; 1993, c. 321, s. 28(d); 1997-400, s. 6.3(b).)

Editor's Note. — This section was formerly G.S. 143B-390.3. It was recodified as 143B-289.21 by Session Laws 1993, c. 321, s. 28(d), effective July 1, 1993. This section was subsequently recodified as 143B-289.42 by Session Laws 1997-400, s. 6.3(b).

§ 143B-289.43. Local advisory committees; duties; membership.

Local advisory committees created pursuant to G.S. 143B-289.41(a)(1b) shall assist each North Carolina Aquarium in its efforts to establish projects and programs and to assure adequate citizen-consumer input into those efforts. Members of these committees shall be appointed by the Secretary of Environment and Natural Resources for three-year terms from nominations made by the Director of the Office of Marine Affairs. Each committee shall select one of its members to serve as chairperson. Members of the committees shall serve without compensation for services or expenses. (1991, c. 320, s. 4; 1993, c. 321, ss. 28(d), 28(f); 1997-286, s. 4; 1997-400, s. 6.3(b), (d); 1997-443, ss. 11A.119(a), 11A.123.)

Editor's Note. — This section was formerly G.S. 143B-390.4. It was recodified as 143B-289.22 by Session Laws 1993, c. 321, s. 28, effective July 1, 1993. This section was subsequently recodified as 143B-289.43 by Session Laws 1997-400, s. 6.3(b).

§ 143B-289.44. North Carolina Aquariums; fees; fund.

(a) Fees. — The Secretary of Environment and Natural Resources may adopt a schedule of uniform entrance fees for the North Carolina Aquariums.

(b) Fund. — The North Carolina Aquariums Fund is hereby created as a special and nonreverting fund. The North Carolina Aquariums Fund shall be used for repair, renovation, expansion, maintenance, educational exhibit construction, and operational expenses at existing aquariums, to pay the debt service and lease payments related to the financing of expansions of aquariums, including other relevant satellite areas, and to match private funds that are raised for these purposes.

(c) Disposition of Fees. — All entrance fee receipts shall be credited to the North Carolina Aquariums Fund.

(d) The Division of North Carolina Aquariums shall submit to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division by September 30 of each year a report on the North Carolina Aquariums Fund that shall include the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year. (1997-286, s. 5; 1997-400, s. 6.3(b); 1997-443, s. 11A.119(b); 1999-49, s. 2; 2002-159, s. 46; 2005-276, s. 12.10.)

Editor's Note. — This section was formerly numbered 143B-289.23. It was recodified as 143B-289.44 by Session Laws 1997-400, s. 6.3(b).

§§ 143B-289.45 through 143B-289.49: Reserved for future codification purposes.

Part 5D. Marine Fisheries Commission.

§ 143B-289.50. Definitions.

(a) As used in this part:

(1) "Commission" means the Marine Fisheries Commission.

(2) "Department" means the Department of Environment and Natural Resources.

(3) "Fisheries Director" means the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources.

(4) "Secretary" means the Secretary of Environment and Natural Resources.

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply throughout this Part. (1997-400, s. 2.1; 1997-443, s. 11A.123.)

Editor's Note. — Sections 143B-289.20 through 143B-289.31, as enacted by Session Laws 1997-400, s. 2.1, as Part 5B of Article 7, have been recodified as sections 143B-289.50 through 143B-289.61, Part 5D of Article 7, at the direction of the Revisor of Statutes.

§ 143B-289.51. Marine Fisheries Commission — creation; purposes.

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment and Natural Resources.

(b) The functions, purposes, and duties of the Marine Fisheries Commission are to:

(1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132.

(2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.

(3) Implement management measures regarding ocean and marine fisheries in the Atlantic Ocean consistent with the authority conferred on the State by the United States.

(4) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean. (1997-400, s. 2.1; 1997-443, s. 11A.119(b).)

Editor's Note. — Session Laws 1997-400, s. 6.4, provides: "The records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting and purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act, are transferred to the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act. All rules, decisions, and actions heretofore adopted, made or taken by the Marine Fisheries Commissions created under Part 5 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws, and all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act, that have not been heretofore repealed or rescinded shall continue in effect until repealed or rescinded by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act."

Session Laws 1997-400, s. 6.8 directed the Revisor of Statutes to set out s. 6.4 of that act as a note under this section. Section 6.4 is noted above.

Session Laws 1998-225, s. 5.3, provides: "Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules."

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The Marine Fisheries Commission has the power to regulate North Carolina vessels in the Exclusive Economic Zone (EEZ), and the Marine Patrol has the power to cite those vessels in the EEZ; the Marine Patrol has both subject matter jurisdiction and territorial jurisdiction over State registered vessels in the EEZ, subject to certain restrictions. See opinion of Attorney General to Colonel B. M. Rivenbark, N.C. Marine Patrol Division of Marine Fisheries, 1998 N.C.A.G. 16 (3/9/98).

§ 143B-289.52. Marine Fisheries Commission — powers and duties.

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:
  a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
  b. Seasons for taking fish.
  c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221.1.

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery

Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(13) To adopt rules to define fishing gear as either recreational gear or commercial gear.

(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(d1) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the harvest or landing of fish in the fishery. If the Commission regulates participation in a fishery under this subsection, the Division may issue a license to participate in the fishery to a person who:

(1) Held a valid license issued by the Division to harvest, land, or sell fish during at least two of the three license years immediately preceding the date adopted by the Commission to determine participation in the fishery; and

(2) Participated in the fishery during at least two of those license years by landing in the State at least the minimum number of pounds of fish adopted by the Commission to determine participation in the fishery.

(e) The Commission may adopt rules to implement or comply with a fishery management plan adopted by the Atlantic States Marine Fisheries Commission or adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan.

(f) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(g) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

(h) Social security numbers and identifying information obtained by the Commission or the Division of Marine Fisheries shall be treated as provided in G.S. 132-1.10. For purposes of this subsection, "identifying information" also includes a person's mailing address, residence address, date of birth, and telephone number.

(i) The Commission may adopt rules to exempt individuals who participate in organized fishing events held in coastal or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission. (1997-400, ss. 2.1, 2.2; 1997-443, s. 11A.123; 1998-217, s. 18(a); 1998-225, ss. 1.3, 1.4, 1.5; 2001-474, s. 32; 2003-154, s. 3; 2004-187, ss. 7, 8; 2006-255, ss. 11.2, 12.)

Editor's Note. — Session Laws 1997-400, s. 5.5 provides that the Marine Fisheries Commission shall adopt a Fishery Management Plan for the blue crab fishery in accordance with this section, as enacted by s. 2.1 of the act, and G.S. 113-182.1, as enacted by s. 3.4 of the act, no later than January 1, 1999.

Session Laws 1997-400, s. 6.10, provides that, unless otherwise expressly provided, every agency to which the act applies shall adopt rules to implement the provisions of that act only in accordance with the provisions of Chapter 150B of the General Statutes, that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, that every agency to which the act applies that is authorized to adopt rules to implement the provisions of the act may adopt temporary rules to implement the provisions of the act, and that s. 6.10 of that act shall continue in effect until all rules necessary to implement the provisions of the act have become effective as either temporary rules or permanent rules.

Session Laws 1998-225, s. 1.4, which added subsection (d1), became effective July 1, 1999.

Session Laws 1998-225, s. 5.3, provides: "Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules."

§ 143B-289.53. Marine Fisheries Commission — quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Marine Fisheries Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Marine Fisheries Commission shall govern the following proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.

(2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the marine and estuarine resources within the jurisdiction of the Commission, as described in G.S. 113-132; to the public health; or to private property resulting from the violation.

(2) The frequency and gravity of the violation.

(3) The cost of rectifying the damage.

(4) Whether the violation was committed willfully or intentionally.

(5) The prior record of the violator in complying or failing to comply with programs over which the Marine Fisheries Commission has regulatory authority.

(6) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary may delegate his powers and duties under this section to the Fisheries Director. (1997-400, s. 2.1; 1997-443, s. 11A.119(a).)

§ 143B-289.54. Marine Fisheries Commission — members; appointment; term; oath; ethical standards; removal; compensation; staff.

(a) Members, Selection. — The Marine Fisheries Commission shall consist of nine members appointed by the Governor as follows:

(1) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(2) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(3) One person actively connected with, and experienced as, a licensed fish dealer or in seafood processing or distribution as demonstrated by deriving at least fifty percent (50%) of annual earned income from activities involving the buying, selling, processing, or distribution of seafood landed in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(4) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(5) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(6) One person actively engaged in the sports fishing industry as demonstrated by deriving at least fifty percent (50%) of annual earned income from selling goods or services in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(7) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(8) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(9) One person who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowl-

edge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or sports fishing industries, including the processing and distribution of seafood.

(b) Residential Qualifications. — For purposes of providing regional representation on the Commission, the following three coastal regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of subsection (a) of this section shall be residents of one of the coastal regions of the State. The membership of the Commission shall include at least one person who is a resident of each of the three coastal regions of the State.

(c) Additional Considerations. — In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission. The Governor shall make appointments to the Commission consistent with the restrictions of G.S. 113-200(g).

(d) Terms. — The term of office of members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (4), and (7) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (3), (6), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.

(e) Vacancies. — An appointment to fill a vacancy shall be for the unexpired balance of the term.

(f) Oath of Office. — Each member of the Commission, before assuming the duties of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

(g) Ethical Standards. —

(1) Disclosure statements. — Any person under consideration for appointment to the Commission shall provide both a financial disclosure statement and a potential bias disclosure statement to the Governor. A financial disclosure statement shall include statements of the nominee's financial interests in and related to State fishery resources use, licenses issued by the Division of Marine Fisheries held by the nominee or any business in which the nominee has a financial interest, and uses made by the nominee or by any business in which the nominee has a financial interest of the regulated resources. A potential bias disclosure statement shall include a statement of the nominee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the management and use of the State's coastal fishery resources. Disclosure statements shall be treated as public records under Chapter 132 of the General Statutes and shall be updated on an annual basis.

(2) Voting/conflict of interest. — A member of the Commission shall not vote on any issue before the Commission that would have a "significant and predictable effect" on the member's financial interest. For

purposes of this subdivision, "significant and predictable effect" means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

(3) Regular attendance. — It shall be the duty of each member of the Commission to regularly attend meetings of the Commission.

(h) Removal. — The Governor may remove, as provided in G.S. 143B-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance.

(i) Office May Be Held Concurrently With Others. — The office of member of the Marine Fisheries Commission may be held concurrently with any other elected or appointed office, as authorized by Article VI, Section 9, of the Constitution of North Carolina.

(j) Compensation. — Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(k) Staff. — All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department.

(*l*) Legal Services. — The Attorney General shall: (i) act as attorney for the Commission; (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii) represent the Commission in any appeal or other review of any order of the Commission. (1997-400, s. 2.1; 1998-225, ss. 1.6, 1.7; 2001-213, s. 5.)

Editor's Note. — Session Laws 1997-400, s. 6.5, provides that, in order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission initially filling positions established by subdivisions (a)(1), (a)(2), and (a)(3) of this section shall begin on the date the member is appointed and duly qualified and expire on June 30, 2001; the terms of members initially filling positions established by subdivisions (a)(4), (a)(5), and (a)(6) shall begin on the date the member is appointed and duly qualified and expire on June 30, 2000; and the terms of members filling positions initially established by subdivisions (a)(7), (a)(8), and (a)(9) shall begin on the date the member is appointed and duly qualified and expire on June 30, 1999.

Session Laws 1998-225, ss. 1.6, 1.7, which added the second sentence in subsection (c); and in subsection (h), substituted "G.S. 143B-13" for "G.S. 143-13," was effective retroactively to September 1, 1997.

Session Laws 2001-213, s. 6, effective June 30, 2001, makes appointments for the Marine Fisheries Commission and specifies the termination date for the appointments made for each named individual, altering the schedule of staggered terms of three years for the Commission to provide for an orderly transition in membership of the Commission as specified in G.S. 143B-289.54, as amended by Session Laws 2001-213, s. 1, notwithstanding G.S. 143B-289.54(d).

§ 143B-289.55. Marine Fisheries Commission — officers; organization; seal.

(a) The Governor shall appoint a member of the Commission to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve any number of consecutive terms.

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

(c) The Commission shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) The Commission may adopt a common seal and may alter it as necessary. (1997-400, s. 2.1.)

§ 143B-289.56. Marine Fisheries Commission — meetings; quorum.

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. At least three of the four quarterly meetings of the Commission shall be held in one of the coastal regions designated in G.S. 143B-289.54.

(b)(1) Six members of the Commission shall constitute a quorum for the transaction of business.

(2) A quorum of the Commission may transact business only if one member, other than the Chair, appointed pursuant to subdivision (1), (2), or (3) of G.S. 143B-289.54(a) and one member, other than the Chair, appointed pursuant to subdivision (4), (5), or (6) of G.S. 143B-289.54(a) are present.

(c) If the Commission is unable to transact business because the requirements of subdivision (2) of subsection (b) of this section are not met, the Chair shall call another meeting of the Commission within 30 days and shall place on the agenda for that meeting every matter with respect to which the Commission was unable to transact business. Five members of the Commission shall constitute a quorum for the transaction of business at a meeting called under this subsection. The requirements of subdivision (2) of subsection (b) of this section shall not apply to a meeting called under this subsection. (1997-400, s. 2.1; 1998-225, s. 1.8.)

Editor's Note. — Session Laws 1998-225, s. 5.3, provides: "Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules."

§ 143B-289.57. Marine Fisheries Commission Advisory Committees established; members; selection; duties.

(a) The Commission shall be assisted in the performance of its duties by four standing advisory committees and four regional advisory committees. Each standing and regional advisory committee shall consist of no more than 11 members. The Chair of the Commission shall designate one member of each advisory committee to serve as Chair of the committee. Members shall serve staggered three-year terms as determined by the Commission. The Commission shall establish other policies and procedures for standing and regional advisory committees that are consistent with those governing the Commission as set out in this Part.

(b) The Chair of the Commission shall appoint the following standing advisory committees:

(1) The Finfish Committee, which shall consider matters concerning finfish.

(2) The Crustacean Committee, which shall consider matters concerning shrimp and crabs.

(3) The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.

(4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

(c) Each standing advisory committee shall be composed of commercial and recreational fishermen, scientists, and other persons who have expertise in the matters to be considered by the advisory committee to which they are appointed. In making appointments to advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented and shall consider for appointment persons who are recommended by groups representing commercial fishing interests, recreational fishing interests, environmental protection and conservation interests, and other groups interested in coastal fisheries management.

(d) Each standing advisory committee shall review all matters referred to the committee by the Commission and shall make findings and recommendations on these matters. A standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The Commission, in the performance of its duties, shall consider all findings and recommendations submitted by standing advisory committees.

(e) The Chair of the Commission shall appoint a regional advisory committee for each of the three coastal regions designated in G.S. 143B-289.54(b) and shall appoint a regional advisory committee for that part of the State that is not included in the three coastal regions. In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented. (1997-400, s. 2.1.)

§ 143B-289.58. Marine Fisheries Endowment Fund.

(a) Recognizing the inestimable importance to the State and its people of conserving the marine and estuarine resources of the State, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its marine and estuarine resources, there is created the North Carolina Marine Fisheries Endowment Fund, the income and principal of which shall be used only for the purpose of supporting marine and estuarine resource conservation programs of the State in accordance with this section.

(b) There is created the Board of Trustees of the Marine Fisheries Endowment Fund of the Marine Fisheries Commission, with full authority over the administration of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and members shall be the Chair, Vice-Chair, and members of the Marine Fisheries Commission. The State Treasurer shall be the custodian of the Marine Fisheries Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(c) The assets of the Marine Fisheries Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund.

(2) Any other sources specified by law.

(d) The Marine Fisheries Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Fund. In recognition of this special trust, the following limitations and restrictions are placed on expenditures from the Fund:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from the gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No expenditure or disbursement shall be made from the principal of the Marine Fisheries Endowment Fund except as otherwise provided by law.

(3) The income received and accruing from the investments of the Marine Fisheries Endowment Fund must be spent only to further the conservation of marine and estuarine resources.

(e) The Board of Trustees of the Marine Fisheries Endowment Fund may accumulate the investment income of the Fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget for the conservation and management of marine and estuarine resources. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the Fund for the purposes set out in subdivision (3) of subsection (d) above.

(f) Expenditure of the income derived from the Marine Fisheries Endowment Fund shall be made through the State budget accounts of the Marine Fisheries Commission in accordance with the provisions of the Executive Budget Act. The Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(g) The Marine Fisheries Endowment Fund and the income therefrom shall not take the place of State appropriations, but any portion of the income of the Marine Fisheries Endowment Fund available for the purpose set out in subdivision (3) of subsection (d) above shall be used to supplement other income of and appropriations for the conservation and management of marine and estuarine resources to the end that the Commission may improve and increase its services and become more useful to a greater number of people. (1997-400, s. 2.1.)

Editor's Note. — Session Laws 2005-455, ss. 2.9 and 2.10(a) and (b), provide: "G.S. 113-174.2(d), as enacted by Section 1.4 of this act, provides that the holders of certain lifetime licenses purchased prior to January 1, 2006, are exempt from the license requirement for engaging in recreational fishing in coastal fishing waters. The General Assembly finds that, because the holders of these lifetime licenses will be authorized to take marine resources from the coastal fishing waters of the State, it is appropriate that a portion of the revenues derived from the sale of these lifetime licenses should be transferred to the Marine Resources Endowment Fund so that the endowment investment income generated by the transferred license revenues will be used to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The General Assembly specifically finds that this transfer of funds is consistent with the overall spirit, intent, and purpose underlying the creation of the Wildlife Endowment Fund and the Marine Resources Endowment Fund. Therefore, in accordance with G.S. 143-250.1(d)(3), the State Treasurer shall transfer the sum of three million four hundred thousand dollars ($3,400,000) from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. This transfer shall be made in five equal installments of six hundred eighty thousand dollars ($680,000) on the first day of March in 2006, 2007, 2008, 2009, and 2010.

"The Wildlife Resources Commission may disburse up to one million dollars ($1,000,000) from the Wildlife Resources Fund to implement this act.

"The State Treasurer shall transfer a sum equal to the sum of funds disbursed pursuant to subsection (a) of this section from the Marine Resources Fund to the Wildlife Resources Fund on July 1, 2010."

§ 143B-289.59. Conservation Fund; Commission may accept gifts.

(a) The Marine Fisheries Commission may accept gifts, donations, or contributions from any sources. These funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management. These funds shall be administered by the Marine Fisheries Commission and shall be used for marine and estuarine resources management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Marine Fisheries Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources Conservation Fund that shall be made available to the Marine Fisheries Commission for conservation, protection, enhancement, preservation, and perpetuation of marine and estuarine species that may be endangered or threatened with extinction and for education about these issues. The special Conservation Fund is subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different sizes, shapes, types, or designs may be used to recognize contributions in different amounts, but no emblem shall be issued for a contribution amounting in value to less than five dollars ($5.00). (1997-400, s. 2.1.)

§ 143B-289.60. Article subject to Chapter 113.

Nothing in this Article shall be construed to affect the jurisdictional division between the Marine Fisheries Commission and the Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter. (1997-400, s. 2.1.)

§ 143B-289.61. Jurisdictional questions.

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment and Natural Resources and the Marine Fisheries Commission as to any duty, responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding. (1997-400, s. 2.1; 1997-443, s. 11A.123; 1997-443, s. 11A.123.)

Editor's Note. — Pursuant to Session Laws 1997-443, s. 11A.123, references to the Department or Secretary of Environment and Natural Resources were substituted for references to the Department or Secretary of Environment, Health and Natural Resources.

§§ 143B-289.62 through 143B-289.65: Reserved for future codification purposes.

Part 6. North Carolina Mining Commission.

§ 143B-290. North Carolina Mining Commission — creation; powers and duties.

There is hereby created the North Carolina Mining Commission of the Department of Environment and Natural Resources with the power and duty to promulgate rules for the enhancement of the mining resources of the State.

(1) The North Carolina Mining Commission shall have the following powers and duties:
  a. To act as the advisory body to the Governor pursuant to Article V(a) of the Interstate Mining Compact, as set out in G.S. 74-37.
  b. Repealed by Session Laws 2002-165, s. 1.10, effective October 23, 2002.
  c. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61.
  d. To promulgate rules necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63.
  e. To promulgate rules necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983, pursuant to G.S. 74-86.

(2) The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mining resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall make such rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(4) Recodified as § 74-54.1 by c. 1039, s. 16, effective July 24, 1992. (1973, c. 1262, s. 29; 1977, c. 771, s. 4; 1983, c. 279, s. 2; 1989, c. 727, s. 193; 1989 (Reg. Sess., 1990), c. 944, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 16; 1997-443-11A.119(a); 2002-165, s. 1.10.)

Editor's Note. — Subsection (a) of G.S. 74-38, referred to in subdivision (1)a of this section, was repealed by Session Laws 1973, c. 1262, s. 33.

Article 6 of Chapter 74, referred to in subdivision (1)b of this section, was repealed by Session Laws 1977, c. 712, s. 2 effective July 1, 1979.

Section 74-44, referred to in subdivision (1)b of this section, was repealed by Session Laws 1977, c. 712, s. 2, effective July 1, 1979.

§ 143B-291. North Carolina Mining Commission — members; selection; removal; compensation; quorum; services.

(a) Members, Selection. — The North Carolina Mining Commission shall consist of nine members appointed by the Governor under a specified subdivision of this subsection as follows:

(1) One member who is the chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio.
(2) One member who is a representative of the mining industry.
(3) One member who is a representative of the mining industry.
(4) One member who is a representative of the mining industry.
(5) One member who is a representative of nongovernmental conservation interests.
(6) One member who is a representative of nongovernmental conservation interests.
(7) One member who is a representative of nongovernmental conservation interests.
(8) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.
(9) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

(b) Terms. — The term of office of a member of the Commission is six years. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications for a term of six years. The term of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (4), (7), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by three years those years that are evenly divisible by six. Upon the expiration of a six-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(c) Vacancies. — An appointment to fill a vacancy shall be for the unexpired balance of the term.

(d) Removal. — The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13.

(e) Compensation. — The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) Quorum. — A majority of the Commission shall constitute a quorum for the transaction of business.

(g) Staff. — All clerical and other services required by the Commission shall be supplied by the Secretary of Environment and Natural Resources. (1973, c. 1262, s. 30; 1997-496, s. 8; 2006-79, ss. 3, 4.)

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 450(1998).

§ 143B-292. North Carolina Mining Commission — officers.

The North Carolina Mining Commission shall have a chair and a vice-chair. The chair shall be designated by the Governor from among the members of the Commission to serve as chair at the pleasure of the Governor. The vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of the vice-chair's regularly appointed term. (1973, c. 1262, s. 31; 2006-79, s. 5.)

§ 143B-293. North Carolina Mining Commission — meetings.

The North Carolina Mining Commission shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chair or upon the written request of at least five members. (1973, c. 1262, s. 32; 2006-79, s. 6.)

Part 7. Soil and Water Conservation Commission.

§ 143B-294. Soil and Water Conservation Commission — creation; powers and duties; compliance inspections.

(a) There is hereby created the Soil and Water Conservation Commission of the Department of Environment and Natural Resources with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:
   a. To approve petitions for soil conservation districts.
   b. To approve application for watershed plans.
   c. Such other duties as specified in Chapter 139.
   d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of Environment and Natural Resources may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee or agent has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, shall be guilty of a Class 1 misdemeanor. (1973, c. 1262, s. 34; 1977, c. 771, s. 4; 1989, c. 727, s. 194; 1997-173, s. 1; 1997-443, s. 11A.119(a).)

Cross References. — For notes regarding implementation of the Tar-Pamlico River Basin-Nutrient Sensitive Waters Management Strategy, see G.S. 143B-282.

Agricultural Drought Response Cost Share Program. — Session Laws 2008-107, s. 12.4, provides: "(a) Agricultural Drought Response Cost Share Program. — The Agricultural Drought Response Cost Share Program is established. The Program shall provide cost share funds to assist North Carolina farmers who suffered damage from the severe and extreme drought conditions in North Carolina in 2007. These cost share funds shall be used to assist farmers with the following projects:

"(1) To redrill damaged wells or to drill new wells to be used as a water supply for livestock or for irrigation.

"(2) To renovate damaged or inadequate farm ponds or construct new farm ponds to be used as a water supply for livestock or for irrigation.

"(3) To renovate pastures depleted by the 2007 drought.

"(b) Program Administration. — The Program shall be implemented and supervised by the Soil and Water Conservation Commission through the Agriculture Cost Share Program for Nonpoint Source Pollution Control. The Commission shall administer this Program as provided in this section and in Part 9 of Article 21 of Chapter 143 of the General Statutes.

"(c) Program Functions. — Under the Agricultural Drought Response Cost Share Program, the Division shall:

"(1) Within funds available for this Program, provide cost share funds subject to all of the following limitations and requirements:

"a. Except as provided in G.S. 143-215.74(b)(9), State funding shall be limited to:

"1. Seventy-five percent (75%) of the average cost for each project with the assisted person providing twenty-five percent (25%) of the project cost, which may include in-kind support of the project.

"2. A maximum of seventy-five thousand dollars ($75,000) per year to each applicant.

"b. Applicants shall be limited to farmers who have an adjusted gross income in each of the previous two years that is at or below two hundred fifty thousand dollars ($250,000), unless at least seventy-five percent (75%) of this adjusted gross income is derived directly from farming, ranching, or forestry operations.

"c. To be eligible for cost share funds under subdivision (1) or subdivision (2) of subsection (a) of this section, applicants must demonstrate that their existing water supplies are insufficient to provide reliable water to meet current needs for livestock watering or irrigation.

"d. Applicants may apply for cost share funds for projects under subsection (a) of this section that were installed as of August 1, 2007, so long as the costs of installation are documented to the satisfaction of the Commission.

"e. The requirements and limitations under subdivisions (1), (2), (5), and (8) of subsection (b) of G.S. 143-215.74 do not apply. All other limitations and requirements set out in Part 9 of Article 21 of Chapter 143 of the General Statutes, as modified by this section, apply.

"(2) Establish criteria to prioritize the redrilling of damaged wells and the drilling of new wells, the renovation of damaged or inadequate farm ponds and the construction of new farm ponds, and the renovation of pastures depleted by the drought.

"(3) Establish criteria for the selection of applicants who are eligible for participation in the Program.

"(4) Develop a process for soliciting and reviewing applications and for selecting farmers to participate in the Program.

"(5) Investigate and pursue other funding sources to supplement State funds, including federal, local, and private funding sources.

"(6) Provide technical assistance to participating persons to assist with the projects that are eligible for cost share funds under subsection (a) of this section and to facilitate the timely transfer of technology among participating persons.

"(d) Report. — No later than 31 January of each year, the Division shall prepare a comprehensive report on the implementation of subsections (a) through (c) of this section. The report shall be submitted to the Environmental Review Commission as a part of the report required by G.S. 143-215.74(e). The first report required by this subsection shall be submitted to the Environmental Review Commission no later than 31 January 2009.

"(e) Program Funds. — The Soil and Water Conservation Commission may use up to one hundred fifteen thousand dollars ($115,000) of the funds appropriated in this act to the Department of Environment and Natural Resources for the 2008-2009 fiscal year to be used for the Agricultural Drought Response Cost Share Program for the Division of Soil and Water Conservation and for the Soil and Water Conservation Districts for the costs of providing engineering assistance, providing technical assistance, and administering the Program. Further, twenty-five percent (25%) of the remaining funds shall not be allocated during the initial funding cycle, but shall be retained to be allocated by the Commission consistent with the limitations under this section, for the purposes under this section, and to address future drought emergencies or to allocate to farmers who received cost share funds under this section who need additional funds to achieve the purpose of the initial cost share disbursement."

Editor's Note. — Session Laws 1998-165, s. 2, provides: "The Soil and Water Conservation Commission may adopt temporary rules to implement the conservation Reserve Enhancement Program. This section shall constitute a recent act of the General Assembly for purposes of G.S. 150B-21(a)(2)."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143B-295. Soil and Water Conservation Commission — members; selection; removal; compensation; quorum; services.

(a) The Soil and Water Conservation Commission of the Department of Environment and Natural Resources shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

(1) The president, first vice-president, and immediate past president of the North Carolina Association of Soil and Water Conservation Districts. Vacancies arising in any of these positions shall be filled through appointment by the Governor upon the nomination by the executive committee of the North Carolina Association of Soil and Water Conservation Districts;

(2) Three supervisor members nominated by the North Carolina Association of Soil and Water Conservation Districts from its own membership representing the three major geographical regions of the State and appointed by the Governor;

(3) One member appointed at large by the Governor.

(b) The members of the Commission, except those members serving in an ex officio capacity, shall be appointed for terms of three years and shall serve until their successors are appointed and qualified. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(c) The office of member of the Soil and Water Conservation Commission may be held concurrently with any other elective or appointive office, in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(d) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

(e) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the Commission shall constitute a quorum for the transaction of business.

(g) All clerical and other services required by the Commission shall be supplied by the Secretary of Environment and Natural Resources. (1973, c. 1262, s. 35; 1977, c. 771, s. 4; 1989, c. 727, s. 218(136); 1997-443, s. 11A.119(a); 2002-176, s. 2; 2003-198, s. 1.)

§ 143B-296. Soil and Water Conservation Commission — officers.

The Soil and Water Conservation Commission shall have a chair and a vice-chair. The chair shall be designated by the Governor from among the members of the Commission to serve as chair at the pleasure of the Governor. The vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of the vice-chair's regularly appointed term. (1973, c. 1262, s. 36; 2006-79, s. 7.)

§ 143B-297. Soil and Water Conservation Commission — meetings.

The Soil and Water Conservation Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the chair or upon the written request of at least four members. (1973, c. 1262, s. 37; 2006-79, s. 8.)

§ 143B-297.1. Soil and Water Conservation Account.

The Soil and Water Conservation Account is established as a nonreverting account within the Department of Environment and Natural Resources. The Account consists of revenue credited to the Account from the sale of soil and water conservation special license plates. The Commission shall use the revenue from the account to fund environmental education and water quality education in North Carolina. (1997-477, s. 5; 1997-443, s. 11A.123.)

Part 8. Sedimentation Control Commission.

§ 143B-298. Sedimentation Control Commission — creation; powers and duties.

There is hereby created the Sedimentation Control Commission of the Department of Environment and Natural Resources with the power and duty to develop and administer a sedimentation control program as herein provided.

The Sedimentation Control Commission has the following powers and duties:

(1) In cooperation with the Secretary of the Department of Transportation and Highway Safety and other appropriate State and federal agencies, develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program.

(2) Develop and adopt on or before July 1, 1974, rules and regulations for the control of erosion and sedimentation pursuant to G.S. 113A-54.

(3) Conduct public hearings pursuant to G.S. 113A-54.

(4) Assist local governments in developing erosion and sedimentation control programs pursuant to G.S. 113A-60.

(5) Assist and encourage other State agencies in developing erosion and sedimentation control programs pursuant to G.S. 113A-56.

(6) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques pursuant to G.S. 113A-54. (1973, c. 1262, s. 39; 1977, c. 771, s. 4; 1989, c. 727, s. 218(137); 1997-443, s. 11A.119(a).)

§ 143B-299. Sedimentation Control Commission — members; selection; compensation; meetings.

(a) Creation; Membership. — There is hereby created in the Department of Environment and Natural Resources the North Carolina Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this Article. The Commission shall consist of the following members:

(1) A person to be nominated jointly by the boards of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners;

(2) A person to be nominated by the Board of the North Carolina Home Builders Association;

(3) A person to be nominated by the Carolinas Branch, Associated General Contractors of America;

(4) The president, vice-president, or general counsel of a North Carolina public utility company;

(5) The Director of the North Carolina Water Resources Research Institute;

(6) A member of the State Mining Commission who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);

(7) A member of the State Soil and Water Conservation Commission;

(8) A member of the Environmental Management Commission;

(9) A soil scientist from the faculty of North Carolina State University;

(10) Two persons who shall be representatives of nongovernmental conservation interests; and

(11) A professional engineer registered under the provisions of Chapter 89C of the General Statutes nominated by the Professional Engineers of North Carolina, Inc.

(b) Appointment. — The Commission members shall be appointed by the Governor. All Commission members, except the person appointed under subdivision (5) of subsection (a) of this section, shall serve staggered terms of three years and until their successors are appointed and duly qualified. The person appointed under subdivision (5) of subsection (a) of this section shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as the person continues as Director of the Water Resources Research Institute. The terms of members appointed under subdivisions (2), (4), (7), and (8) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The terms of members appointed under subdivisions (1), (3), and (10) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed under subdivisions (6), (9), and (11) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Except for the person appointed under subdivision (5) of subsection (a) of this section, no member of the Commission shall serve more than two complete consecutive three-year terms. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, or because they no longer possess the required qualifications for membership. The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(b1) Chair. — The Governor shall designate a member of the Commission to serve as chair.

(c) Compensation. — The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.

(d) Meetings of Commission. — The Commission shall meet at the call of the chair and shall hold special meetings at the call of a majority of the members. (1973, c. 1262, s. 40; 1977, c. 771, s. 4; 1981, c. 248, ss. 1, 2; 1989, c. 727, s. 218(138); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991, c. 551, s. 1; 1997-443, s. 11A.119(a); 2006-79, s. 9.)

Editor's Note. — Former G.S. 113A-53 was repealed by Session Laws 1973, c. 1262, s. 41, ratified April 11, 1974, and effective July 1, 1974, and its provisions were incorporated in Session Laws 1973, c. 1262, s. 40, codified as this section. Session Laws 1973, c. 1417, ratified April 13, 1974, and effective on ratification, amended subdivision (a)(1) and subsection (b) of repealed G.S. 113A-53. In an opinion of the Attorney General to Mr. James E. Harrington, Secretary of Natural and Economic Resources, July 10, 1974, it was concluded that Session Laws 1973, c. 1417, s. 2, had the effect of amending Session Laws 1973, c. 1262, s. 40, so as to permanently remove the Secretary of Natural and Economic Resources from his position as chairman of the Sedimentation Control Commission.

Subsection (b) of G.S. 74-38, referred to in subdivision (6) of subsection (a), was repealed by Session Laws 1973, c. 1262, s. 33.

Session Laws 1991, c. 551, s. 3, provides: "This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. The Sedimentation Control Commission and the Department of Environment, Health, and Natural Resources [now the Department of Environment and Natual Resources] shall implement the provisions of this act from funds otherwise appropriated or available to the Commission or to the Department."

Part 9. Water Pollution Control System Operators Certification Commission.

§ 143B-300. Water Pollution Control System Operators Certification Commission — creation; powers and duties.

(a) There is hereby created the Water Pollution Control System Operators Certification Commission to be located in the Department of Environment and Natural Resources. The Commission shall adopt rules with respect to the certification of water pollution control system operators as provided by Article 3 of Chapter 90A of the General Statutes.

(b) The Commission shall adopt such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for programs concerned with the certification of water pollution control system operators which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(c) The Commission may by rule delegate any of its powers, other than the power to adopt rules, to the Secretary of Environment and Natural Resources or the Secretary's designee. (1973, c. 1262, s. 42; 1977, c. 771, s. 4; 1989, c. 727, s. 195; 1991, c. 623, s. 15; 1997-443, s. 11A.119(a); 2006-79, s. 10.)

§ 143B-301. Water Pollution Control System Operators Certification Commission — members; selection; removal; compensation; quorum; services.

(a) The Water Pollution Control System Operators Certification Commission shall consist of 11 members. Two members shall be from the animal agriculture industry and shall be appointed by the Commissioner of Agriculture. Nine members shall be appointed by the Secretary of Environment and Natural Resources with the approval of the Environmental Management Commission with the following qualifications:

(1) Two members shall be currently employed as water pollution control facility operators, water pollution control system superintendents or directors, water and sewer superintendents or directors, or equivalent positions with a North Carolina municipality;

(2) One member shall be manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;

(3) One member shall be manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;

(4) One member shall be employed by a private industry and shall be responsible for supervising the treatment or pretreatment of industrial wastewater;

(5) One member who is a faculty member of a four-year college or university and whose major field is related to wastewater treatment;

(6) One member who is employed by the Department of Environment and Natural Resources and works in the field of water pollution control, who shall serve as Chairman of the Commission;

(7) One member who is employed by a commercial water pollution control system operating firm; and

(8) One member shall be currently employed as a water pollution control system collection operator, superintendent, director, or equivalent position with a North Carolina municipality.

(b) Appointments to the Commission shall be for a term of three years. Terms shall be staggered so that three terms shall expire on 30 June of each year, except that members of the Commission shall serve until their successors are appointed and duly qualified as provided by G.S. 128-7.

(c) The Commission shall elect a Vice-Chairman from among its members. The Vice-Chairman shall serve from the time of his election until 30 June of the following year, or until his successor is elected.

(d) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(e) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

(f) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15.

(g) A majority of the Commission shall constitute a quorum for the transaction of business.

(h) All clerical and other services required by the Commission shall be supplied by the Secretary of Environment and Natural Resources. (1973, c. 1262, s. 43; 1977, c. 771, s. 4; 1989, c. 372, s. 10; c. 727, s. 196, 197; 1989 (Reg. Sess., 1990), c. 850, s. 1; c. 1004, s. 19(b); 1991, c. 623, ss. 1, 16; 1995 (Reg. Sess., 1996), c. 626, s. 5; 1997-443, s. 11A.119(a).)

§ 143B-301.1. Definitions.

The definitions set out in G.S. 90A-46 shall apply throughout this Part. (1991, c. 623, s. 17; 1991 (Reg. Sess., 1992), c. 890, s. 21.)

§§ 143B-301.2 through 143B-301.9: Reserved for future codification purposes.

Part 9A. Well Contractors Certification Commission.

§ 143B-301.10. Definitions.

The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part. (1997-358, s. 1.)

§ 143B-301.11. Creation, powers, and duties of the Commission.

(a) Creation and Duties. — The Well Contractors Certification Commission is created within the Department. The Commission shall:

(1) Adopt rules with respect to the certification of well contractors as provided by Article 7A of Chapter 87 of the General Statutes.

(2) Exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. The Commission shall make the final agency decision on any matter involving the certification of well contractors pursuant to Article 7A of Chapter 87 of the General Statutes and on civil penalties assessed for violations of that Article or rules adopted pursuant to that Article.

(3) Adopt rules as may be required to secure a federal grant-in-aid for a program concerned with the certification of well contractors. This subdivision is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(b) Delegation. — The Commission may, by rule, delegate to the Secretary any of its powers, other than the power to adopt rules. (1997-358, s. 1.)

§ 143B-301.12. Membership of Commission.

(a) Appointments. — The Commission shall consist of seven members appointed as follows:

(1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.

(2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time

of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.

(3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.

(5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. — Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of, or has a principal place of business in, the same county as another member of the Commission.

(c) Terms. — Appointments to the Commission shall be for terms of three years. The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June of years evenly divisible by three. The terms of members appointed to fill positions (3) and (4) shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed to fill positions (5) and (6) shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Members shall serve until their successors are appointed and qualified. No member shall serve more than two consecutive terms.

(d) Officers. — The Commission shall elect a Chair and a Vice-Chair from among its members. These officers shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Vacancies. — An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Removal. — The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143B-13.

(g) Compensation. — The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) Quorum. — A majority of the membership of the Commission constitutes a quorum for the transaction of business.

(i) Services. — All clerical and other services required by the Commission shall be supplied by the Secretary. (1997-358, s. 1; 2002-165, s. 1.11.)

Part 10. Earth Resources Council.

§§ 143B-302 through 143B-304: Repealed by Session Laws 1983, c. 667, s. 1.

Part 11. Community Development Council.

§§ 143B-305 through 143B-307: Recodified as §§ 143B-437.1 through 143B-437.3 by Session Laws 1989, c. 727, s. 199.

Part 12. Forestry Council.

§ 143B-308. Forestry Council — creation; powers and duties.

There is hereby created the Forestry Council of the Department of Environment and Natural Resources. The Forestry Council shall have the following functions and duties:

(1) To advise the Secretary of Environment and Natural Resources with respect to all matters concerning the protection, management, and preservation of State-owned, privately owned, and municipally owned forests in the State, including but not limited to:
  a. Profitable use of the State's forests consistent with the principles of sustained productivity.
  b. Best management practices, including those for protection of soil, water, wildlife, and wildlife habitat, to be used in managing the State's forests and their resources.
  c. Restoration of forest ecosystems and protection of rare and endangered species occurring in the State's private forests consistent with principles of private ownership of land.

(2) To maintain oversight of a continuous monitoring and planning process, to provide a long-range, comprehensive plan for the use, management, and sustainability of North Carolina's forest resources, and to report regularly on progress made toward meeting the objectives of the plan.

(3) To provide a forum for the identification, discussion, and development of recommendations for the resolution of conflicts in the management of North Carolina's forests.

(4) To undertake any other studies, make any reports, and advise the Secretary of Environment and Natural Resources on any matter as the Secretary may direct. (1973, c. 1262, s. 52; 1977, c. 771, s. 4; 1989, c. 727, s. 218(139); 1995 (Reg. Sess., 1996), c. 653, s. 1; 1997-443, s. 11A.119(a).)

Editor's Note. — The subdivision (2) designation in this section was added at the direction of the Revisor of Statutes.

§ 143B-309. Forestry Council — members; chairperson; selection; removal; compensation; quorum.

(a) The Forestry Advisory Council of the Department of Environment and Natural Resources shall consist of 18 members appointed as follows:

(1) Three persons who are registered foresters and who represent the primary forest products industry, one each from the Mountains, Piedmont and Coastal Plain.
(2) One person who represents the secondary wood-using industry.
(3) One person who represents the logging industry.
(4) Four persons who are nonindustrial woodland owners actively involved in forest management, one of whom has agricultural interests, and at least one each from the Mountains, Piedmont, and Coastal Plain.
(5) Three persons who are members of statewide environmental or wildlife conservation organizations.
(6) One consulting forester.
(7) Two persons who are forest scientists with knowledge of the functioning and management of forest ecosystems.
(8) One person who represents a banking institution that manages forestland.
(9) One person with expertise in urban forestry.
(10) One person with active experience in city and regional planning.

(b) The Governor shall appoint one person from categories (1) and (5), two persons from category (4), and the persons from categories (6), (7), (8), (9), and (10). The President Pro Tempore of the Senate shall appoint the person from category (2) and one person each from categories (1), (4), and (5). The Speaker of the House of Representatives shall appoint the person from category (3) and one person each from categories (1), (4), and (5). The Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall consult with one another to insure that each of the three geographic regions of the State are represented in appointments made to fill categories (1) and (4).

(c) The Governor shall designate one member of the Council to serve as chairperson at the pleasure of the Governor.

(d) Members shall serve staggered terms of office of four years. The terms of office of members filling categories (1), (4), and (5) shall expire on 30 June of years that follow by one year those years that are evenly divisible by four. The terms of office of members filling categories (2), (3), (6), (7), (8), (9), and (10) shall expire on 30 June of years that follow by three years those years that are evenly divisible by four. Terms shall expire as provided by this subsection except that members of the Council shall serve until their successors are appointed and duly qualified as provided by G.S. 128-7. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term and shall be made by the appointing authority responsible for that category. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The Governor shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by the Governor. The General Assembly shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by the General Assembly.

(f) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(g) A majority of the Council shall constitute a quorum for the transaction of business.

(h) All clerical and other services required by the Council, including the support required to carry out studies it is requested to make, shall be supplied by the Secretary of Environment and Natural Resources. (1973, c. 1262, s. 53; 1977, c. 771, s. 4; 1989, c. 727, s. 218(140); 1995 (Reg. Sess., 1996), c. 653, s. 2; 1997-443, s. 11A.119(a).)

§ 143B-310. Forestry Council — meetings.

The Forestry Council shall meet annually in October and at least three other times a year and may hold special meetings at any time and place within the State at the call of the chairperson or upon the written request of at least a majority of the members. At least one meeting during each two-year period shall be held in the Mountains, Piedmont, and the Coastal Plain. (1973, c. 1262, s. 54; 1995 (Reg. Sess., 1996), c. 653, s. 3.)

Part 13. Parks and Recreation Council.

§§ 143B-311 through 143B-313: Repealed by Session Laws 1995, c. 456, s. 4.

Part 13A. North Carolina Parks and Recreation Authority.

§ 143B-313.1. North Carolina Parks and Recreation Authority; creation; powers and duties.

The North Carolina Parks and Recreation Authority is created, to be administered by the Department of Environment and Natural Resources. The North Carolina Parks and Recreation Authority shall have at least the following powers and duties:

(1) To receive public and private donations, appropriations, grants, and revenues for deposit into the Parks and Recreation Trust Fund.
(2) To allocate funds for land acquisition from the Parks and Recreation Trust Fund.
(3) To allocate funds for repairs, renovations, improvements, construction, and other capital projects from the Parks and Recreation Trust Fund.
(4) To solicit financial and material support from public and private sources.
(5) To develop effective public and private support for the programs and operations of the parks and recreation areas.
(6) To consider and to advise the Secretary of Environment and Natural Resources on any matter the Secretary may refer to the North Carolina Parks and Recreation Authority. (1995, c. 456, s. 1; 1997-443, s. 11A.119(a).)

§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.

(a) Membership. — The North Carolina Parks and Recreation Authority shall consist of 15 members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. In making appointments, each appointing authority shall specify under which subdivision of this subsection the person is appointed. Members shall be appointed as follows:

(1) One member appointed by the Governor.
(2) One member appointed by the Governor.
(3) One member appointed by the Governor.
(3a) One member appointed by the Governor.
(3b) One member appointed by the Governor.
(4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.
(5) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.
(6) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.
(7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.
(7a) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.
(8) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.
(9) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.
(10) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.
(11) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.
(12) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(b) Terms. — Members shall serve staggered terms of office of three years. Members shall serve no more than two consecutive three-year terms. After serving two consecutive three-year terms, a member is not eligible for appointment to the Authority for at least one year after the expiration date of that member's most recent term. Upon the expiration of a three-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The terms of members appointed under subdivision (1), (3a), (5), (7), or (9) of subsection (a) of this section shall expire on July 1 of years that are evenly divisible by three. The terms of members appointed under subdivision (2), (3b), (4), (8), or (11) of subsection (a) of this section shall expire on July 1 of years that follow by one year those years that are evenly divisible by three. The terms of members appointed under subdivision (3), (6), (7a), (10), or (12) of subsection (a) of this section shall expire on July 1 of years that precede by one year those years that are evenly divisible by three.

(c) Chair. — The Governor shall appoint one member of the North Carolina Parks and Recreation Authority to serve as Chair.

(d) Vacancies. — A vacancy on the North Carolina Parks and Recreation Authority shall be filled by the appointing authority responsible for making the appointment to that position as provided in subsection (a) of this section. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(e) Removal. — The Governor may remove, as provided in Article 10 of Chapter 143C of the General Statutes any member of the North Carolina Parks and Recreation Authority appointed by the Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any member of the North Carolina Parks and Recreation Authority appointed by the General Assembly for misfeasance, malfeasance, or nonfeasance.

(f) Compensation. — The members of the North Carolina Parks and Recreation Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of G.S. 138-5.

(g) Meetings. — The North Carolina Parks and Recreation Authority shall meet at least quarterly at a time and place designated by the Chair.

(h) Quorum. — A majority of the North Carolina Parks and Recreation Authority shall constitute a quorum for the transaction of business.

(i) Staff. — All clerical and other services required by the North Carolina Parks and Recreation Authority shall be provided by the Secretary of Environment and Natural Resources. (1995, c. 456, s. 1; 1996, 2nd Ex. Sess., c. 15, s. 16.1; 1997-443, s. 11A.119(a); 1997-496, s. 10; 2001-424, s. 19.3(a); 2006-203, s. 105; 2007-437, s. 2.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 450(1998).

Part 14. North Carolina Water Safety Council.

§§ 143B-314 through 143B-316: Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 12.

Part 15. Small Business Environmental Advisory Panel.

§ 143B-317. Small Business Environmental Advisory Panel — creation; powers and duties.

There is hereby created the Small Business Environmental Advisory Panel of the Department of Environment and Natural Resources. The Small Business Environmental Advisory Panel shall have the following functions and duties:

(1) To render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement.

(2) To make periodic reports to the Administrator of the United States Environmental Protection Agency concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act, 44 U.S.C. §§ 3501 et. seq.; the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq.; and the Equal Access to Justice Act, 5 U.S.C. §§ 504 et seq.

(3) To review information for small business stationary sources to assure such information is understandable by the layperson. (1973, c. 1262, s. 61; 1977, c. 771, s. 4; 1989, c. 727, s. 218(143); 1991, c. 552, s. 6; 1997-443, s. 11A.119(a); 2005-386, s. 8.2.)

Legal Periodicals. — For note regarding North Carolina air toxics regulations, see 69 N.C.L. Rev. 1579 (1991).

§ 143B-318. Small Business Environmental Advisory Panel — members; chair; selection; removal; compensation; quorum; services.

(a) The Small Business Environmental Advisory Panel shall consist of two members who are not owners or representatives of owners of small business stationary sources, appointed by the Governor to represent the general public; two members appointed one each by the Speaker and the minority leader of the House of Representatives, and who are owners, or who represent owners, of small business stationary sources; two members appointed one each by the President Pro Tempore and the minority leader of the Senate, who are owners, or who represent owners, of small business stationary sources; and one member appointed by the Secretary of Environment and Natural Resources.

(b) The Governor shall designate one member of the Panel to serve as chair at the pleasure of the Governor.

(c) Members shall serve staggered terms of four years. In order to achieve staggered terms, the Speaker and the minority leader of the House of Representatives shall initially appoint members for terms of two years, the President Pro Tempore and the minority leader of the Senate shall initially appoint members for terms of three years. At the end of the respective terms of office of the initial members, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Panel created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member of the Panel from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16.

(e) The members of the Panel shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the Panel shall constitute a quorum for the transaction of their business.

(g) The Secretary of Environment and Natural Resources shall designate an office within the Department of Environment and Natural Resources to serve as ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program established by the Department pursuant to section 507 of Title V of the 1990 amendments to the federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2645, 42 U.S.C. § 7661f(a)(3)). The Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall serve as the secretariat for the development and dissemination of reports and advisory opinions issued by the Panel. The Panel and the ombudsman shall exercise their powers consistent with G.S. 143B-14(b).

(h) All clerical and other services required by the Panel shall be supplied by the Secretary of Environment and Natural Resources. (1973, c. 1262, s. 62; 1977, c. 771, s. 4; 1989, c. 727, s. 218(144); 1991, c. 552, s. 7; 1993, c. 400, s. 1(d); 1997-443, s. 11A.119(a); 2001-474, s. 33; 2005-386, s. 8.2.)

§ 143B-319. Small Business Environmental Advisory Panel — meetings.

The Panel shall meet at least semiannually and may hold special meetings at any time and place at the call of the chair or upon the written request of at least three members. (1973, c. 1262, s. 63; 1991, c. 552, s. 8; 2005-386, s. 8.2.)

Part 16. Water Quality Council.

§§ 143B-320, 143B-321: Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 14.

Part 17. North Carolina National Park, Parkway and Forests Development Council.

§§ 143B-322 through 143B-324: Recodified as G.S. 143B-446 through 143B-447.1 by Session Laws 1977, c. 198, s. 26.

Part 17A. North Carolina National Park, Parkway and Forests Development Council.

§ 143B-324.1. North Carolina National Park, Parkway and Forests Development Council; creation; powers; duties.

The North Carolina National Park, Parkway and Forests Development Council is created within the Department of Environment and Natural Resources. The North Carolina National Park, Parkway and Forests Development Council shall:

(1) Endeavor to promote the development of that part of the Smoky Mountains National Park lying in North Carolina, the completion and development of the Blue Ridge Parkway in North Carolina, the development of the Nantahala and Pisgah national forests, and the development of other recreational areas in that part of North Carolina immediately affected by the Great Smoky Mountains National Park, the Blue Ridge Parkway or the Pisgah or Nantahala national forests.

(2) Study the development of these areas and to recommend a policy that will promote the development of the entire area generally designated as the mountain section of North Carolina, with particular emphasis upon the development of the scenic and recreational resources of the region, and the encouragement of the location of tourist facilities along lines designed to develop to the fullest these resources in the mountain section.

(3) Confer with the various departments, agencies, commissioners and officials of the federal government and governments of adjoining states in connection with the development of the federal areas and projects named in this section.

(4) Advise and confer with the various officials, agencies or departments of the State of North Carolina that may be directly or indirectly concerned in the development of the resources of these areas.

(5) Advise and confer with the various interested individuals, organizations or agencies that are interested in developing this area.

(6) Use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole.
(7) Study the need for additional entrances to the Great Smoky Mountains National Park, together with the need for additional highway approaches and connections.
(8) File its findings in this connection as recommendations with the National Park Service of the federal government, and the North Carolina Department of Transportation.
(9) Advise the Secretary of Environment and Natural Resources upon any matter the Secretary of Environment and Natural Resources may refer to it. (1973, c. 1262, s. 66; 1977, c. 198, ss. 5, 26; 1989, c. 751, s. 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 85; 1997-443, ss. 11A.123, 15.36(b), (c).)

Editor's Note. — The above section was formerly G.S. 143B-322. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

Session Laws 1997-443, s. 15.36(b), recodified Part 7 of Article 10 of this chapter as Part 17A of Article 7 of this chapter.

This section was formerly 143B-446. It was recodified as 143B-324.1 by Session Laws 1997-443, s. 15.36(b).

Session Laws 1997-443, s. 15.36(a), provides: "All functions, powers, duties, and obligations heretofore vested in the North Carolina National Park, Parkway and Forests Development Council of the Department of Commerce are hereby transferred to and vested in the Department of Environment, Health, and Natural Resources [now the Department of Environment and Natural Resources] by a Type II transfer, as defined in G.S. 143A-6."

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4 is a severability clause.

§ 143B-324.2. North Carolina National Park, Parkway and Forests Development Council — members; selection; officers; removal; compensation; quorum; services.

The North Carolina National Park, Parkway and Forests Development Council within the Department of Environment and Natural Resources shall consist of seven members appointed by the Governor. The composition of the Council shall be as follows: one member shall be a resident of Buncombe County, one member a resident of Haywood County, one member a resident of Jackson County, one member a resident of Swain County, three members residents of counties adjacent to the Blue Ridge Parkway, the Great Smoky Mountains National Park or the Pisgah or Nantahala national forests. The appointment of members shall be for terms of four years, or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Council shall elect a chairman, a vice-chairman and a secretary. The chairman and the vice-chairman shall all be members of the Council, but the secretary need not be a member of the Council. These officers shall perform the duties usually pertaining to such offices and when elected shall serve for a period of one year, but may be reelected. In case of vacancies by resignation or death, the office shall be filled by the Council for the unexpired term of said officer.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15 of the Executive Organization Act of 1973.

Five members of the Council shall constitute a quorum for the transaction of business. (1973, c. 1262, s. 67; 1977, c. 198, ss. 5, 26; 1997-443, ss. 11A.123, 15.36(b), (d).)

Editor's Note. — The above section was formerly G.S. 143B-323. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

This section was formerly 143B-447. It was recodified as 143B-324.2 by Session Laws 1997-443, s. 15.36(b).

§ 143B-324.3. North Carolina National Park, Parkway and Forests Development Council — meetings.

The North Carolina National Park, Parkway and Forests Development Council shall meet monthly and may hold special meetings at any time and place within the State at the call of the chairman or upon written request of at least a majority of the members. (1973, c. 1262, s. 68; 1977, c. 198, s. 26; 1997-443, s. 15.36(b).)

Editor's Note. — The above section was formerly G.S. 143B-324. It has been recodified in this Article pursuant to Session Laws 1977, c. 198, s. 26. The 1977 act expressly recodified G.S. 143B-322 and 143B-323, but did not mention G.S. 143B-324.

This section was formerly 143B-447.1. It was recodified as 143B-324.3 by Session Laws 1997-443, s. 15.36(b).

Part 18. Commercial and Sports Fisheries Advisory Committee.

§§ 143B-325 through 143B-327: Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 11.

Part 19. John H. Kerr Reservoir Committee.

§§ 143B-328 through 143B-330: Repealed by Session Laws 1985 (Regular Session 1986), c. 1028, s. 30.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1028, s. 30 abolished the John H. Kerr Reservoir Committee, but provided that the act does not prevent local officials in counties affected by the reservoir from establishing a local advisory group.

Part 20. Science and Technology Committee.

§§ 143B-331, 143B-332: Recodified as §§ 143B-440, 143B-441 by Session Laws 1977, c. 198, s. 26.

Part 21. North Carolina Trails Committee.

§ 143B-333. North Carolina Trails Committee — creation; powers and duties.

There is hereby created the North Carolina Trails Committee of the Department of Environment and Natural Resources. The Committee shall have the following functions and duties:

(1) To meet not less than two times annually to advise the Department on all matters directly or indirectly pertaining to trails, their use, extent, location, and the other objectives and purposes of G.S. 113A-88.

(2) To coordinate trail development among local governments, and to assist local governments in the formation of their trail plans and advise the Department of its findings.

(3) To advise the Secretary of trail needs and potentials pursuant to G.S. 113A-88. (1973, c. 1262, s. 80; 1977, c. 771, s. 4; 1989, c. 727, s. 218(145); 1997-443, s. 11A.119(a).)

§ 143B-334. North Carolina Trails Committee — members; selection; removal; compensation.

The North Carolina Trails Committee shall consist of seven members appointed by the Secretary of Environment and Natural Resources. Two members shall be from the mountain section, two from the Piedmont section, two from the coastal plain, and one at large. They shall as much as possible represent various trail users.

The initial members of the North Carolina Trails Committee shall be the members of the current North Carolina Trails Committee who shall serve for a period equal to the remainder of their current term on the North Carolina Trails Committee. At the end of the respective terms of office of the initial members of the Committee, the appointment of their successors shall be for staggered terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Secretary of Environment and Natural Resources shall designate a member of the Committee to serve as chairman at the pleasure of the Governor.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15 of the Executive Organization Act of 1973. (1973, c. 1262, s. 81; 1977, c. 771, s. 4; 1989, c. 727, s. 218(146); 1997-443, s. 11A.119(a).)

Part 22. North Carolina Zoological Park Council.

§ 143B-335. North Carolina Zoological Park Council — creation; powers and duties.

There is hereby created the North Carolina Zoological Park Council of the Department of Environment and Natural Resources. The North Carolina Zoological Park Council shall have the following functions and duties:

(1) To advise the Secretary on the basic concepts of and for the Zoological Park, approve conceptual plans for the Zoological Park and its buildings;
(2) To advise on the construction, furnishings, equipment and operations of the North Carolina Zoological Park;
(2a) To establish and set admission fees with the approval of the Secretary of Environment and Natural Resources as provided in G.S. 143-177.3(b);
(3) To recommend programs to promote public appreciation of the North Carolina Zoological Park;
(4) To disseminate information on animals and the park as deemed necessary;
(5) To develop effective public support of the North Carolina Zoological Park through whatever means are desirable and necessary;
(6) To solicit financial and material support from various private sources within and without the State of North Carolina; and
(7) To advise the Secretary of Environment and Natural Resources upon any matter the Secretary may refer to it. (1973, c. 1262, s. 83; 1977, c. 771, s. 4; 1981, c. 278, s. 2; 1989, c. 727, s. 218(147); 1997-443, s. 11A.119(a).)

Administrative Improvements to the North Carolina Zoological Park Operation — Session Laws 2009-329, s. 3.1, provides: "The Secretary of the Department of Environment and Natural Resources shall work with the North Carolina Zoological Park to do the following:

"(1) Examine all purchasing and contracting policies and procedures. The Department shall identify opportunities for delegating purchasing and contracting responsibilities to the Park where appropriate. For purchases and contracts involving promotion and advertising, the Department shall consider increasing the amount over which the Park must solicit competitive bids or quotes to five thousand dollars ($5,000).

"(2) Continue negotiations with the Office of Information Technology Services regarding the implementation of Article 3D of Chapter 147 of the General Statutes.

"(3) Identify and address any other administrative concerns of the Park."

Session Laws 2009-329, s. 3.2, provides: "The Secretary of the Department of Environment and Natural Resources shall review the current Memorandum of Understanding between the Department and the North Carolina Zoological Society. The Secretary shall work with the Society to make appropriate revisions to or replace the Memorandum, as needed."

Session Laws 2009-329, s. 4, provides: "The Department of Environment and Natural Resources shall report to the North Carolina Zoological Park Funding and Organization Study Committee and to the Fiscal Research Division of the Legislative Services Office on the progress and implementation of Parts I and III of this act no later than January 15, 2010." Parts I and III of Session Laws 2009-329 refer to purchasing and contracting authority on behalf of the North Carolina Zoological Park and administrative improvements to the North Carolina Zoological Park Operations.

Session Laws 2009-329, ss. 5.1 through 5.12, provide: "SECTION 5.1. Committee Established. — The North Carolina Zoological Park Funding and Organization Study Committee is hereby established.

"SECTION 5.2. Membership. — The Committee shall consist of 22 members as follows:

"(1) Five members of the Senate appointed by the President Pro Tempore of the Senate.

"(2) Five members of the House appointed by the Speaker of the House of Representatives.

"(3) The Secretary of Environment and Natural Resources, or the Secretary's designee.

"(4) The Director of the Zoological Park, or the Director's designee.

"(5) The Secretary of Commerce, or the Secretary's designee.

"(6) The Executive Director of the Division of Tourism, Film and Sports Development of the Department of Commerce, or the Executive Director's designee.

"(7) The Chair of the North Carolina Zoological Park Council, or the Chair's designee.

"(8) The Chair of the board of directors of the North Carolina Zoological Society, Inc., or the Chair's designee.

"(9) Two additional representatives of the Zoo Society Board, who may be comprised of current or former members, one appointed by the President Pro Tempore of the Senate upon recommendation of the Chair of the Zoo Society Board, one appointed by the Speaker of the House of Representatives upon recommendation of the Chair of the Zoo Society Board.

"(10) Two representatives from the public at large appointed by the President Pro Tempore of the Senate.

"(11) Two representatives from the public at large appointed by the Speaker of the House of Representatives.

"SECTION 5.3. Cochairs. — The Committee shall have three cochairs, one designated by the President Pro Tempore of the Senate and two designated by the Speaker of the House of Representatives from among their respective appointees. The Committee shall meet upon the call of the cochairs.

"SECTION 5.4. Quorum. — A quorum of the Committee shall consist of 10 members.

"SECTION 5.5. Vacancies. — Any vacancy on the Committee shall be filled by the original appointing authority.

"SECTION 5.6. Purpose and Duties. — The Committee shall study: (i) funding issues associated with the Zoological Park, including current and expected capital and operational needs, current sources of revenue, and potential funding mechanisms; and (ii) the current organizational structure of the Zoological Park, and other potential organizational structures, including, but not limited to, reorganization as an authority, as a private nonprofit corporation, or other entity to determine which organizational structure would most effectively achieve the mission of the Zoological Park.

"SECTION 5.7. Expenses of Members. — Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"SECTION 5.8. Staff. — Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Committee to aid in its work.

"SECTION 5.9. Consultants. — The Committee may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

"SECTION 5.10. Meetings. — The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

"SECTION 5.11. Report. — The Committee shall report its findings and recommendations to the 2010 Regular Session of the 2009 General Assembly and the Environmental Review Commission on or before May 1, 2010, at which time the Committee shall terminate.

"SECTION 5.12. Funding. — From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act."

§ 143B-336. North Carolina Zoological Park Council — members; selection; removal; chairman; compensation; quorum; services.

The North Carolina Zoological Park Council of the Department of Environment and Natural Resources shall consist of 15 members appointed by the Governor, one of whom shall be the Chairman of the Board of Directors of the North Carolina Zoological Society.

The initial members of the Council shall be the members of the Board of Directors of the North Carolina Zoo Authority who shall serve for a period equal to the remainder of their current terms on the Board of Directors of the North Carolina Zoological Authority, all of whose terms expire July 15, 1975. At the end of the respective terms of office of the initial members of the Council, the Governor, to achieve staggered terms, shall appoint five members for terms of two years, five members for terms of four years and five members for terms of six years. Thereafter, the appointment of their successors shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Environment and Natural Resources. (1973, c. 1262, s. 84; 1977, c. 771, s. 4; 1979, c. 30, s. 1; 1989, c. 727, s. 218(148); 1997-443, s. 11A.119(a).)

§ 143B-336.1. Special Zoo Fund.

A special continuing and nonreverting fund, to be called the Special Zoo Fund, is created. The North Carolina Zoological Park shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 1989, and deposit these receipts into this Fund. This Fund shall be used for maintenance, repairs, and renovations of exhibits in existing habitat clusters and visitor services facilities, construction of visitor services facilities and support facilities such as greenhouses and temporary animal holding areas, for the replacement of tram equipment as required to maintain adequate service to the public, and for marketing the Zoological Park. The Special Zoo Fund may also be used to match private funds that are raised for these purposes. Funds may be expended for these purposes by the Department of Environment and Natural Resources on the advice of the North Carolina Zoological Park Council and with the approval of the Office of State Budget and Management. The Department of Environment and Natural Resources shall provide an annual report to the Office of State Budget and Management and to the Fiscal Research Division of the Legislative Services Office on the use of fees collected pursuant to this section. (1989, c. 752, s. 154; 1995, c. 324, s. 26.11; 1997-443, s. 11A.119(a); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2005-386, s. 5.)

Part 23. Governor's Law and Order Commission.

§§ 143B-337 through 143B-339: Recodified as §§ 143B-478 through 143B-480.

Editor's Note. — This Part was rewritten by Session Laws 1977, c. 11, and has been recodified as G.S. 143B-478 through 143B-480.

Part 24. North Carolina Employment and Training Council.

§§ 143B-340, 143B-341: Repealed by Session Laws 1985, c. 543, s. 6.

Cross References. — For the Employment and Training Act of 1985, see G.S. 143B-438.1 et seq.

Part 25. Triad Park Commission.

§§ 143B-342 through 143B-344.2: Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 13.

Part 26. Economic Opportunity Agencies.

§§ 143B-344.3 through 143B-344.10: Repealed by Session Laws 1981, c. 1127, s. 70.

Editor's Note. — The repealed Part was Article 6 of Chapter 108 as recodified by Session Laws 1981, c. 275, s. 3.

Part 27. Employment and Training Act of 1985.

§§ 143B-344.11 through 143B-344.15: Recodified as §§ 143B-438.1 through 143B-438.5 by Session Laws 1989, c. 727, s. 202.

Part 28. North Carolina Aquariums Commission.

§§ 143B-344.16, 143B-344.17: Repealed by Session Laws 1997, c. 286, s. 1.

Part 29. Advisory Commission for North Carolina State Museum of Natural Sciences.

§ 143B-344.18. Commission created; membership.

There is created an Advisory Commission for the North Carolina State Museum of Natural Sciences which shall determine its own organization. It shall consist of at least nine members, which shall include the Director of the North Carolina State Museum of Natural Sciences, the Commissioner of Agriculture, the State Geologist and Secretary of Environment and Natural Resources, the Director of the Institute of Fisheries Research of the University of North Carolina, the Director of the Wildlife Resources Commission, the Superintendent of Public Instruction, or qualified representative of any or all of the above-named members, and at least three persons representing the East, the Piedmont, and the Western areas of the State. Members appointed by the Governor shall serve for four-year staggered terms. Terms shall begin on 1 September. Members appointed by the Governor shall not serve more than three consecutive four-year terms. Any member may be removed by the Governor for cause. (1961, c. 1180, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 218(119); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1993, c. 561, ss. 116(b), (f); 1997-443, s. 11A.119(a); 2007-495, s. 4(a).)

Editor's Note. — This Part is former Article 40 of Chapter 143, as rewritten and recodified by Session Laws 1993, c. 561, s. 116(b), effective August 1, 1993. Where appropriate, the historical citations to the sections in the former Article have been added to corresponding sections in the Part as rewritten and recodified.

Session Laws 1993, c. 561, which recodified this section, in s. 116(a) provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of (i) the North Carolina State Museum of Natural Sciences, and of (ii) the Advisory Commission established in Article 40 of Chapter 143 of the General Statutes for the North Carolina State Museum of Natural Sciences, are transferred from the Department of Agriculture to the Department of Environment, Health, and Natural Resources [now the Department of Environment and Natural Resources]. This transfer has all of the elements of a Type I transfer as defined by G.S. 143A-6."

Session Laws 2007-495, s. 4(b), provides: "In order to provide four-year staggered terms for members of the Advisory Commission for the North Carolina State Museum of Natural Sciences, the Governor shall, at the Governor's discretion, extend the terms for those appointees whose terms shall expire on 31 August 2007 to 31 August 2009 and extend the terms for those appointees whose terms shall expire on 31 August 2008 to 31 August 2010. The three-term limitation provision set out in G.S. 143B-344.18, as amended by subsection (a) of this section, shall not apply to persons who are members of the Advisory Commission for the North Carolina State Museum of Natural Sciences at the time this act becomes law." This act became law on August 30, 2007.

State Government Reorganization. — The Museum of Natural History Advisory Commission was transferred to the Department of Agriculture by former G.S. 143A-66, enacted by Session Laws 1971, c. 864. See now G.S. 143B-344.18 et seq.

§ 143B-344.19. Duties of Commission; meetings, formulation of policies and recommendations to Governor and General Assembly.

It shall be the duty of the Advisory Commission for the North Carolina State Museum of Natural Sciences to meet at least twice each year, to formulate policies for the advancement of the Museum, to make recommendations to the Governor and to the General Assembly concerning the Museum, and to assist in promoting and developing wider and more effective use of the North Carolina State Museum of Natural Sciences as an educational, scientific and historical exhibit. (1961, c. 1180, s. 2; 1993, c. 561, ss. 116(b), (f).)

Editor's Note. — This section was formerly G.S. 143-371. It was recodified by Session Laws 1993, c. 516, s. 116(b).

§ 143B-344.20. No compensation of members; reimbursement for expenses.

Members of the Advisory Commission shall serve without compensation and shall be reimbursed for actual expenses incurred while in attendance at meetings of the Commission at the same rate as that established for reimbursement of State employees. Payment for such reimbursement for actual expense shall be made from the Contingency and Emergency Fund. (1961, c. 1180, s. 3; 1993, c. 561, s. 116(b).)

Editor's Note. — This section was formerly G.S. 143-372. It was recodified by Session Laws 1993, c. 561, s. 116(b).

§ 143B-344.21. Reports to General Assembly.

The Commission shall prepare and submit to the 1995 General Assembly, and to each succeeding General Assembly, a report outlining the needs of the North Carolina State Museum of Natural Sciences and their recommendation for improvement of the effectiveness of the North Carolina State Museum of Natural Sciences for the purpose hereinabove set forth. (1961, c. 1180, s. 4; 1993, c. 561, ss. 116(b), (f).)

Editor's Note. — This section was formerly G.S. 143-373. It was recodified by Session Laws 1993, c. 561, c. 116(b).

§ 143B-344.22. Museum of Natural Sciences; disposition of objects.

Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other law pertaining to surplus State property, the Department of Environment and Natural Resources may sell or exchange any object from the collection of the Museum of Natural Sciences when it would be in the best interest of the Museum to do so. Sales or exchanges shall be conducted in accordance with generally accepted practices for accredited museums. If an object is sold, the net proceeds of the sale shall be deposited in the State treasury to the credit of a special fund to be used for the improvement of the Museum's collections or exhibits. (1991 (Reg. Sess., 1992), c. 900, s. 175; 1997-261, s. 24; 1998-212, s. 21(a).)

Editor's Note. — This section was formerly G.S. 106-22.2. It was recodified pursuant to Session Laws 1998-212, s. 21.

Session Laws 1997-443, s. 14.2, effective July 1, 1997, provides for the transfer of the North Carolina Maritime Museum (which was formerly included in this section) and associated funds, resources, and personnel from the Department of Agriculture and Consumer Services to the Department of Cultural Resources.

§ 143B-344.23. North Carolina Museum of Forestry; satellite museum.

The Department of Environment and Natural Resources shall establish and administer the North Carolina Museum of Forestry in Columbus County as a satellite museum of the North Carolina State Museum of Natural Sciences. (1998-212, s. 14.1(a).)

Editor's Note. — Session Laws 1998-212, s. 14.1(a), originally enacted this section as G.S. 143B-344.22; however, it has been redesignated as G.S. 143B-344.23 at the direction of the Revisor of Statutes.

§§ 143B-344.24 through 143B-344.29: Reserved for future codification purposes.

Part 30. State Infrastructure Council.

§§ 143B-344.30 through 143B-344.33: Repealed by Session Laws 2005-454, s. 9, effective January 1, 2006.

Article 8.

Department of Transportation.

Part 1. General Provisions.

§ 143B-345. Department of Transportation — creation.

There is hereby created and established a department to be known as the "Department of Transportation" with the organization, powers, and duties defined in Article 1 of Chapter 143B, except as modified in this Article. (1975, c. 716, s. 1.)

Editor's Note. — Session Laws 2002-190, s. 1, as amended by Session Laws 2002-159, s. 31.5, provides: "All statutory authority, powers, duties, and functions, including rulemaking, budgeting, purchasing, records, personnel, personnel positions, salaries, property, and unexpended balances of appropriations, allocations, reserves, support costs, and other funds allocated to the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing are transferred to and vested in the Department of Crime Control and Public Safety. This transfer has all the elements of a Type I transfer as defined in G.S. 143A-6.

"The Department of Crime Control and Public Safety shall be considered a continuation of the transferred portion of the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the purpose of succession to all rights, powers, duties, and obligations of the Enforcement Section and of those rights, powers, duties, and obligations exercised by the Department of Transportation, Division of Motor Vehicles on behalf of the Enforcement Section. Where the Department of Transportation, the Division of Motor Vehicles, or the Enforcement Section, or any combination thereof are referred to by law, contract, or other document, that reference shall apply to the Department of Crime Control and Public Safety.

"All equipment, supplies, personnel, or other properties rented or controlled by the Department of Transportation, Division of Motor Vehicles Enforcement Section for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing shall be administered by the Department of Crime Control and Public Safety."

Session Laws 2005-276, s. 28.11(a)-(c), provides: "The Secretary of Transportation shall transfer the Program Development branch, as it existed on May 1, 2005, from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the Chief Financial Officer of the Department of Transportation.

"The Secretary of Transportation shall transfer the Transportation Planning branch, as it existed on May 1, 2005, from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the State Highway Administrator.

"The Secretary of Transportation shall transfer the Project Development and Environmental Analysis branch, as it existed May 1, 2005, from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the State Highway Administrator."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

§ 143B-346. Department of Transportation — purpose and functions.

The general purpose of the Department of Transportation is to provide for the necessary planning, construction, maintenance, and operation of an integrated statewide transportation system for the economical and safe transportation of people and goods as provided for by law. The Department shall also provide and maintain an accurate register of transportation vehicles as provided by statutes, and the Department shall enforce the laws of this State relating to transportation safety assigned to the Department. The Department of Transportation shall be responsible for all of the transportation functions of the executive branch of the State as provided by law except those functions delegated to the Utilities Commission, the State Ports Authority, and the Commissioners of Navigation and Pilotage as provided for by Chapter 76. The major transportation functions include aeronautics, highways, mass transportation, motor vehicles, and transportation safety as provided for by State law. The Department of Transportation shall succeed to all functions vested in the Board of Transportation and the Department of Motor Vehicles on July 1, 1977. (1975, c. 716, s. 1; 1977, c. 464, s. 2.)

Editor's Note. — Session Laws 2008-121, s. 1, provides: "The Department of Transportation shall study issues relating to the vehicular transportation of individuals seated in wheelchairs. The study shall include reviewing appropriate methods of transporting passengers who remain seated in wheelchairs while in motor vehicles and developing guidelines for the installation and use of wheelchair tie-down systems. The Department shall report its findings and any recommendations to the North Carolina Study Commission on Aging and the Joint Legislative Transportation Oversight Committee not later than February 1, 2009."

Legal Periodicals. — For survey of 1984 administrative law, "A Declining Role for the Attorney General," see 63 N.C.L. Rev. 1051 (1985).

CASE NOTES

The Board of Transportation and the Department of Transportation are in essence the sovereign and have paramount authority over municipal corporations, which are subservient to the State in such matters. Town of Morehead City v. North Carolina Dep't of Transp., 74 N.C. App. 66, 327 S.E.2d 602 (1985).

Duty to Use Due Care. — The law does not impose a duty on the individual employees of the Department of Transportation that extends to the general public, beyond the duty to use due care in the performance of the specific tasks they undertake. The duty owing to the public to maintain highways falls upon the Department of Transportation (DOT). Reid v. Roberts, 112 N.C. App. 222, 435 S.E.2d 116, cert. denied, 335 N.C. 559, 439 S.E.2d 151 (1993).

Standard of Care Not Established. — Administrator's wrongful death claim against the state department of transportation arising from a fatal traffic accident caused by water on a highway was properly dismissed where the administrator's evidence failed to establish the department's standard of care, and failed to show that any failure by the department proximately caused the accident. Drewry v. N.C. DOT, 168 N.C. App. 332, 607 S.E.2d 342, 2005 N.C. App. LEXIS 262 (2005), cert. denied, 359 N.C. 410, 612 S.E.2d 318 (2005).

Failure to Erect Guardrail. — The Department of Transportation's intentional, discretionary decision not to erect a guardrail at the site of fatal accident was not so clearly unreasonable as to amount to oppressive and manifest abuse so as to invoke the jurisdiction of the judiciary or the Industrial Commission to review the discretionary policy-making decisions of the Department, nor was it a breach of any duty imposed upon it. Thus, the Department was not negligent in any respect within the meaning of the Tort Claims Act, G.S. 143-291, and no act or omission upon the part of defendant was the proximate cause of the accident and the deaths of plaintiff's decedents. Hochheiser v. North Carolina Dep't of Transp., 82 N.C. App. 712, 348 S.E.2d 140 (1986), aff'd, 321 N.C. 117, 361 S.E.2d 562 (1987).

Applied in Tice v. DOT, 67 N.C. App. 48, 312 S.E.2d 241 (1984); Viar v. N.C. DOT, 162 N.C. App. 362, 590 S.E.2d 909, 2004 N.C. App. LEXIS 184 (2004).

Cited in Guthrie v. North Carolina State Ports Auth., 56 N.C. App. 68, 286 S.E.2d 823 (1982); Davis v. J.M.X., Inc., 137 N.C. App. 267, 528 S.E.2d 56, 2000 N.C. App. LEXIS 309 (2000).

§ 143B-347: Repealed by Session Laws 1977, c. 464, s. 3.

Cross References. — For present provisions as to the functions of the Department of Transportation, see G.S. 143B-346.

§ 143B-348. Department of Transportation — head; rules, regulations, etc., of Board of Transportation.

The Secretary of Transportation shall be the head of the Department of Transportation. He shall carry out the day-to-day operations of the Department and shall be responsible for carrying out the policies, programs, priorities, and projects approved by the Board of Transportation. He shall be responsible for all other transportation matters assigned to the Department of Transportation, except those reserved to the Board of Transportation by statute. Except as otherwise provided for by statute, the Secretary shall have all the powers and duties as provided for in Article 1 of Chapter 143B including the responsibility for all management functions for the Department of Transportation. The Secretary shall be vested with authority to adopt design criteria, construction specifications, and standards as required for the Department of Transportation to construct and maintain highways, bridges, and ferries.

All rules, regulations, ordinances, specifications, standards, and criteria adopted by the Board of Transportation and in effect on July 1, 1977, shall continue in effect until changed by the Board of Transportation or the Secretary of Transportation. The Secretary shall have complete authority to modify any of these matters existing on July 1, 1977, except as specifically restricted by the Board. Whenever any such criteria, rule, regulation, ordinance, specification, or standards are continued in effect under this section and the words "Board of Transportation" are used, the words shall mean the "Department of Transportation" unless the context makes such meaning inapplicable. All actions pending in court by or against the Board of Transportation may continue to be prosecuted in that name without the necessity of formally amending the name to the Department of Transportation. (1975, c. 716, s. 1; 1977, c. 464, s. 4.)

§ 143B-349: Repealed by Session Laws 1977, c. 464, s. 5.

Part 2. Board of Transportation.

§ 143B-350. Board of Transportation — organization; powers and duties, etc.

(a) Board of Transportation. — There is hereby created a Board of Transportation. The Board shall carry out its duties consistent with the needs of the State as a whole. The diversity and size of the State require that regional differences be considered by Board members as they develop transportation policy and projects for the benefit of the citizens of the State.

(b) Membership of the Board. —

(1) Number, appointment. — The Board of Transportation shall have 19 voting members. Fourteen of the members shall be division members appointed by the Governor. Five shall be at-large members appointed by the Governor. At least three members of the Board shall be registered voters of a political party other than the political party of the Governor. The Secretary of Transportation shall serve as an ex officio nonvoting member of the Board. No more than two members of the Board may reside in the same highway division.

(2) Division members. — One member shall be appointed from and be a resident of each of the 14 highway divisions. The Governor, in selecting division members, shall consider for appointment persons suggested by the Transportation Advisory Committees located within each division. Division members shall direct their primary effort to developing transportation policy and addressing transportation problems in the region they represent. Division members shall regularly consult with and consider the views of local government units and Transportation Advisory Committees in the region they represent.

(3) At-large members. — Five members shall be appointed by the Governor from the State at large. At-large members appointed pursuant to this subdivision shall develop transportation policy and address transportation problems with a statewide perspective. At-large members appointed under this subdivision shall possess the following qualifications:

a. One at-large member shall be a person with expertise in environmental issues affecting the State;

b. One at-large member shall be a person familiar with the State ports and aviation issues;

c. One at-large member shall be a person residing in a rural area of the State with broad knowledge of and experience in transportation issues affecting rural areas;

d. One at-large member shall be a person residing in an urban area with broad knowledge of and expertise in mass transit;

e. One at-large member shall be a person with broad knowledge of and expertise in government-related finance and accounting.

(c) Staggered Terms. — The terms of all Board members serving on the Board prior to January 15, 2001, shall expire on January 14, 2001. A new board of 19 members shall be appointed with terms beginning on January 15, 2001. The Board shall serve the following terms: division members representing divisions 1, 3, 5, 7, 9, 11, and 13 and the three at-large members filling the positions designated in sub-subdivisions (b)(3)a., b., and e. of this section shall serve four-year terms beginning on January 15, 2001, and four-year terms thereafter; and division members representing divisions 2, 4, 6, 8, 10, 12, and 14 and the two at-large members filling the positions designated in sub-subdivisions (b)(3)c. and d. of this section shall serve two-year terms beginning January 15, 2001, and four-year terms thereafter.

(d) Holdover Terms; Vacancies; Removal. — Members shall continue to serve until their successors are appointed. The Governor may appoint a member to serve out the unexpired term of any Board member. The Governor may remove any member of the Board for any cause the Governor finds sufficient. The Governor shall remove any member of the Board upon conviction of a felony, conviction of any offense involving a violation of the Board member's official duties, or for a violation of the provisions of subsections (i), (j), and (k) of this section or any other code of ethics applicable to members of the Board as determined by the Governor or the Governor's designee.

(e) Organization and Meetings of the Board. — Within 60 days after January 15, 2001, and thereafter within 60 days following the beginning of the regular term of the Governor, the Governor or his designee shall call the Board into session. The Board shall select a chair and vice-chair from among its membership for two-year terms. The Board may select a chair or vice-chair for one additional two-year term. The Board of Transportation shall meet once in each 60 days at such regular meeting times as the Board may by rule provide and at any place in the State as the Board may provide. The Board may hold special meetings at any time at the call of the chairman or any three members. The Board shall have the power to adopt and enforce rules and regulations for the government of its business and proceedings. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. The majority of the Board shall constitute a quorum for the transaction of business. Board members shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(f) Duties of the Board. — The Board of Transportation has the following duties and powers:

(1) To formulate policies and priorities for all modes of transportation under the Department of Transportation.

(2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the Department.

(3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation taking into consideration the social, economic and environmental impacts of the various alternatives.

(4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future. This schedule is designated the Transportation Improvement Program; it must be published and copies must be available for distribution. The document that contains the Transportation Improvement Program, or a separate document that is published at the same time as the Transportation Improvement Program, must include the anticipated funding sources for the improvement projects

included in the Program, a list of any changes made from the previous year's Program, and the reasons for the changes.

(5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to it.

(6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the Department.

(7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be available.

(8) To approve all highway construction programs.

(9) To approve all highway construction projects and construction plans for the construction of projects.

(10) To review all statewide maintenance functions.

(11) To award all highway construction contracts.

(12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain.

(12a) To approve partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, with priority given to highways, roads, streets, and bridges.

(13) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

(f1) Local Government Participation. — The ability of a local government to pay in part or whole for any transportation improvement project shall not be a factor considered by the Board of Transportation in its development and approval of a schedule of major State highway system improvement projects to be undertaken by the Department under G.S. 143B-350(f)(4).

(f2) Approval of aircraft and ferry purposes. — Before approving the purchase of an aircraft from the Equipment Fund or a ferry in a Transportation Improvement Program, the Board of Transportation shall prepare an estimate of the operational costs and capital costs associated with the addition of the aircraft or ferry and shall report those additional costs to the General Assembly pursuant to G.S. 136-12(b), and to the Joint Legislative Commission on Governmental Operations.

(g) Delegation of Board Duties. — The Board of Transportation may, in its discretion, delegate to the Secretary of Transportation the authority:

(1) To approve all highway construction projects and construction plans for the construction of projects;

(2) To award all highway construction contracts;

(3) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The Secretary may, in turn, subdelegate these duties and powers.

(h) Consultation of Board Members. — Each member of the Board of Transportation who is appointed to represent a transportation engineering division or who resides in a division shall be consulted before the Board makes a decision affecting that division.

(i) Disclosure of Contributions. — Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after

December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. — A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. — The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection shall include a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

(*l*) Additional Requirements for Disclosure Statements. — All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. — The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in nature, conducted in conjunction with the State Ethics Commission, and shall include input from the School of Government at the

University of North Carolina at Chapel Hill, the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

(n) Review of Appointments by the Joint Legislative Transportation Oversight Committee. — The Governor shall submit the names of all proposed Board of Transportation appointees, along with the disclosure statements required under subsections (i), (j), and (k) of this section, to the Joint Legislative Transportation Oversight Committee prior to Board members' taking office. The Committee shall have 30 days to review and submit comments to the Governor on the proposed appointees before they take office. The Governor shall consider the views expressed by the Committee concerning the appointees to the Board. If the Committee does not review or submit comments to the Governor on the proposed Board appointees within the 30 days, the Governor may proceed to appoint the proposed members to the Board. (1975, c. 716, s. 1; 1977, c. 464, s. 6; 1981 (Reg. Sess., 1982), c. 1191, ss. 9, 10; 1985, c. 479, s. 185; 1987, c. 738, s. 170(b), (c); c. 747, s. 4.1; 1989, c. 500, s. 53; c. 692, s. 1.10; 1993, c. 483, s. 4; 1995, c. 490, s. 60; 1997-443, s. 32.1; 1997-495, s. 88(a); 1998-169, ss. 1, 2; 2006-201, s. 15; 2006-230, s. 1(c); 2006-264, s. 29(n); 2007-439, s. 2; 2008-180, s. 1.)

Editor's Note. — Subsection (f2) was designated as such at the direction of the Revisor of Statutes, the designation in Session Laws 1997-443, s. 32.1 having been subsection (i). This subsection was enacted by Session Laws 1997-443, s. 32.1, effective July 1, 1997.

Session Laws 1998-169, s. 9, provides: "Section 1 of this act becomes effective December 1, 1998. Section 2 of this act becomes effective January 1, 2001. Section 3 of this act becomes effective January 1, 1999, and applies to actions taken by the Board of Transportation on or after March 1, 1999. Section 4 of this act becomes effective December 1, 1998, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 1998. Members of the Board of Transportation serving on and before January 14, 2001, shall continue to serve until the date their successors are appointed in accordance with this act."

Session Laws 1998-169, s. 9, provides, in part: "Members of the Board of Transportation serving on and before January 14, 2001, shall continue to serve until the date their successors are appointed in accordance with this act."

Session Laws 1999-237, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 1999'."

Session Laws 1999-237, s. 27.3, provides that notwithstanding any other provision of law, the Board of Transportation may award up to three contracts annually for construction of transportation projects on a design-build basis. These contracts may be awarded after a determination by the Department of Transportation that delivery of the projects must be expedited and that it is not in the public interest to comply with normal design and construction contracting procedures. Prior to the award of a design-build contract, the Secretary of Transportation shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative Commission on Governmental Operations on the nature and scope of the project and the reasons an award on a design-build basis will best serve the public interest.

Session Laws 1999-237, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium."

Session Laws 1999-237, s. 30.4, contains a severability clause.

Session Laws 2006-201, s. 23(a), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2008-180, s. 1, effective August 4, 2008, substituted "Local Government" for "Municipal" and "local government" for "municipality" in subsection (f1).

CASE NOTES

The Board of Transportation and the Department of Transportation are in essence the sovereign and have paramount authority over municipal corporations, which are subservient to the State in such matters. Town of Morehead City v. North Carolina Dep't of Transp., 74 N.C. App. 66, 327 S.E.2d 602 (1985).

Cited in Orange County Sensible Hwys. & Protected Env'ts, Inc. v. North Carolina DOT, 46 N.C. App. 350, 265 S.E.2d 890 (1980); Guthrie v. North Carolina State Ports Auth., 56 N.C. App. 68, 286 S.E.2d 823 (1982); Batch v. Town of Chapel Hill, 92 N.C. App. 601, 376 S.E.2d 22 (1989).

§§ 143B-351, 143B-352: Repealed by Session Laws 1977, c. 464, s. 7.

Part 3. North Carolina State Ports Authority Transfer.

§ 143B-353: Repealed by Session Laws 1977, c. 65, s. 3.

Part 4. Navigation and Pilotage Commissions.

§ 143B-354: Recodified as § 143B-451 by Session Laws 1977, c. 198, s. 26.

Part 5. Division of Aeronautics — Aeronautics Council.

§ 143B-355. Division of Aeronautics.

There is hereby created the Division of Aeronautics of the Department of Transportation. The Division of Aeronautics shall carry out the duties assigned to the Department of Transportation by Article 1B of Chapter 113 of the General Statutes. (1975, c. 716, s. 1.)

Editor's Note. — Article 1B of Chapter 113, referred to in this section, was recodified as G.S. 63-65 through 63-72 by Session Laws 1979, c. 148, s. 5.

§ 143B-356. Aeronautics Council — creation; powers and duties.

There is hereby created the Aeronautics Council of the Department of Transportation. The Aeronautics Council shall advise the Secretary of the Department in the issuance of loans and grants to the cities, counties, and public airport authorities of North Carolina for the purposes of planning, acquiring, constructing, or improving municipal, county, or public authority airport facilities and upon any matter relating to airports which the Secretary may refer to it. The Secretary shall report the activities of the Council to the Governor. (1975, c. 716, s. 1.)

§ 143B-357. Aeronautics Council — Members; selection; quorum; compensation.

(a) The Aeronautics Council of the Department of Transportation shall consist of 15 members appointed by the Governor, who, in making such appointments, shall designate one person from each of the congressional districts of the State and two members selected at large. At least four of the appointed members shall possess a broad knowledge of aviation and airport development.

Five of the initial members of the Council shall be the five members of the Governor's Aviation Committee whose terms expire on June 30, 1977, who shall serve on the Council until June 30, 1977. Thereafter, their successors shall be appointed for a term of office of four years. Six members of the Council shall be appointed for a term of four years beginning July 1, 1975. The initial term of the member representing the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996. Thereafter, after the expiration of their respective terms of office, the successors shall be appointed for terms of four years. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(b) The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16.

The Governor shall designate a member of the Council to serve as chairman at his pleasure.

(c) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

(d) All clerical and other services required by the Council shall be supplied by the Secretary of Transportation. (1975, c. 716, s. 1; 1983, c. 325, s. 1; 1991 (Reg. Sess., 1992), c. 1038, s. 19; 2001-486, s. 2.17.)

Part 6. North Carolina Railroad and Atlantic and North Carolina Railroad.

§ 143B-358: Repealed by Session Laws 1991 (Regular Session, 1992), c. 1030, s. 45.

Part 7. North Carolina Traffic Safety Authority.

§ 143B-359: Repealed by Session Laws 1981, c. 90, s. 2.

Part 8. Highway Safety Program.

§ 143B-360. Powers and duties of Department and Secretary.

The Department of Transportation is hereby empowered to contract on behalf of the State with the government of the United States to the extent allowed by the laws of North Carolina for the purpose of securing the benefits available to this State under the Federal Highway Safety Act of 1966. To that end, the Secretary of Transportation shall coordinate, with the Governor's approval, the activities of any and all departments and agencies of the State and its subdivisions relating thereto.

All of the duties and responsibilities of the Governor's Highway Safety Program, established pursuant to this section, are transferred to the Office of the Secretary of Transportation. (1975, c. 716, s. 1; 2001-424, s. 27.11(a).)

Part 9. North Carolina Rail Council.

§ 143B-361. Findings.

The General Assembly finds that:

(1) The rail system in North Carolina is an irreplaceable transportation resource;

(2) The promotion and preservation of railroads operating within North Carolina as transportation resources and economic development tools is vital to the State's economy, and the continued economic viability of railroads is a necessary part of the free enterprise system;

(3) A healthy rail system is vital to a competitive State economy, and railroads must be allowed, through effective public policy, to compete fairly in the transportation marketplace and to provide those transportation services for which rail is suitable;

(4) The preservation of rail corridors, through branch line rehabilitation and State acquisition of strategic corridors, is in the public interest and is an integral and necessary part of a balanced transportation system; and

(5) As the owner of the majority interest in the North Carolina Railroad Company, the State has a vested interest in the preservation, development, and well-being of the North Carolina Railroad. (1993, c. 483, s. 1.)

§ 143B-362. North Carolina Rail Council — creation; powers and duties.

There is created the North Carolina Rail Council of the Department of Transportation. The Rail Council shall:

(1) Advise the Governor, Secretary of Transportation, Board of Transportation, and General Assembly on policy concerning the preservation and enhancement of the State's rail system, including the acquisition and management of existing rail corridors, revitalization and rehabilitation of active freight and passenger railways, improvements in rail safety, and promotion of competitive rail passenger services;

(2) Designate a Strategic Rail System, with the North Carolina Railroad as its foundation, to be approved by the Board of Transportation;

(3) Recommend to the Board of Transportation funding sources and levels to accomplish the purposes of this act;

(4) Plan and recommend the distribution of financial assistance for the revitalization of railroads and conservation of rail corridors as authorized in G.S. 136-44.36;

(5) Plan and recommend the acquisition of rail corridors for future use as authorized in G.S. 136-44.36A and oversee the protection and maintenance of preserved rail corridors;

(6) Otherwise assist in the preservation of the rail system in North Carolina through branch line rehabilitation and revitalization and through corridor acquisition by the Department of Transportation, and encourage cooperation between the Department of Transportation and railroad companies in preserving the linear integrity of strategic corridors;

(7) Advise the Department of Transportation on the reinvestment in the State's rail system of the annual dividends received by the State from its ownership of stock in the North Carolina Railroad and appropriated to the Department in G.S. 136-16.6;

(8) Promote and assist in the preservation of rail access to the facilities operated by the State Ports Authority and to passenger and cargo airport facilities; and

(9) Perform any other duties relating to the promotion and preservation of railroads which the Secretary may recommend.

The Council shall report its activities to the General Assembly by March 1 in odd-numbered years and to the Joint Legislative Commission on Governmental Operations by March 1 in even-numbered years. (1993, c. 483, s. 1.)

Editor's Note. — Session Laws 1999-237, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 1999'."

Session Laws 1999-237, s. 27.25(a)-(*l*), established the Future of the North Carolina Railroad Study Commission, and Session Laws 2000-138, ss. 8.1-8.3 and Session Laws 2000-146, ss. 12, 13, amended portions of these provisions. Session Laws 2000-138, s. 8.3, amended Session Laws 1999-237, s. 27.25(k), to make the Commission permanent. Session Laws 1999-237, ss. 27.25(a)-(k), have been codified as Chapter 120, Article 28, G.S. 120-245 to 120-255, at the direction of the Revisor of Statutes.

Session Laws 1999-237, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium."

Session Laws 1999-237, s. 30.4, contains a severability clause.

The preamble to Session Laws 2005-222, provides: "Whereas, expanding and upgrading passenger, freight, commuter, and short line rail service is important to the economy of North Carolina; and

"Whereas, the citizens of this State have stated their support for expanded passenger rail service through resolutions from over 100 cities, towns, and organizations submitted to the House Interim Committee on Expanding Rail Service in the fall of 2004; and

"Whereas, Congress is debating reauthorization of the federal Surface Transportation Program; and

"Whereas, Congress is considering new and innovative means of financing construction of transportation infrastructure, including highways, transit, intermodal, and rail projects; and

"Whereas, Congress is debating reform of the National Railroad Passenger Corporation, known as Amtrak, and the result may be more responsibilities for rail transferred to the states; and

"Whereas, it is in the best interest of the State of North Carolina to respond in a timely way to these proposed changes as they impact our transportation programs and economic development opportunities; and

"Whereas, many rail corridors in the State, such as the Wallace to Castle Hayne rail corridor, are in need of restoration and improvement; and

"Whereas, many rail initiatives in the State, including service to western and southeastern North Carolina, are in need of federal and State investment; Now, therefore, The General Assembly of North Carolina enacts:"

Session Laws 2005-222, s. 1, provides: "The Department of Transportation is directed, no more than 60 days following enactment of reauthorization of the federal Surface Transportation Program, to develop and report its recommendations on strategies, using funds available to the Department, to provide matching funds so the State can leverage the maximum federal and private participation in funding needed rail initiatives, such as the restoration of the rail corridor from Wallace to Castle Hayne, a rail connection between north-south and east-west routes in the vicinity of Pembroke, service to Winston-Salem, and service to the western and southeastern parts of the State."

Session Laws 2005-222, s. 2, provides: "The Department shall submit its report to the Joint Appropriations Subcommittee on Transportation or, if the General Assembly is not in session, to the Joint Legislative Transportation Oversight Committee."

§ 143B-363. North Carolina Rail Council — members; selection; compensation.

(a) The North Carolina Rail Council shall consist of 18 members, 14 of which shall be appointed by the Governor, who, in making the appointments, shall designate one person from each of the 14 transportation engineering divisions of the State. Of the members appointed by the Governor, at least two members shall possess broad knowledge of railroad operations, at least two members shall represent local government interests, and at least two members shall represent the interests of shippers or passengers using rail service. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint two members, who may be members of the General Assembly. All members of the Council should have an interest in developing policy for the promotion and preservation of railroads as part of a balanced transportation system.

(b) Nine of the initial members appointed by the Governor shall serve on the Council for terms of three years beginning July 1, 1993. The remaining members shall be appointed for terms of two years beginning July 1, 1993. Upon the expiration of each member's term, a successor shall be appointed for a term of two years. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, or death of a member shall be for the balance of the unexpired term.

(c) Each appointing officer may remove any member of the Council appointed by him for the reasons that members of boards, councils, or committees may be removed by the Governor pursuant to G.S. 143B-16.

(d) The Governor shall designate a member of the Council to serve as chairman at his pleasure.

(e) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) Members of the Council shall be subject to the provisions of G.S. 136-13, 136-13.1, and 136-14.

(g) All clerical and other services required by the Council shall be supplied by the Secretary of Transportation. (1993, c. 483, s. 1.)

§§ 143B-364, 143B-365: Reserved for future codification purposes.

ARTICLE 9.

Department of Administration.

Part 1. General Provisions.

§ 143B-366. Department of Administration — creation.

There is hereby recreated and reestablished a department to be known as the "Department of Administration," with the organization, powers, and duties defined in the Executive Organization Act of 1973. (1975, c. 879, s. 2.)

Cross References. — For other provisions as to the Department of Administration, see G.S. 143-334 et seq.

School-Based Child and Family Team Initiative. — Session Laws 2007-323, s. 10.9(a)-(f), as reenacted for the 2009-2011 fiscal biennium by Session Laws 2009-451, s. 10.13, provides: "(a) School-Based Child and Family Team Initiative established. —

"(1) Purpose and duties. — There is established the School-Based Child and Family Team Initiative. The purpose of the Initiative is to identify and coordinate appropriate community services and supports for children at risk of school failure or out-of-home placement in order to address the physical, social, legal, emotional, and developmental factors that affect academic performance. The Department of Health and Human Services, the Department of Public Instruction, the State Board of Education, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and other State agencies that provide services for children shall share responsibility and accountability to improve outcomes for these children and their families. The Initiative shall be based on the following principles:

"a. The development of a strong infrastructure of interagency collaboration;

"b. One child, one team, one plan;

"c. Individualized strengths-based care;

"d. Accountability;

"e. Cultural competence;

"f. Children at risk of school failure or out-of-home placement may enter the system through any participating agency;

"g. Services shall be specified, delivered, and monitored through a unified Child and Family Plan that is outcome-oriented and evaluation-based;

"h. Services shall be the most efficient in terms of cost and effectiveness and shall be delivered in the most natural settings possible;

"i. Out-of-home placements for children shall be a last resort and shall include concrete plans to bring the children back to a stable, permanent home, their schools, and their community; and

"j. Families and consumers shall be involved in decision making throughout service planning, delivery, and monitoring.

"(2) Program goals and services. — In order to ensure that children receiving services are appropriately served, the affected State and local agencies shall:

"a. Increase capacity in the school setting to address the academic, health, mental health, social, and legal needs of children.

"b. Ensure that children receiving services are screened initially to identify needs and assessed periodically to determine progress and sustained improvement in educational, health, safety, behavioral, and social outcomes.

"c. Develop uniform screening mechanisms and a set of outcomes that are shared across affected agencies to measure children's progress in home, school, and community settings.

"d. Promote practices that are known to be effective based upon research or national best practice standards.

"e. Review services provided across affected State agencies to ensure that children's needs are met.

"f. Eliminate cost shifting and facilitate cost-sharing among governmental agencies with respect to service development, service delivery, and monitoring for participating children and their families.

"g. Participate in a local memorandum of agreement signed annually by the participating superintendent of the local LEA, directors of the county departments of social services and health, director of the local management entity, the chief district court judge, and the chief district court counselor.

"(3) Local level responsibilities. — In coordination with the North Carolina Child and Family Leadership Council (Council), the local board of education shall establish the School-Based Child and Family Team Initiative (Initiative) at designated schools and shall appoint the Child and Family Team Leaders who shall be a school nurse and a school social worker. Each local management entity that has any selected schools in its catchment area shall appoint a Care Coordinator, and any department of social services that has a selected school in its catchment area shall appoint a Child and Family Teams Facilitator. The Care Coordinators and Child and Family Team Facilitators shall have as their sole responsibility working with the selected schools in their catchment areas and shall provide training to school-based personnel, as required. The Child and Family Team Leaders shall identify and screen children who are potentially at risk of academic failure or out-of-home placement due to physical, social, legal, emotional, or developmental factors. Based on the screening results, responsibility for developing, convening, and implementing the Child and Family Team Initiative is as follows:

"a. School personnel shall take the lead role for those children and their families whose primary unmet needs are related to academic achievement.

"b. The local management entity shall take the lead role for those children and their families whose primary unmet needs are related to mental health, substance abuse, or developmental disabilities and who meet the criteria for the target population established by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

"c. The local department of public health shall take the lead role for those children and their families whose primary unmet needs are health-related.

"d. Local departments of social services shall take the lead for those children and their families whose primary unmet needs are related to child welfare, abuse, or neglect.

"e. The chief district court counselor shall take the lead for those children and their families whose primary unmet needs are related to juvenile justice issues.

"A representative from each named or otherwise identified publicly supported children's agency shall participate as a member of the Team as needed. Team members shall coordinate, monitor, and assure the successful implementation of a unified Child and Family Plan.

"(4) Reporting requirements. — School-Based Child and Family Team Leaders shall provide data to the Council for inclusion in their report to the North Carolina General Assembly. The report shall include the following:

"a. The number of and other demographic information on children screened and assigned to a team and a description of the services needed by and provided to these children;

"b. The number of and information about children assigned to a team who are placed in programs or facilities outside the child's home or outside the child's county and the average length of stay in residential treatment;

"c. The amount and source of funds expended to implement the Initiative;

"d. Information on how families and consumers are involved in decision making throughout service planning, delivery, and monitoring;

"e. Other information as required by the Council to evaluate success in local programs and ensure appropriate outcomes; and

"f. Recommendations on needed improvements.

"(5) Local advisory committee. — In each county with a participating school, the superintendent of the local LEA shall either identify an existing cross agency collaborative or council, or shall form a new group, to serve as a local advisory committee to work with the Initiative. Newly formed committees shall be chaired by the superintendent and one other member of the committee to be elected by the committee. The local advisory committee shall include the directors of the county departments of social services and health, the directors of the local management entity, the chief district court judge, the chief district court counselor, the director of a school-based or school-linked health center if a center is located within the catchment area of the School-Based Child and Family Team Initiative, and representatives of other agencies providing services to children, as designated by the Committee. The members of the Committee shall meet as needed to monitor and support the successful implementation of the School-Based Child and Family Team Initiative.

"The Local Child and Family Team Advisory Committee may designate existing cross agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

"(1) Leadership Council established; location. — There is established the North Carolina Child and Family Leadership Council (Council). The Council shall be located within the Department of Administration for organizational and budgetary purposes.

"(2) Purpose. — The purpose of the Council is to review and advise the Governor in the development of the School-Based Child and Family Team Initiative and to ensure the active participation and collaboration in the Initiative by all State agencies and their local counterparts providing services to children in participating counties in order to increase the academic success and reduce out-of-home and out-of-county placements of children at risk of academic failure.

"(3) Membership. — The Superintendent of Public Instruction and the Secretary of Health and Human Services shall serve as cochairs of the Council. Council membership shall include the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chairman of the State Board of Education, the Director of the Administrative Office of the Courts, and other members as appointed by the Governor.

"(4) The Council shall:

"a. Sign an annual memorandum of agreement (MOA) among the named State agencies to define the purposes of the program and to ensure that program goals are accomplished.

"b. Resolve State policy issues, as identified at the local level, which interfere with effective implementation of the School-Based Child and Family Team Initiative.

"c. Direct the integration of resources, as needed, to meet goals and ensure that the Initiative promotes the most effective and efficient use of resources and eliminates duplication of effort.

"d. Establish criteria for defining success in local programs and ensure appropriate outcomes.

"e. Develop an evaluation process, based on expected outcomes, to ensure the goals and objectives of this Initiative are achieved.

"f. Review progress made on integrating policies and resources across State agencies, reaching expected outcomes, and accomplishing other goals.

"g. Report semiannually, on January 1 and July 1, on progress made and goals achieved to the Office of the Governor, the Joint Appropriations Committees and Subcommittees on Education, Justice and Public Safety, and Health and Human Services, and the Fiscal Research Division of the Legislative Services Office.

"The Council may designate existing cross agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

"(c) Department of Health and Human Services. — The Secretary of the Department of Health and Human Services shall ensure that all agencies within the Department collaborate in the development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

"(d) Department of Juvenile Justice and Delinquency Prevention. — The Secretary of the Department of Juvenile Justice and Delinquency Prevention shall ensure that all agencies within the Department collaborate in the development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

"(e) Administrative Office of the Courts. — The Director of the Administrative Office of the Courts shall ensure that the Office collaborates in the development and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful.

"(f) Department of Public Instruction. — The

Superintendent of Public Instruction shall ensure that the Department collaborates in the development and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Editor's Note. — Session Laws 2001-424, s. 7.9, provides: "The Secretary of the Department of Administration shall maintain the Office of Historically Underutilized Businesses (HUB) as established by Executive Order 150. The HUB shall have the same duties, responsibilities, and functions as under Executive Order 150 until further action is taken by the General Assembly concerning the HUB. Every governmental entity required by statute to use the services of the Department of Administration in the purchase of goods and services shall report its use of historically underutilized businesses to the HUB on a quarterly basis. The HUB shall report annually to the Chairs of the Appropriation Subcommittee on General Government of the Senate and the House of Representatives by May 1 of each year."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143B-367. Duties of the Department.

It shall be the duty of the Department of Administration to serve as a staff agency to the Governor and to provide for such ancillary services as the other departments of State government might need to insure efficient and effective operations. (1975, c. 879, s. 3.)

Cross References. — As to powers and duties of the Department of Administration, see G.S. 143-341. As to establishment of land records management program in the Department of Administration, see G.S. 147-54.3.

§ 143B-368. Functions of the Department.

(a) The functions of the Department of Administration shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all functions of the executive branch of the State in relation to interdepartmental administration previously delineated and further including those prescribed powers, duties, functions, and responsibilities enumerated in Article 10 of Chapter 143A of the General Statutes of North Carolina.

(b) Repealed by Session Laws 1991, c. 542, s. 11, effective July 4, 1991. (1975, c. 879, s. 4; 1991, c. 134, s. 2; c. 542, s. 11.)

Cross References. — As to the powers and duties of the Department of Administration, see also G.S. 143-341.

§ 143B-369. Head of the Department.

The Secretary of Administration shall be the head of the Department. (1975, c. 879, s. 5.)

Cross References. — As to the powers and duties of the Secretary of Administration, see G.S. 143-340.

§ 143B-370: Repealed by Session Laws 1991, c. 542, s. 12.

Part 2. State Goals and Policy Board.

§§ 143B-371, 143B-372: Repealed by Session Laws 1995, c. 117, s. 2.

Part 2A. North Carolina Progress Board.

§§ 143B-372.1 through 143B-372.3: Repealed by Session Laws 2007-323, s. 9.11, effective July 1, 2007.

Editor's Note. — Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

Part 3. North Carolina Capital Planning Commission.

§ 143B-373. North Carolina Capital Planning Commission — creation; powers and duties.

(a) There is hereby recreated the North Carolina Capital Planning Commission of the Department of Administration.

(1) The Commission shall have the following powers and duties:
  a. To obtain and maintain up-to-date building requirements for State governmental agencies in Wake County;
  b. To formulate a long-range capital improvement program as required for State central governmental agencies in Wake County and maintain this program up-to-date;
  c. To recommend the acquisition of land as required;
  d. To recommend to the Governor the locations for State government buildings, monuments, memorials and improvements in Wake County, except for buildings occupied by the General Assembly; and
  e. To recommend to the Governor the name for any new State government building or any building hereafter acquired by the State of North Carolina in Wake County, with the exception of buildings comprising a part of the North Carolina State University, the Dorothea Dix Hospital, the General Assembly or the Governor Morehead School;

(2) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for capital improvement purposes which may be made available to the State by the federal government. This section is to be liberally construed in

order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the existing North Carolina Capital Planning Commission shall remain in full force and effect unless and until repealed or superseded by action of the recreated Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Administration.

(b) Any:

(1) City exercising any jurisdiction in Wake County under Article 19 of Chapter 160A of the General Statutes (or under any local act of similar nature); and

(2) County exercising any jurisdiction in Wake County under Article 18 of Chapter 153A of the General Statutes (or under any local act of similar nature)

shall provide to the North Carolina Capital Planning Commission no later than August 1, 1989, a copy of any ordinance adopted under that Article and in effect on July 1, 1989, and shall provide a copy of any additional ordinance adopted or amended under such Article or similar local act after July 1, 1989, within 30 days of adoption; provided that no ordinance adopted under G.S. 160A-441 shall be so provided unless it applies to a structure owned by the State.

(c) Any:

(1) City exercising any jurisdiction in Wake County under Article 19 of Chapter 160A of the General Statutes (or under any local act of similar nature); and

(2) County exercising any jurisdiction in Wake County under Article 18 of Chapter 153A of the General Statutes (or under any local act of similar nature)

shall provide to the North Carolina Capital Planning Commission within seven days of first consideration by the governing body any proposal under either of those Articles or local acts which, if adopted would affect property within Wake County owned by the State.

(d) The North Carolina Capital Planning Commission may, by resolution, further define what types of proposals are required to be submitted under subsection (c) of this section, and may define the meaning of "first consideration" differently as to different types of actions, and may require similar notice of proposals before planning boards, boards of adjustment, and planning commissions. The North Carolina Capital Planning Commission may, in lieu of the specific requirements of subsection (c) and this subsection, adopt a different schedule for submission of proposals and ordinances, and the schedule may be different for different jurisdictions, so as to carry out the intent of this section. (1975, c. 879, s. 10; 1981 (Reg. Sess., 1982), c. 1191, s. 66; 1989, c. 32.)

§ 143B-374. North Carolina Capital Planning Commission — members; selection; quorum; compensation.

(a) The North Carolina Capital Planning Commission of the Department of Administration shall consist of the following ex officio members: the Governor of North Carolina who shall serve as chairman; all members of the Council of State including the Lieutenant Governor (or a person designated by the Lieutenant Governor), who shall serve as vice-chairman; the Speaker (or a person designated by the Speaker), and four members of the North Carolina House of Representatives, and four members of the North Carolina Senate;

and a representative of the City of Raleigh to be designated by the City Council of Raleigh to serve a two-year term to expire at the same date city council members' terms expire. The President Pro Tempore of the Senate shall appoint the four members of the Senate on or before July 1, 1975, for two-year terms to expire at the same date General Assembly members' terms expire. The Speaker of the House of Representatives shall appoint the four members of the House on or before July 1, 1975, for two-year terms to expire at the same date General Assembly members' terms expire.

Public officers who are made members of the Commission shall be deemed to serve ex officio.

(b) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Administration.

All minutes, records, plans, and all other documents of public record of the State Capital Planning Commission, the Heritage Square Commission, and the former North Carolina Capital Planning Commission shall be turned over to the Department of Administration.

The Commission shall meet quarterly, and at other times at the call of the chairman. (1975, c. 879, s. 11; 1981, c. 47, s. 3; 1991, c. 739, s. 28.)

Editor's Note. — Session Laws 1981, c. 47, which amended this section, in s. 7, provided: "When the Speaker, President of the Senate, or Lieutenant Governor has designated a person to serve in his place as permitted by this act, that person shall be compensated in accordance with G.S. 120-3.1 if a member of the General Assembly, in accordance with G.S. 138-6 if a State officer or employee, and in accordance with G.S. 138-5 in any other case, except that a member of the General Assembly so designated may not receive per diem if the Speaker, President of the Senate, or Lieutenant Governor may not receive per diem."

Part 4. Child Day-Care Licensing Commission.

§§ 143B-375, 143B-376: Recodified as §§ 143B-168.1, 143B-168.2 by Session Laws 1985, c. 757, s. 155(f).

Part 5. North Carolina Drug Commission.

§§ 143B-377, 143B-378: Repealed by Session Laws 1977, c. 667, s. 1.

Part 6. North Carolina Council on Interstate Cooperation.

§§ 143B-379 through 143B-384: Repealed by Session Laws 1991 (Regular Session, 1992), c. 912, s. 1.

Part 7. Youth Councils.

§ 143B-385. State Youth Advisory Council — creation; powers and duties.

There is hereby created the State Youth Advisory Council of the Department of Administration. The State Youth Advisory Council shall have the following functions and duties:

(1) To advise the youth councils of North Carolina;
(2) To encourage State and local councils to take active part in governmental and civic affairs, promote and participate in leadership and citizenship programs, and cooperate with other youth-oriented groups;
(3) To receive on behalf of the Department of Administration and to recommend expenditure of gifts and grants from public and private donors;
(4) To establish procedures for the election of its youth representatives by the State Youth Council; and
(5) To advise the Secretary of Administration upon any matter the Secretary may refer to it. (1975, c. 879, s. 26.)

§ 143B-386. State Youth Advisory Council — members; selection; quorum; compensation.

The State Youth Advisory Council of the Department of Administration shall consist of 20 members. The composition and appointment of the Council shall be as follows:

Ten youths to be elected by the procedure adopted by the Youth Advisory Council, which shall include a requirement that four of the members represent youth organizations; and 10 adults to be appointed by the Governor at least four of whom shall be individuals working on youth programs through youth organizations. Provided that no person shall serve on the Board for more than two complete consecutive terms.

The initial members of the Council shall be the appointed members of the Youth Advisory Board who shall serve for a period equal to the remainder of their current terms on the Youth Advisory Board. The current terms of the youth members expire July 1, 1976, the current terms of four of the adult members expire April 7, 1976, and the remaining four adult members' terms expire May 1, 1978. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be as follows:

(1) Eight youth members to serve for terms beginning on July 1, 1976, and expiring on June 30, 1977, and two additional youth members to serve for terms beginning on July 1, 1977, and expiring on June 30, 1978. At the end of the terms of office of these youth members of the Council, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify.
(2) Four adult members to serve for terms beginning on April 8, 1976, and expiring on June 30, 1979; four adult members to serve for terms beginning on May 1, 1978, and expiring on June 30, 1980; one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1978; and one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1979. At the end of the respective terms of office of these adult members of the Council, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. At least one adult member shall be an advisor of a local youth council at appointment and for the duration of the term. The total membership shall reasonably reflect the socioeconomic, ethnic, sexual and sectional composition of the State.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate an adult member of the Council to serve as chairman at the pleasure of the Governor. The Council shall elect a youth member to serve as vice-chairman for a one-year term.

A majority of the Council shall constitute a quorum for the transaction of business.

Members of the Council who are not officers or employees of the State shall receive per diem and necessary travel and subsistence expenses in accordance with provisions of G.S. 138-5.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 27; 1977, c. 510; 1979, c. 410; 1991, c. 128, s. 1.)

§ 143B-387. State Youth Council.

There shall be a State Youth Council. It shall be established within one year of July 1, 1975, in accordance with the methods and procedures established by the Youth Advisory Council. The State Youth Council is authorized and empowered to do the following:

(1) To consider problems affecting youth and recommend solutions or approaches to these problems to State and local governments and their officials;
(2) To promote statewide activities for the benefit of youth; and,
(3) To elect the youth representatives to the Youth Advisory Council. (1975, c. 879, s. 28.)

§ 143B-387.1. North Carolina Youth Advocacy and Involvement Fund.

The North Carolina Youth Advocacy and Involvement Fund is created as a special and nonreverting fund. Conference registration fees, gifts, donations, or contributions to or for the North Carolina Youth Legislative Assembly (YLA) and the North Carolina Students Against Destructive Decisions (SADD) programs shall be credited to the Fund.

The Fund shall be used solely to support planning and execution of the YLA and SADD programs. The Department shall maintain separate cost centers for each program. (2000-67, s. 23.1; 2004-124, s. 19.10.)

§ 143B-388. Local youth councils.

The primary purpose of local youth councils is to promote participation by youth in programs affecting civic and governmental affairs. (1975, c. 879, s. 29.)

Part 8. North Carolina Marine Science Council.

§§ 143B-389, 143B-390: Repealed by Session Laws 1991, c. 320, s. 1.

Part 8A. Office of Marine Affairs.

§ 143B-390.1: Recodified as § 143B-289.19 by Session Laws 1995, c. 509, s. 98.

§§ 143B-390.2 through 143B-390.4: Recodified as §§ 143B-289.20 through 143B-289.22 by Session Laws 1993, c. 321, s. 28.

§§ 143B-390.5 through 143B-390.9: Reserved for future codification purposes.

Part 8B. North Carolina Council on Ocean Affairs.

§§ 143B-390.10, 143B-390.11: Repealed by Session Laws 1993, c. 321, s. 28.

§§ 143B-390.12 through 143B-390.14: Reserved for future codification purposes.

Part 8C. North Carolina Aquariums Commission.

§§ 143B-390.15, 143B-390.16: Recodified as §§ 143B-344.16, 143B-344.17 by Session Laws 1993, c. 321, s. 28.

Part 9. North Carolina Human Relations Commission.

§ 143B-391. North Carolina Human Relations Commission — Creation; powers and duties.

There is hereby created the North Carolina Human Relations Commission of the Department of Administration. The North Carolina Human Relations Commission shall have the following functions and duties:

(1) To study problems concerning human relations;
(2) To promote equality of opportunity for all citizens;
(3) To promote understanding, respect, and goodwill among all citizens;
(4) To provide channels of communication among the races;
(5) To encourage the employment of qualified people without regard to race;
(6) To encourage youths to become better trained and qualified for employment;
(7) To receive on behalf of the Department of Administration and to recommend expenditure of gifts and grants from public and private donors;
(8) To enlist the cooperation and assistance of all State and local government officials in the attainment of the objectives of the Commission;
(9) To assist local good neighborhood councils and biracial human relations committees in promoting activities related to the functions of the Commission enumerated above;
(10) To advise the Secretary of Administration upon any matter the Secretary may refer to it;
(11) To administer the provisions of the State Fair Housing Act as outlined in Chapter 41A of the General Statutes;
(12) To administer the provisions of Chapter 99D of the General Statutes. (1975, c. 879, s. 34; 1983, c. 522, s. 2; 1989 (Reg. Sess., 1990), c. 979, s. 1(6); 1991, c. 433, s. 3.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 979, effective July 19, 1990, in s. 1(4), amended "Part 9. North Carolina Human Relations Council" by substituting references to the North Carolina Human Relations Commission for references to the North Carolina Human Relations Council; however, the Chapter and Article were not specified by the act. Therefore, the title of Part 9 of Article 9 of this Chapter was changed pursuant to Session Laws 1989 (Reg. Sess., 1990), c. 979, s. 2, which provided: "The Revisor of Statutes is authorized to delete any reference to the North Carolina Human Relations Council or derivative thereof in any portion of the General Statutes or in any Session Law of local applicability to which conforming amendments are not made by this act and replace them with the phrase North Carolina Human Relations Commission or the appropriate derivative, consistent with the provisions of this act."

CASE NOTES

Federal Age Discrimination Plaintiff Need Not Seek Recourse from Human Relations Council as Jurisdictional Prerequisite. — Recourse by a plaintiff to the North Carolina Human Relations Council is not a jurisdictional prerequisite to filing a suit in a federal court under the Age Discrimination in Employment Act, 29 U.S.C. § 201-219, since G.S. 143-422.1 et seq. is not "a law prohibiting discrimination in employment because of age" and the North Carolina Human Relations Council is not a "state authority established or authorized to grant or seek relief from such discriminatory practice" within the meaning of 29 U.S.C. § 633(b). Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979), aff'd in part and rev'd in part, 641 F.2d 1109 (4th Cir. 1981).

§ 143B-392. North Carolina Human Relations Commission — Members; selection; quorum; compensation.

(a) The Human Relations Commission of the Department of Administration shall consist of 22 members. The Governor shall appoint one member from each of the 13 congressional districts, plus five members at large, including the chairperson. The Speaker of the North Carolina House of Representatives shall appoint two members to the Commission. The President Pro Tempore of the Senate shall appoint two members to the Commission. The terms of four of the members appointed by the Governor shall expire June 30, 1988. The terms of four of the members appointed by the Governor shall expire June 30, 1987. The terms of four of the members appointed by the Governor shall expire June 30, 1986. The terms of four of the members appointed by the Governor shall expire June 30, 1985. The terms of the members appointed by the Speaker of the North Carolina House of Representatives shall expire June 30, 1986. The terms of the members appointed by the Lieutenant Governor shall expire June 30, 1986. The initial term of office of the person appointed to represent the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996. At the end of the respective terms of office of the initial members of the Commission, the appointment of their successors shall be for terms of four years. No member of the commission shall serve more than two consecutive terms. A member having served two consecutive terms shall be eligible for reappointment one year after the expiration of his second term. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be filled in the manner of the original appointment for the unexpired term.

(b) Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(c) A majority of the Commission shall constitute a quorum for the transaction of business.

(d) All clerical and support services required by the Commission shall be supplied by the Secretary of the Department of Administration. (1975, c. 879, s. 35; 1983, c. 461; 1989 (Reg. Sess., 1990), c. 979, s. 1(7); 1991 (Reg. Sess., 1992), c. 1038, s. 20; 1995, c. 490, s. 26; 2001-486, s. 2.19.)

Part 10. North Carolina Council for Women.

§ 143B-393. North Carolina Council for Women — creation; powers and duties.

There is hereby created the North Carolina Council for Women of the Department of Administration. The North Carolina Council for Women shall have the following functions and duties:

(1) To advise the Governor, the principal State departments, and the State legislature concerning the education and employment of women in the State of North Carolina; and

(2) To advise the Secretary of Administration upon any matter the Secretary may refer to it; and

(3) To establish programs for the assistance of displaced homemakers as set forth in Part 10B of this Article. (1975, c. 879, s. 37; 1979, c. 1016, s. 1; 1991, c. 134, s. 4.)

Editor's Note. — Session Laws 2007-15, s. 1 provides: "The North Carolina Council for Women/Domestic Violence Commission (Council), in cooperation with the North Carolina Coalition Against Domestic Violence, shall review the guidelines that agencies must meet in order to receive State funds through the Council. The Council shall consider whether there should be specific guidelines designed to ensure safety at domestic violence shelters that are operated by State-funded agencies.

"The Council shall report to the Joint Legislative Committee on Domestic Violence no later than May 1, 2008, on the results of the review."

Cross References. — As to Sexual Assault and Rape Crisis Center Fund, see G.S. 143B-394.21.

§ 143B-394. North Carolina Council for Women — members; selection; quorum; compensation.

The North Carolina Council for Women of the Department of Administration shall consist of 20 members appointed by the Governor. The initial members of the Council shall be the appointed members of the North Carolina Council for Women, three of whose appointments expire June 30, 1977, and four of whose appointments expire June 30, 1978. Thirteen additional members shall be appointed in 1977, six of whom shall serve terms expiring June 30, 1978, and seven of whom shall serve terms expiring June 30, 1979. At the ends of the respective terms of office of the initial members of the Council and of the 13 members added in 1977, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Members of the Council shall be representative of age, sex, ethnic and geographic backgrounds.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 38; 1977, c. 818; 1991, c. 134, s. 4.)

Part 10A. Office of Coordinator of Services for Victims of Sexual Assault.

§ 143B-394.1. Office of Coordinator of Services for Victims of Sexual Assault — purpose.

The ultimate goal of this Article is to establish a network of coordinated public and private services for victims of sexual assault, incorporating existing programs as well as aiding in the development of new programs. (1977, c. 997, s. 1.)

§ 143B-394.2. Office of Coordinator of Services for Victims of Sexual Assault — office created.

(a) The office of Coordinator of Services for Victims of Sexual Assault is hereby created in the Department of Administration. The office shall be under the direction and supervision of a full-time salaried State employee who shall be designated as the State Coordinator. The State Coordinator shall be appointed by the Secretary of the Department of Administration and shall receive a salary commensurate with State government pay schedules for the duties of this office, or such salary to be set by the State Personnel Board pursuant to G.S. 126-4. Necessary travel allowance or reimbursement for expenses shall be authorized for the State Coordinator in accordance with G.S. 138-6. Sufficient clerical staff shall be provided under the direction of the Secretary of the Department of Administration.

(b) This State Coordinator shall have administrative experience and the recommendation of the North Carolina Rape Crisis Association and the North Carolina Council for Women. If possible, the State Coordinator shall have public speaking experience, training in rape crisis intervention and education in a related field. (1977, c. 997, s. 1; 1991, c. 134, s. 5.)

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 143B-394.3. Office of Coordinator of Services for Victims of Sexual Assault — duties and responsibilities.

The duties of the State Coordinator shall include the following:

(1) To establish an office to facilitate and coordinate all programs and services which deal with the victim of sexual assault;

(2) To research the needs of the State and already existing programs for sexual assault services;

(3) To create a liaison between public services and private services with which victims of sexual assault normally come in contact;

(4) To be an information clearinghouse on all aspects of sexual assault services;

(5) To develop model programs and training techniques to be used to train medical, legal, and psychological personnel (both in the public and private sectors) who deal with the victims of sexual assault, and to aid in implementing these programs to suit the needs of specific communities;

(6) To be available to aid and advise sexual assault services on operational and functional problems; and

(7) To develop and coordinate a public education program for the State of North Carolina on the phenomenon of sexual assault. (1977, c. 997, s. 1.)

Part 10B. Displaced Homemakers.

§ 143B-394.4. Definitions.

As used in this Part, unless the context otherwise requires:

(1) "Center" means any multi-purpose facility or program serving displaced homemakers.

(2) "Council" means the North Carolina Council for Women.

(3) "Department" means the Department of Administration.

(4) "Displaced homemaker" means an individual who:

a. Has worked in his or her own household and has provided unpaid household services; and

b. Is unable to secure gainful employment due to the lack of required training, age, or experience; or is unemployed, or underemployed; and

c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support but is within two years of losing the support, or has been supported by public assistance as the parent of minor children but is no longer eligible, or is within two years of losing the eligibility. (1979, c. 1016, s. 2; 1991, c. 134, s. 6; 2005-405, s. 1; 2006-66, s. 17.7; 2006-259, s. 33.5.)

§ 143B-394.5. Establishment of center; location.

The Council shall establish or contract for the establishment of a pilot center for displaced homemakers. (1979, c. 1016, s. 2; 2005-405, s. 2.)

§ 143B-394.5A. Location of displaced homemaker centers; grant criteria.

(a) The Council shall consider the location of displaced homemaker centers based on the probable number of displaced homemakers in an area, the availability of resources for training and education, and viable living wage job opportunities.

(b) The Council shall make grants to displaced homemaker centers in accordance with this section and G.S. 143B-394.10. The Council shall establish criteria, including a baseline cost of basic center operations, to determine grant award categories. The grant criteria shall incorporate displaced homemaker program operational costs based on the location, program delivery capacities, and the probable number of displaced homemakers served in an area. (2005-405, s. 3.)

§ 143B-394.6. Staff for center.

To the maximum extent feasible, the staff of the center, including technical, administrative, and advisory positions, shall be filled by displaced homemakers. Where necessary, potential staff members shall be provided with on-the-job training. (1979, c. 1016, s. 2.)

§ 143B-394.7. Funding.

The Council shall explore all possible sources of funding and in-kind contributions from federal, local and private sources in establishing the center.

The Council is authorized to accept any funding or other contributions such as building space, equipment, or services of training personnel. (1979, c. 1016, s. 2.)

§ 143B-394.8. Services to be provided.

(a) The center shall be designed to provide displaced homemakers with such necessary counseling, training, services, skills, and education as would enable them to secure gainful employment, and as would be necessary for their health, safety, and well-being.

(b) The center shall provide:

(1) Job counseling programs specifically designed for displaced homemakers entering the job market, taking into consideration their previous absence from the job market, and their lack of recent paid work experience, and taking into account and building upon the skills and experience possessed by the displaced homemaker;

(2) Job training and job placement services to train and place displaced homemakers for and into available jobs in the public and private sectors;

(3) Health education and counseling services with respect to general principles of preventive health care, including but not limited to family health care, nutrition education, and the selection of physicians and health care services;

(4) Financial management services with information and assistance on all aspects of financial management including but not limited to insurance, taxes, estate and probate matters, mortgages, and loans; and

(5) Educational services, including information services concerning available secondary and post-secondary education programs beneficial to displaced homemakers seeking employment; and information services with respect to all employment in the public or private sectors, education, health, public assistance, and unemployment assistance programs. (1979, c. 1016, s. 2.)

§ 143B-394.9. Rules and regulations; evaluation.

(a) The Department shall, upon recommendations by the Council, promulgate rules and regulations concerning the eligibility of persons for the services of the center and governing the granting of any stipends to be provided.

(b) The Council shall require the director and staff of the center to evaluate the effectiveness of the job training, placement, and service components of the center. The evaluation shall include the number of persons trained, the number of persons placed in employment, follow-up data on such persons, the number of persons served by the various service programs, and the cost effectiveness of each component of the center. (1979, c. 1016, s. 2.)

§ 143B-394.10. North Carolina Fund for Displaced Homemakers.

(a) There is established in the Department of Administration the North Carolina Fund for Displaced Homemakers. The Fund shall be administered by the North Carolina Council for Women in accordance with Chapter 143C of the General Statutes and shall be used to make grants to up to 35 centers for displaced homemakers. The Council shall make quarterly grants to no more than 35 eligible centers. Grants shall be awarded according to criteria established by the Council pursuant to G.S. 143B-394.4(4) and G.S. 143B-394.5A. The Council shall use no more than ten percent (10%) of these funds for administrative costs. To be eligible to receive grant funds under this section, a displaced homemaker center shall fulfill all of the criteria established by the Council and shall have been operational for at least two years. The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from the Fund, the success of those programs, and the costs associated with administering the Fund.

(b) The Department, upon recommendations by the Council, shall adopt rules to implement the North Carolina Fund for Displaced Homemakers. (1998-219, s. 1; 2005-405, s. 4; 2006-203, s. 106.)

§§ 143B-394.11 through 143B-394.14: Reserved for future codification purposes.

Part 10C. Domestic Violence Commission.

§ 143B-394.15. Commission established; purpose; membership; transaction of business.

(a) Establishment. — There is established the Domestic Violence Commission. The Commission shall be located within the Department of Administration for organizational, budgetary, and administrative purposes.

(b) Purpose. — The purpose of the Commission is to (i) assess statewide needs related to domestic violence, (ii) assure that necessary services, policies, and programs are provided to those in need, (iii) strengthen the existing domestic violence programs which have been established pursuant to G.S. 50B-9 and are funded through the Domestic Violence Center Fund, and (iv) recommend new domestic violence programs.

(c) Membership. — The Commission shall consist of 39 members, who reflect the geographic and cultural regions of the State, as follows:

(1) Nine persons appointed by the Governor, one of whom is a clerk of superior court; one of whom is an academician who is knowledgeable about domestic violence trends and treatment; one of whom is a member of the medical community; one of whom is a United States Attorney for the State of North Carolina or that person's designee; one of whom is a member of the North Carolina Bar Association who has studied domestic violence issues; one of whom is a representative of a victims' service program eligible for funding by the Governor's Crime Commission or the North Carolina Council for Women; one of whom is a member of the North Carolina Coalition Against Domestic Violence; one of whom is a former victim of domestic violence; and one of whom is a member of the public at large.

(2) Nine persons appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, one of whom is a member of the Senate; one of whom is a district court judge; one of whom is a district attorney or assistant district attorney; one of whom is a representative of the law enforcement community with specialized knowledge of domestic violence issues; one of whom is a county manager; one of whom is a representative of a community legal services agency who works with domestic violence victims; one of whom is a representative of the linguistic and cultural minority communities; one of whom is a representative of a victims' service program eligible for funding by the Governor's Crime Commission or the North Carolina Council for Women; and one of whom is a member of the public at large.

(3) Nine persons appointed by the General Assembly, upon recommendation of the Speaker of the House of Representatives, one of whom is a member of the House of Representatives; one of whom is a magistrate; one of whom is a member of the business community; one of whom is a district court judge; one of whom is a representative of a victims' service program eligible for funding by the Governor's Crime Commission or the North Carolina Council for Women; one of whom is a representative of the law enforcement community with specialized knowledge of domestic violence issues; one of whom provides offender treatment and is approved by the North Carolina Council for Women; one of whom is a representative of the linguistic and cultural minority communities; and one of whom is a public member.

(4) The following persons or their designees, ex officio:
a. The Governor.
b. The Lieutenant Governor.
c. The Attorney General.
d. The Secretary of the Department of Administration.
e. The Secretary of the Department of Crime Control and Public Safety.
f. The Superintendent of Public Instruction.
g. The Secretary of the Department of Correction.
h. The Secretary of the Department of Health and Human Services.
i. The Director of the Office of State Personnel.
j. The Chair of the North Carolina Council for Women.
k. The Dean of the School of Government at the University of North Carolina at Chapel Hill.
l. The Chairman of the Governor's Crime Commission.

(d) Terms. — Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The Governor shall initially appoint five members for terms of two years and four members for terms of three years.

(2) The President Pro Tempore of the Senate shall initially appoint five members for terms of two years and four members for terms of three years.

(3) The Speaker of the House of Representatives shall initially appoint five members for terms of two years and four members for terms of three years.

Initial terms shall commence on September 1, 1999.

(e) Chair. — The chair shall be appointed biennially by the Governor from among the membership of the Commission. The initial term shall commence on September 1, 1999.

(f) Vacancies. — A vacancy on the Commission or as chair of the Commission resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) Compensation. — The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(h) Removal. — Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) Meetings. — The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than four times a year.

(j) Quorum. — A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(k) Office Space. — The Department of Administration shall provide office space in Raleigh for use as offices by the Domestic Violence Commission, and the Department of Administration shall receive no reimbursement from the Commission for the use of the property during the life of the Commission.

(*l*) Staffing. — The Secretary of the Department of Administration shall be responsible for staffing the Commission. (1999-237, s. 24.2(b); 2001-424, s. 7.7; 2006-264, s. 29(o); 2009-342, s. 1.)

Editor's Note. — Session Laws 2009-52, s. 1 provides for the establishment of a multidisciplinary Domestic Violence Fatality Prevention and Protection Review Team to identify and review domestic violence-related deaths and facilitate communication which team is modeled upon the North Carolina Child Fatality Prevention Team. The team shall consist of a lead agency, Community Support Services of Charlotte, North Carolina, and representatives of public and nonpublic agencies in the community serving domestic violence victims. The team shall meet at least four times annually and shall: study the incidences and causes of death in domestic violence incidents; develop a system for multidisciplinary review; examine issues on confidentiality; make recommendations for improvements and resources; and perform other functions necessary to carry out the team's mandate. The team is granted access to to records and documentation concerning domestic violence cases; however, access shall be limited when investigations are pending and confidentiality shall be maintained. The team shall terminate upon the earlier of its filing its final report, or June 15, 2014. Finally, the General Assembly is not obligated to appropriate funds to implement the provisions of the act.

Session Laws 2009-342, s. 7, provides: "The North Carolina Domestic Violence Commission, in consultation with the North Carolina Coalition Against Domestic Violence and the North Carolina Coalition Against Sexual Assault, shall study the issue of State oversight and coordination of services to victims of sexual violence and whether sexual violence should be included as a focus area of the Commission. The study shall include, but is not limited to, a review of the organization and membership of entities in other states that provide (i) information and recommendations to state legislatures on domestic and sexual violence and (ii) information and services to the public regarding these issues. The Commission shall report its findings and recommendations to the Joint Legislative Committee on Domestic Violence by February 1, 2010."

Effect of Amendments. — Session Laws 2009-342, s. 1, effective July 24, 2009, in subsection (b), substituted "(iii) strengthen the" for "and (iii) coordinate and collaborate with the North Carolina Council For Women in strengthening the" near the middle, and "Fund, and (iv) recommend" for "Fund and in establishing" near the end; in subdivision (c)(4), substituted "The Chair" for "The Executive Director"; and in subsection (*l*), deleted the former last sentence, which read: "To that end, the Secretary shall, at a minimum, assign an employee to serve as a Deputy Director within the North Carolina Council for Women whose primary duties shall be to staff the Commission. The person assigned as Deputy Director shall have the education, experience, and any other qualifications necessary for the position."

§ 143B-394.16. Powers and duties of the Commission; reports.

(a) Powers and Duties. — The Commission shall have the following powers and duties:

(1) As recommended in the January 15, 1999, final report of the Governor's Task Force on Domestic Violence, to develop and recommend to the General Assembly the "Safe Families Act" and to promote adequate funding to promote victim safety and accountability of perpetrators.

(2) To develop and recommend domestic violence training initiatives for law enforcement and judicial personnel and for all persons who provide treatment and services to domestic violence victims.

(3) To develop training initiatives for and make recommendations and provide information and advice to State agencies in the areas of child protection, education, employer/employee relations, criminal justice, and subsidized housing.
(4) To provide information and advice to any private entities that request assistance in providing services and support to domestic violence victims.
(5) To design, coordinate, and oversee a statewide public awareness campaign.
(6) To design and coordinate improved data collection efforts for domestic violence crimes and acts in the State.
(7) To research, develop, and recommend proposals of how best to meet the needs of domestic violence victims and to prevent domestic violence in the State.
(8) To adopt rules in accordance with Article 2A of Chapter 150B of the General Statutes for the approval of abuser treatment programs as provided in G.S. 50B-3(a)(12). The Commission shall adopt rules to establish a consistent level of performance from providers of abuser treatment programs and to ensure that approved programs enhance the safety of victims and hold those who perpetrate acts of domestic violence responsible.

(b) Report. — The Commission shall report its findings and recommendations, including any legislative or administrative proposals, to the General Assembly no later than April 1 each year. (1999-237, s. 24.2(b); 2002-105, s. 1.)

§§ 143B-394.17 through 143B-394.20: Reserved for future codification purposes.

Part 10D. Sexual Assault and Rape Crisis Center Fund.

§ 143B-394.21. Sexual Assault and Rape Crisis Center Fund.

(a) The Sexual Assault and Rape Crisis Center Fund is established within the State Treasury. The fund shall be administered by the Department of Administration, North Carolina Council for Women, and shall be used to make grants to centers for victims of sexual assault or rape crisis and to the North Carolina Coalition Against Sexual Assault, Inc. This fund shall be administered in accordance with the provisions of the State Budget Act under Chapter 143C of the General Statutes. The Department of Administration shall make quarterly grants to each eligible sexual assault or rape crisis center and to the North Carolina Coalition Against Sexual Assault, Inc. To be eligible to receive funds under this section, a sexual assault or rape crisis center shall meet the following requirements:
(1) Have been in operation on the preceding July 1 and continue to be in operation.
(2) Offer all of the following services: a hotline, transportation services, community education programs, daytime services, and call forwarding during the night; and fulfill other criteria established by the Department of Administration.
(3) Be a nonprofit corporation or a local governmental entity.
(4) Have a mission statement that clearly specifies rape crisis services are provided.
(5) Act in support of victims of rape or sexual assault by providing assistance to ensure victims' interests are represented in law enforce-

ment and legal proceedings and support and referral services are provided in medical and community settings.

(b) Funds appropriated from the General Fund to the Department of Administration, North Carolina Council for Women, for the Sexual Assault and Rape Crisis Center Fund shall be distributed in two shares. The North Carolina Coalition Against Sexual Assault, Inc., and sexual assault or rape crisis centers whose services are confined to rape crisis or sexual assault services shall receive an equal share of thirty-five percent (35%) of the funds. Organizations whose services contain sexual assault or rape crisis services and domestic violence services or other support services shall receive an equal share of the remaining sixty-five percent (65%) of the funds. (2008-107, s. 19.1.)

Editor's Note. — This Part was enacted as Part 3B of Article 11 of this Chapter, and this section was enacted as G.S. 143B-480.20, by Session Laws 2008-107, s. 19.1. This Part has been redesignated as Part 10D of Article 9 of this Chapter, and this section redesignated as G.S. 143B-394.21, at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 30.6, made this Part effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Part 11. North Carolina Manpower Council.

§§ 143B-395, 143B-396: Repealed by Session Laws 1977, c. 771, s. 14.

Cross References. — As to the State Job Training Coordinating Council in the Department of Natural Resources and Community Development, see G.S. 143B-438.4.

Part 12. Standardization Committee.

§§ 143B-397, 143B-398: Repealed by Session Laws 1983, c. 717, s. 81.

Part 13. Veterans' Affairs Commission.

§ 143B-399. Veterans' Affairs Commission — creation, powers and duties.

There is hereby created the Veterans' Affairs Commission of the Department of Administration. The Veterans' Affairs Commission shall have the following functions and duties:

(1) To advise the Governor on matters relating to the affairs of veterans in North Carolina;

(2) To maintain a continuing review of the operation and budgeting of existing programs for veterans and their dependents in the State and to make any recommendations to the Governor for improvements and additions to such matters to which the Governor shall give due consideration;

(3) To serve collectively as a liaison between the Division of Veterans Affairs and the veterans organizations represented on the Commission;

(4) To promulgate rules and regulations concerning the awarding of scholarships for children of North Carolina veterans as provided by Article 4 of Chapter 165 of the General Statutes of North Carolina. The Commission shall make rules and regulations consistent with the

provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the State Board of Veterans' Affairs shall remain in full force and effect unless and until repealed or superseded by action of the Veterans Affairs Commission. All rules and regulations adopted by the Commission shall be enforced by the Division of Veterans' Affairs;

(4a) To promulgate rules concerning the awarding of the North Carolina Services Medal to all veterans who have served in any period of war as defined in 38 U.S.C. § 101. The award shall be self-financing; those who wish to be awarded the medal shall pay a fee to cover the expenses of producing the medal and awarding the medal. All rules adopted by the Commission with respect to the North Carolina Services Medal shall be implemented and enforced by the Division of Veterans' Affairs; and

(5) To advise the Governor on any matter the Governor may refer to it. (1973, c. 620, s. 7; 1977, c. 70, ss. 24, 25, 27; c. 622; 1991 (Reg. Sess., 1992), c. 998, s. 1; 1993, c. 553, s. 47.)

Editor's Note. — This section was formerly G.S. 143B-252. It was recodified as G.S. 143B-399 by Session Laws 1977, c. 70.

§ 143B-400. Veterans' Affairs Commission — members; selection; quorum; compensation.

The Veterans' Affairs Commission of the Department of Administration shall consist of one voting member from each congressional district, all of whom shall be veterans, appointed by the Governor for four-year terms. In making these appointments, the Governor shall insure that both major political parties will be continuously represented on the Veterans' Affairs Commission.

The initial members of the Commission shall be the appointed members of the current Veterans' Affairs Commission who shall serve for the remainder of their current terms and six additional members appointed by the Governor for terms expiring June 30, 1981. Thereafter, all members shall be appointed for terms of four years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Governor shall have the power to remove any member of the Commission in accordance with provisions of G.S. 143B-13.

In the event that more than 11 congressional districts are established in the State, the Governor shall on July 1 following the establishment of such additional congressional districts appoint a member of the Commission from that congressional district. If on July 1, 1977, or at any time thereafter due to congressional redistricting, two or more members of the Veterans' Affairs Commission shall reside in the same congressional district then such members shall continue to serve as members of the Commission for a period equal to the remainder of their current terms on the Commission provided that upon the expiration of said term or terms the Governor shall fill such vacancy or vacancies in such a manner as to insure that as expeditiously as possible there is one member of the Veterans' Affairs Commission who is a resident of each congressional district in the State.

The Governor shall designate from the membership of the Commission a chairman and vice-chairman of the Commission who shall serve at the pleasure of the Governor. The Secretary of the Department of Administration or his designee shall serve as secretary of the Commission.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

The Veterans' Affairs Commission shall meet at least twice a year and may hold special meetings at any time or place within the State at the call of the chairman, at the call of the Secretary of the Department of Administration or upon the written request of at least six members.

All clerical and other services required by the Commission shall be provided by the Secretary of the Department of Administration. (1973, c. 620, s. 8; 1977, c. 70, ss. 24, 25, 27; c. 637, s. 1.)

Editor's Note. — This section was formerly G.S. 143B-253. It was recodified as G.S. 143B-400 by Session Laws 1977, c. 70.

§ 143B-401. Veterans' Affairs Commission Advisory Committee — members; compensation.

The department commander or official head of each veterans' organization which has been chartered by an act of the United States Congress and which is legally constituted and operating in this State pursuant to said charter shall constitute an Advisory Committee to the Veterans' Affairs Commission. Members of the Veterans' Affairs Commission Advisory Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1977, c. 637, s. 3.)

Part 14. Advocacy Council for the Handicapped.

§§ 143B-402, 143B-403: Repealed by Session Laws 1979, c. 575, s. 1.

Part 14A. Governor's Advocacy Council for Persons with Disabilities.

§§ 143B-403.1, 143B-403.2: Repealed by Session Laws 2007-323, s. 19.1(a), effective July 1, 2007.

Editor's Note. — Session Laws 2007-323, s. 19.1(b), provides: "Pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, the Governor shall redesignate the operation and function of the Governor's Advocacy Council for Persons with Disabilities from the Department of Administration to a nongovernmental entity. The Governor shall follow the federal statutory procedure for redesignation found at 45 C.F.R. § 1386.20, with a target transfer date of July 1, 2007."

Session Laws 2007-323, s. 19.1(k), provides: "Not later than May 1, 2008, the Department of Administration and the Office of State Personnel shall report to the House Appropriations Subcommittee on General Government and the Senate Appropriations Subcommittee on General Government on the placement or compensation of all State employees affected by the redesignation of the Governor's Advocacy Council for Persons with Disabilities."

Session Laws 2007-323, s. 19.1(*l*), provides: "This section is effective on the effective date of the redesignation and transfer of the operation and function of the Governor's Advocacy Council for Persons with Disabilities from the Department of Administration to a nongovernmental entity under the Developmental Disabilities Assistance and Bill of Rights Act 2000, P.L. 106-402. Any funds appropriated to the Governor's Advocacy Council for Persons with Disabilities revert to the General Fund on that date." The redesignation and transfer were effective July 1, 2007.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Part 15. North Carolina State Commission of Indian Affairs.

§ 143B-404. North Carolina State Commission of Indian Affairs — creation; name.

There is hereby created and established the North Carolina State Commission of Indian Affairs. The Commission shall be administered under the direction and supervision of the Department of Administration pursuant to G.S. 143A-6(b) and (c). (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

§ 143B-405. North Carolina State Commission of Indian Affairs — purposes for creation.

The purposes of the Commission shall be as follows:

(1) To deal fairly and effectively with Indian affairs.

(2) To bring local, State, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of North Carolina.

(3) To provide aid and protection for Indians as needs are demonstrated; to prevent undue hardships.

(4) To hold land in trust for the benefit of State-recognized Indian tribes. This subdivision shall not apply to federally recognized Indian tribes.

(5) To assist Indian communities in social and economic development.

(6) To promote recognition of and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to Native Americans. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189; 2001-344, s. 1; 2006-264, s. 15.)

Editor's Note. — Session Laws 2001-344, s. 1 amended this section in the coded bill drafting format prescribed by § 120-20.1. In adding new introductory language, the amendment failed to delete preexisting introductory language. The introductory language has been set out in the form above as directed by the Revisor of Statutes.

§ 143B-406. North Carolina State Commission of Indian Affairs — duties; use of funds.

(a) The Commission shall have the following duties:

(1) To study, consider, accumulate, compile, assemble and disseminate information on any aspect of Indian affairs.

(2) To investigate relief needs of Indians of North Carolina and to provide technical assistance in the preparation of plans for the alleviation of such needs.

(3) To confer with appropriate officials of local, State and federal governments and agencies of these governments, and with such congressional committees that may be concerned with Indian affairs to encourage and implement coordination of applicable resources to meet the needs of Indians in North Carolina.

(4) To cooperate with and secure the assistance of the local, State and federal governments or any agencies thereof in formulating any such programs, and to coordinate such programs with any programs regarding Indian affairs adopted or planned by the federal govern-

ment to the end that the State Commission of Indian Affairs secure the full benefit of such programs.

(5) To act as trustee for any interest in real property that may be transferred to the Commission for the benefit of State-recognized Indian tribes in accordance with a trust agreement approved by the Commission. The Commission shall not hold any interest in real property for the benefit of federally recognized Indian tribes.

(6) To review all proposed or pending State legislation and amendments to existing State legislation affecting Indians in North Carolina.

(7) To conduct public hearings on matters relating to Indian affairs and to subpoena any information or documents deemed necessary by the Commission.

(8) To study the existing status of recognition of all Indian groups, tribes and communities presently existing in the State of North Carolina.

(9) To establish appropriate procedures to provide for legal recognition by the State of presently unrecognized groups.

(10) To provide for official State recognition by the Commission of such groups.

(11) To initiate procedures for their recognition by the federal government.

(b) The Commission may adopt rules to implement the provisions of subdivision (a)(5) of this section. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189; 2001-344, s. 2.)

Legal Periodicals. — For an article on criminal jurisdiction on the North Carolina Cherokee Indian reservation, see 24 Wake Forest L. Rev. 335 (1989).

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Actions by local units of government purporting to "recognize" Indian groups as Indian tribes have no binding impact on the Commission with regard to its statutory duties or its process for official State recognition of Indian tribes; however, a county may adopt such a resolution to urge the State to grant such recognition. See opinion of Attorney General to Mr. R. Glen Peterson General Counsel North Carolina Department of Administration, 1998 N.C.A.G. 42 (10/15/98).

§ 143B-407. North Carolina State Commission of Indian Affairs — membership; term of office; chairman; compensation.

(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Health and Human Services, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Environment and Natural Resources, the Commissioner of Labor or their designees and 21 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa Saponi of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; the Sappony; the Occaneechi Band of the Saponi Nation of Alamance and Orange Counties, and the Native Americans located in Cumberland, Guilford, Johnston, Mecklenburg, Orange, and Wake Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa Saponi, two;

the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Sappony, one; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two; the Occaneechi Band of the Saponi Nation, one, the Triangle Native American Society, one. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122.

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms except that at the first election of Commission members by tribes and groups one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from the Lumbees to a three-year term. The initial appointment from the Indians of Person County shall expire on June 30, 1999. The initial appointment from the Triangle Native American Society shall expire June 30, 2003. The initial appointment of the Occaneechi Band of the Saponi Nation shall expire June 30, 2005. Thereafter, all Commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission. The initial appointments by the General Assembly shall expire on June 30, 1983. Thereafter, successors shall serve for terms of two years.

In the event that a vacancy occurs among the membership representing Indian tribes and groups and the vacancy temporarily cannot be filled by the tribe or group for any reason, the Commission membership may designate a tribal or group member to serve on the Commission on an interim basis until the tribe or group is able to select a permanent member to fill the vacancy. The service of the interim member shall terminate immediately upon appointment by the tribe or group of a member to fill the vacancy in its membership.

(c) Commission members who are seated by virtue of their office within the State government shall be compensated at the rate specified in G.S. 138-6. Commission members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-3.1. Indian members of the commission shall be compensated at the rate specified in G.S. 138-5. (1977, c. 771, s. 4; c. 849, s. 1; 1977, 2nd Sess., c. 1189; 1981, c. 47, s. 5; 1981 (Reg. Sess., 1982), c. 1191, ss. 74, 76; 1989, c. 727, s. 218(149); 1991, c. 467, s. 1; 1995, c. 490, s. 27; 1997-147, s. 2; 1997-293, s. 2; 1997-443, ss. 11A.118(a), 11A.119(a); 2001-318, s. 1; 2002-126, s. 19.1A(a); 2003-87, s. 2; 2009-39, s. 1.)

Cross References. — As to collaboration between Division of Social Services and Commission of Indian Affairs on Indian child welfare issues, see G.S. 143B-139.5A.

Editor's Note. — Session Laws 1981, c. 47, which amended this section, in s. 7, provided: "When the Speaker, President of the Senate, or Lieutenant Governor has designated a person to serve in his place as permitted by this act, that person shall be compensated in accordance with G.S. 120-3.1 if a member of the General Assembly, in accordance with G.S. 138-6 if a State officer or employee, and in accordance with G.S. 138-5 in any other case, except that a member of the General Assembly so designated may not receive per diem if the Speaker, President of the Senate or Lieutenant Governor may not receive per diem."

Effect of Amendments. — Session Laws 2009-39, s. 1, effective July 1, 2009, added the second paragraph of subsection (b).

§ 143B-408. North Carolina State Commission of Indian Affairs — meetings; quorum; proxy vote.

(a) The Commission shall meet quarterly, and at any other such time that it shall deem necessary. Meetings may be called by the chairman or by a petition signed by a majority of the members of the Commission. Ten days' notice shall be given in writing prior to the meeting date.

(b) Simple majority of the Indian members of the Commission must be present to constitute a quorum.

(c) Proxy vote shall not be permitted. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

§ 143B-409. North Carolina State Commission of Indian Affairs — reports.

The Commission shall prepare a written annual report giving an account of its proceedings, transactions, findings, and recommendations. This report shall be submitted to the Governor and the legislature. The report will become a matter of public record and will be maintained in the State Historical Archives. It may also be furnished to such other persons or agencies as the Commission may deem proper. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Editor's Note. — Session Laws 1977, c. 849, contained two identical sections, numbered G.S. 143B-400.6 and 143B-400.9, which have been codified above as G.S. 143B-409.

§ 143B-410. North Carolina State Commission of Indian Affairs — fiscal records; clerical staff.

Fiscal records shall be kept by the Secretary of Administration. The audit report will become a part of the annual report and will be submitted in accordance with the regulations governing preparation and submission of the annual report. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189; 1983, c. 913, s. 41.)

§ 143B-411. North Carolina State Commission of Indian Affairs — executive director; employees.

The Commission may, subject to legislative or other funds that would accrue to the Commission, employ an executive director to carry out the day-to-day responsibilities and business of the Commission. The executive director shall serve at the pleasure of the Commission. The executive director, also subject to legislative or other funds that would accrue to the Commission, may hire additional staff and consultants to assist in the discharge of his responsibilities, as determined by the Commission. The executive director shall not be a member of the Commission, and shall be of Indian descent. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189; 1991, c. 88, s. 1.)

Part 15A. North Carolina Advisory Council on the Eastern Band of the Cherokee.

§ 143B-411.1. North Carolina Advisory Council on the Eastern Band of the Cherokee — creation; membership; terms of office.

The North Carolina Advisory Council on the Eastern Band of the Cherokee is created in the Department of Administration. The Council shall consist of 16 members and shall include the following members: eight members shall be appointed by the Chief with the consent of the Tribal Council of the Eastern Band of the Cherokee; the Superintendent of Public Instruction or his designee; the Secretary of Administration or his designee; the Secretary of Health and Human Services or his designee; the Secretary of Environment and Natural Resources or his designee; the Attorney General or his designee; one member appointed by the Governor who shall be a representative of local government in Swain, Jackson, or Cherokee Counties; one legislator appointed by the Speaker of the House; and one legislator appointed by the President Pro Tempore of the Senate. Members serving by virtue of their office within State Government shall serve so long as they hold that office, except that the members appointed by the Speaker of the House and the President Pro Tempore of the Senate shall serve for two-year terms. Members appointed by the Chief shall serve at the pleasure of the Chief. Members appointed by the Governor shall serve a term of four years at the pleasure of the Governor. (1983 (Reg. Sess., 1984), c. 1085, s. 1; 1989, c. 727, s. 218(150); 1997-443, ss. 11A.118(a), 11A.119(a).)

§ 143B-411.2. North Carolina Advisory Council on the Eastern Band of the Cherokee — purpose or creation; powers and duties.

The purpose of the Council is to study on a continuing basis the relationship between the Eastern Band of the Cherokee and the State of North Carolina in order to resolve any matters of concern to the State or the Tribe. It shall be the duty of the Council:

(1) Identify existing and potential conflicts between the State of North Carolina and the Eastern Band of Cherokee Indians;
(2) Propose State and federal legislation and agreements between the State of North Carolina and the Cherokee Tribe to resolve existing and potential conflicts;
(3) To study and make recommendations concerning any issue referred to the Council by any official of the Eastern Band of the Cherokee, the State of North Carolina, or the government of Haywood, Jackson, Swain, Graham, or Cherokee Counties.
(4) Study other issues of mutual concern to the Eastern Band of the Cherokee;
(5) Make a report with recommendations as needed, but not less often than biannually to the Governor, the Chief of the Eastern Band of the Cherokee, the General Assembly, and the Tribal Council of the Eastern Band of the Cherokee. (1983 (Reg. Sess., 1984), c. 1085, s. 1.)

Legal Periodicals. — For an article on criminal jurisdiction on the North Carolina Cherokee Indian reservation, see 24 Wake Forest L. Rev. 335 (1989).

§ 143B-411.3. North Carolina Advisory Council of the Eastern Band of the Cherokee — meetings; quorum; compensation; chairman.

The Council shall meet at least quarterly or at the call of the chairman or a majority of the Council. A quorum shall consist of a majority of the Council. Designees of Council members serving by virtue of office shall be entitled to vote. The Chairman of the Council shall be elected from the membership. The selection of a member as chairman shall have no effect on the member's voting privileges. Council members who are seated by virtue of their office within State government shall be compensated at the rate specified in G.S. 138-6.

Council members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-31. Other Council members shall be compensated at the rate specified in G.S. 138-5. (1983 (Reg. Sess., 1984), c. 1085, s. 1.)

§ 143B-411.4. North Carolina Advisory Council on the Eastern Band of the Cherokee — clerical and administrative support.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1983 (Reg. Sess., 1984), c. 1085, s. 1.)

Part 16. Governor's Council on Employment of the Handicapped.

§§ 143B-412, 143B-413: Repealed by Session Laws 1979, c. 575, s. 1.

Cross References. — As to powers and duties of the Governor's Council on Employment of the Handicapped, see also G.S. 143-283.1 et seq.

Editor's Note. — The above sections were formerly G.S. 143B-184 and 143B-185. They were rewritten and recodified in this Article by Session Laws 1977, c. 872, s. 2.

Part 17. Governor's Advocacy Council on Children and Youth.

§ 143B-414. Governor's Advocacy Council on Children and Youth — creation; powers and duties.

There is hereby created the Governor's Advocacy Council on Children and Youth of the Department of Administration. The Council shall have the following functions and duties:

(1) To act as an advocate for children and youth within State and local governments, and with private agencies serving children and youth;

(2) To provide assistance in the development and coordination of child advocacy systems at the regional and local levels within the State;

(3) To perform a continuing review of existing programs of State government for children and youth and their families;

(4) To, in cooperation with State, local or private agencies, identify needs of children and youth and their families that are not currently being met and recommend new programs or improvement of existing programs;

(5) To review any new programs affecting children and youth proposed by any State agency and recommend changes to avoid duplication of services, to promote better planning, or otherwise to make more effective use of available resources;

(6) To meet at least annually with the Governor and present a written report concerning the health and well-being of North Carolina's children and the effectiveness of current programs and the need for new programs for children and youth;

(7) To provide information to the general public and State, local and private agencies serving children and youth and their families concerning the activities and findings of the Council; and

(8) To perform other advisory functions assigned by the Secretary of Administration or a legislative committee. (1973, c. 476, s. 180; 1977, c. 872, s. 6; 1981 (Reg. Sess., 1982), c. 1191, s. 13.)

Editor's Note. — This section was formerly G.S. 143B-186. It was rewritten and recodified in this Article by Session Laws 1977, c. 872, s. 6.

§ 143B-415. Governor's Advocacy Council on Children and Youth — members; selection; quorum; compensation.

(a) The Governor's Advocacy Council on Children and Youth shall consist of 19 members. The composition of the Council shall be as follows: two members appointed by the President Pro Tempore of the Senate from the membership of the Senate; two members selected by the Speaker of the House of Representatives from the membership of the House of Representatives; 15 members appointed by the Governor.

Of the members appointed by the Governor, at least one shall come from each congressional district in accordance with G.S. 147-12(3)b.

In selecting the 15 members of the Council, the Governor shall select 11 public-spirited adult citizens who have an interest in and knowledge of children and youth, persons who work with children or representatives of organizations concerned with problems of children and youth. The remaining four members to be appointed by the Governor shall consist of two youths of each sex who are 18 years of age or under at the time of their appointments.

(b) The initial members of the Council shall be the members of the former Governor's Advocacy Council on Children and Youth of the Department of Health and Human Services whose terms shall expire on the date they would have, had said Council of the Department of Health and Human Services not been transferred. At the end of the respective terms of office of the initial members of the Council, the appointment of all members shall be as provided in this section and for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, death, dismissal, or disability of a member shall be for the balance of the unexpired term.

(c) The Governor may remove any member of the Council appointed by the Governor.

The Governor shall designate from the membership of the Council a chairman and a vice-chairman to serve at his pleasure.

The Council shall meet at least quarterly and upon the call of the chairman or upon written request of at least nine members.

The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

(d) All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1973, c. 476, s. 181; 1977, c. 872, s. 6; 1981 (Reg. Sess., 1982), c. 1191, s. 14; 1991, c. 739, s. 31; 1991 (Reg. Sess., 1992), c. 1038, s. 21; 1997-443, s. 11A.118(a); 2001-486, s. 2.20.)

§ 143B-416. Governor's Advocacy Council on Children and Youth — access to information.

Unless otherwise prohibited by law, every State and local agency, department, board, commission, school, or corporation that supervises, administers, or otherwise directs programs or services for children and youth shall provide the Council with any requested information relating to such programs and services. (1977, c. 872, s. 6.)

Part 18. North Carolina Internship Council.

§ 143B-417. North Carolina Internship Council — creation; powers and duties.

There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

(1) To determine the number of student interns to be allocated to each of the following offices or departments:
  a. Office of the Governor
  b. Department of Administration
  c. Department of Correction
  d. Department of Cultural Resources
  e. Department of Revenue
  f. Department of Transportation
  g. Department of Environment and Natural Resources
  h. Department of Commerce
  i. Department of Crime Control and Public Safety
  j. Department of Health and Human Services
  k. Office of the Lieutenant Governor
  l. Office of the Secretary of State
  m. Office of the State Auditor
  n. Office of the State Treasurer
  o. Department of Public Instruction
  p. Repealed by Session Laws 1985, c. 757, s. 162.
  q. Department of Agriculture and Consumer Services
  r. Department of Labor
  s. Department of Insurance
  t. Office of the Speaker of the House of Representatives
  u. Justices of the Supreme Court and Judges of the Court of Appeals
  v. Community Colleges System Office
  w. Office of State Personnel
  x. Office of the Senate President Pro Tempore
  y. Department of Juvenile Justice and Delinquency Prevention
  z. Administrative Office of the Courts
  aa. State Ethics Commission
  bb. Employment Security Commission
  cc. State Board of Elections
  dd. Department of Justice

(2) To screen applications for student internships and select from these applications the recipients of student internships; and

(3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and departments enumerated in subdivision (1) of this section. (1977, c. 771, s. 4; c. 967; 1979, c. 783; 1983, c. 710; 1985, c. 757, s. 162; 1989, c. 727, s. 218(151), c. 751, s. 7(21); 1989 (Reg. Sess., 1990), c. 900, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 42; 1993, c. 522, s. 17; 1997-261, s. 104; 1997-443, ss. 11A.118(a), 11A.119(a); 1999-84, s. 25; 2000-137, s. 4(oo); 2007-121, s. 1.)

Editor's Note. — Subdivision (1)p. as enacted by Session Laws 2007-121, s. 1, was redesignated as subdivision (1)(dd) at the direction of the Revisor of Statutes.

§ 143B-418. North Carolina Internship Council — members; selection; quorum; compensation; clerical, etc., services.

The North Carolina Internship Council shall consist of 17 members, including the Secretary of Administration or his designee, one member to be designated by and to serve at the pleasure of the President Pro Tempore of the Senate, one member to be designated by and to serve at the pleasure of the Speaker of the House of Representatives and the following 14 members to be appointed by the Governor to a two-year term commencing on July 1 of odd-numbered years: two representatives of community colleges; four representatives of The University of North Carolina system; two representatives of private colleges or universities; three representatives of colleges or universities with an enrollment of less than 5,000 students; and three former interns.

At the end of the respective terms of office of the 14 members of the Council appointed by the Governor, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. The Governor may remove any member appointed by the Governor.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Council shall meet at the call of the chairman or upon written request of at least five members.

The Governor shall designate a member of the Council as chairman to serve at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1977, c. 967; 1987, c. 564, s. 9; 1995, c. 490, s. 28.)

§ 143B-419. North Carolina Internship Council — committees for screening applications.

The North Carolina Internship Council may designate one representative from each office or department enumerated in G.S. 143B-417 to serve on a committee to assist pursuant to guidelines adopted by the Council, in the screening and selection of applicants for student internships. (1977, c. 967.)

Part 19. Jobs for Veterans Committee.

§ 143B-420. Governor's Jobs for Veterans Committee — creation; appointment, organization, etc.; duties.

(a) There is hereby created and established in the North Carolina Department of Administration, Division of Veterans Affairs, a committee to be known as the Governor's Jobs for Veterans Committee, with one member from each Congressional district, appointed by the Governor. Members of the Committee shall serve at the pleasure of the Governor. The Secretary of Administration, with the concurrence of the Governor, shall appoint a chairman to administer this Committee who shall be subject to the direction and supervision of the

Secretary. The chairman shall serve at the pleasure of the Secretary. The chairman shall devote full time to his duties of office.

(b) Subject to the general supervision of the Secretary, the duties of the chairman shall include but not be limited to the following:

(1) Serving as a liaison between the Office of the Governor and all State agencies to insure that veterans receive the employment preference to which they are legally entitled and that such State agencies list available jobs with appropriate public employment services;

(2) Evaluating existing programs designed to benefit veterans and submitting reports and recommendations to the Governor and Secretary;

(3) Developing and furthering favorable employer attitudes toward the employment of veterans by appropriate promulgation of information concerning veterans and the functions of the Committee;

(4) Serving as a liaison between the Committee and communities throughout the State to the end that civic committees and volunteer groups are formed and utilized to promote the objectives of the Committee;

(5) Assisting employers in properly designing affirmative action plans as they relate to handicapped and Vietnam-era veterans;

(6) Serving as a liaison between veterans and State agencies on questions regarding the employment practices of such State agencies. (1977, c. 1032; 1985, c. 479, s. 166.)

Legal Periodicals. — For survey of 1977 law on employment regulation, see 56 N.C.L. Rev. 854 (1978).

§ 143B-421. Governor's Jobs for Veterans Committee — authority to receive grants-in-aid.

The Committee is hereby authorized to receive grants-in-aid from the federal government and charitable organizations for carrying out its duties. (1977, c. 1032.)

Part 19A. Selective Service Registration.

§ 143B-421.1. Selective Service registration.

(a) A person who is required under 50 United States Code Appx. § 453 (Military Selective Service Act) to present himself for and submit to registration and fails to do so in accordance with any proclamation or any rule or regulation issued under this section, shall be ineligible for:

(1) Employment by or service for the State, or a political subdivision of the State, including all boards and commissions, departments, agencies, institutions, and instrumentalities.

(2) State-supported scholarships, programs for financial assistance for postsecondary education, or loans insured by any State agency, including educational assistance authorized under Article 23 of Chapter 116 of the General Statutes.

(b) It shall be the duty of all persons or officials having charge of and authority over either the hiring of employees or granting of educational assistance, as described in this section, to adopt rules and regulations which shall require applicants to indicate on a form whether they are in compliance with the registration requirements described in subsection (a). Rules and regulations issued under the authority of this section shall provide that an applicant be given not less than 30 days after notification of a proposed finding of ineligibility for employment or benefits to provide the issuing official with information that he is in compliance with the registration requirements described in subsection (a). The issuing official may afford such person an opportunity for a hearing to establish his compliance or for any other purpose.

(c) A person may not be denied a right, privilege, or benefit under State law by reason of failure to present himself for and submit to registration under 50 U.S.C.S. Appx. § 453 if:

(1) The requirement for the person to so register has terminated or become inapplicable to the person; and

(2) The person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register. (1989, c. 618.)

§ 143B-421.2: Reserved for future codification purposes.

§ 143B-421.3. Consultation required for welcome and visitor centers.

The Department of Commerce and the Department of Transportation shall consult with the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources before beginning the design or construction of any new welcome center or visitor center buildings. (2007-356; s. 1.)

Editor's Note. — Session Laws 2007-356, s. 1, was codified as this section at the direction of the Revisor of Statutes.

Session Laws 2007-356, s. 2 provides: "The Department of Commerce and the Department of Transportation shall immediately cease the planning, design, or construction of any new welcome center buildings in Randolph County and shall not resume the planning, design, or construction of any new welcome center buildings in that county before consulting with the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources."

Session Laws 2007-356, s. 3, provides: "Nothing in this act shall be interpreted to prohibit or restrict the Department of Transportation from constructing visitor center buildings in Randolph County and Wilkes County that were in the planning, design, or construction phase prior to the effective date of this act. The Department of Commerce shall operate the Randolph County visitor center with funding sources consistent with the existing nine welcome centers, excluding use of funds from the Special Registration Plate Account and the Highway Fund."

Session Laws 2007-356, s. 4, made this section effective August 17, 2007.

Part 20. Public Officers and Employees Liability Insurance Commission.

§§ 143B-422 through 143B-426.1: Recodified as §§ 58-27.20 through 58-27.26 (now 58-32-1 through 58-32-30) by Session Laws 1985, c. 666, s. 79.

Part 21. Child and Family Services Interagency Committees.

§§ 143B-426.2 through 143B-426.7A: Repealed by Session Laws 1985 (Regular Session, 1986), c. 1028, s. 31.

Part 22. North Carolina Agency for Public Telecommunications.

§ 143B-426.8. Definitions.

As used in this Part, except where the context clearly requires otherwise:

(1) "Agency" means the North Carolina Agency for Public Telecommunications.

(2) "Board" means the Board of Public Telecommunications Commissioners.

(3) "Telecommunications" means any origination, creation, transmission, emission, storage-retrieval, or reception of signs, signals, writing, images and sounds, or intelligence of any nature, by wire, radio, television, optical or other electromagnetic systems. (1979, c. 900, s. 1.)

CASE NOTES

Cited in Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

§ 143B-426.9. North Carolina Agency for Public Telecommunications — Creation; membership; appointments, terms and vacancies; officers; meetings and quorum; compensation.

The North Carolina Agency for Public Telecommunications is created. It is governed by the Board of Public Telecommunications Commissioners, composed of 27 members as follows:

(1) A Chairman appointed by, and serving at the pleasure of, the Governor;

(2) Ten at-large members, appointed by the Governor from the general public;

(3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121;

(4) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;

(5) The Secretary of Administration, ex officio;

(6) The Chairman of the Board of Trustees of The University of North Carolina Center for Public Television (if and when established), ex officio;

(7) The Chairman of the State Board of Education, ex officio;

(8) The Chairman of the OPEN/net Committee, ex officio, so long as such person is not a State employee;

(9) The Chairman of the North Carolina Utilities Commission, ex officio;

(10) The Director of the Public Staff of the North Carolina Utilities Commission, ex officio;

(11) The Chairman of the Public Radio Advisory Committee of the North Carolina Agency for Public Telecommunications, ex officio;

(12) The Superintendent of Public Instruction, ex officio;

(13) The President of the University of North Carolina, ex officio;

(14) The President of the Community Colleges System, ex officio; and

(15) Two members ex officio who shall rotate from among the remaining heads of departments enumerated in G.S. 143A-11 or G.S. 143B-6, appointed by the Governor.

The 10 at-large members shall serve for terms staggered as follows: four terms shall expire on June 30, 1980; and three terms shall expire on June 30, 1982; and three terms shall expire on June 30, 1984. Thereafter, the members at large shall be appointed for full four-year terms and until their successors are appointed and qualified. In making appointments of members at large, the Governor shall seek to appoint persons from the various geographic areas of the State including both urban and rural areas; persons from various classifications as to sex, race, age, and handicapped persons; and persons who are representatives of the public broadcast, commercial broadcast, nonbroadcast distributive systems and private education communities of the State.

The terms of the ex officio members are coterminous with their respective terms of office. In the event that any of the offices represented on the Board ceases to exist, the successor officer to the designated member shall become an ex officio member of the Board; if there shall be no successor, then the position on the Board shall be filled by a member to be appointed by the Governor from the general public. The ex officio members shall have the right to vote.

The initial members appointed to the Board by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years.

The terms of the rotating ex officio members shall be of one-year duration, and the schedule of rotation is determined by the Governor.

Each State official who serves on the Board may designate a representative of his department, agency or institution to sit in his place on the Board and to exercise fully the official's privileges of membership.

The Secretary of Administration or his designee serves as secretary of the Board.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies shall be filled in the same manner as the original appointment.

The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

The Board meets quarterly and at other times at the call of the chairman or upon written request of at least six members.

A majority of the Board members shall constitute a quorum for the transaction of business. (1979, c. 900, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 6-8; 1983 (Reg. Sess., 1984), c. 1116, s. 92; 1995, c. 490, s. 42; 1999-84, s. 26.)

§ 143B-426.10. Purpose of Agency.

The North Carolina Agency for Public Telecommunications shall serve as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To advise the Governor, the Council of State, the principal State departments, the University of North Carolina, the General Assembly and all other State agencies and institutions on all matters of telecommunications policy as may affect the State of North Carolina and its citizens;

(2) To foster and stimulate the use of telecommunications programming, services and systems for noncommercial educational and cultural purposes by public agencies for the improvement of the performance of governmental services and functions;

(3) To serve State government, local governments and other public agencies and councils in the following ways:

a. To provide a clearinghouse of information about innovative projects, programs or demonstrations in telecommunications;
b. To provide advice on the acquisition, location and operation of telecommunications systems, equipment, and facilities and to provide particularly such advice as may foster compatibility of systems, equipment and facilities and as may reduce or eliminate duplication or mismatching of systems and facilities;
c. To provide advice on the disposition of excess or unused telecommunications equipment;
d. To provide information and advice on new telecommunications developments and emerging technologies;
e. To provide advice on procurement matters on all purchases and contracts for telecommunications systems, programming and services;
f. To provide information and advice on the most cost-effective means of using telecommunications for management, operations and service delivery;
g. To provide advice and assistance in the evaluation of alternative media programming so that the most efficient and effective products may be developed and used;
h. To provide advice and assistance in the identification of various methods of distributing programs and materials;

(4) To study the utilization of the frequency spectrum and to advise appropriate authorities as to effective frequency management;
(5) To assist in the development of a State plan or plans for the best development of telecommunications systems, both public and private, to insure that all citizens of North Carolina will enjoy the benefits which such systems may deliver;
(6) In addition to and not in place of the programs, projects, and services of The University of North Carolina Center for Public Television (or its functional predecessor), to develop and provide media programs and programming materials and services of a noncommercial educational, informational, cultural or scientific nature;
(7) To undertake innovative projects in interactive telecommunications and teleconferencing whenever such projects might serve to improve services, expand opportunities for citizen participation in government and reduce the costs of delivering a service;
(8) To serve as a means of acquiring governmental and private funds for use in the development of services through telecommunications;
(9) To serve as a means of distributing State funds and awarding grants for any purpose determined to be in furtherance of the purposes of this Part;
(10) To operate such telecommunications facilities or systems as may fall within the purview of this Part or as may be assigned to the Agency by the Governor, by the General Assembly, or by the Secretary of Administration consistent with the provisions of G.S. 143-340(14);
(11) To review, assess and report to the Governor on an annual basis on the telecommunications needs and services of State and local government and on the production capabilities and services, the nonproduction services, and the research and development services offered by the Agency and by all other agencies of State government;
(12) To review, assess and report to the Governor, after a period of not less than two years and not more than three years after the enactment of this Part, on the telecommunications statutes, plans and operations in State government, including those resulting from the enactment of this Part and from revision of statutes pertaining to telecommunications in the Department of Administration;

(13) To serve as liaison between State government and local governments, regional organizations, the federal government, foundations and other states and nations on common telecommunications concerns;
(14) To study and evaluate all existing or proposed statutes, rules or regulations at all levels of government touching upon or affecting telecommunications policy, services, systems, programming, rates or funds and to advise the appropriate officials, agencies and councils;
(15) To acquire, construct, equip, maintain, develop and improve such facilities as may be necessary to the fulfillment of the purpose of the Part;
(16) To provide information and advice on any related matter which may be referred to it by any agency or council of State or local government;
(17) And in general to do and perform any act or function which may tend to be useful toward the development and improvement of telecommunications services within State government and which may increase the delivery of services through telecommunications programs or systems.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the possibilities of telecommunications programming, services and systems in the State of North Carolina. (1979, c. 900, s. 1.)

Editor's Note. — Subdivision (14) of G.S. 143-340, referred to in subdivision (10) of this section, was repealed by Session Laws 1989, c. 239, s. 1.

CASE NOTES

Cited in Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

§ 143B-426.11. Powers of Agency.

In order to enable it to carry out the purposes of this Part, the Agency:
(1) Has the powers of a body corporate, including the power to sue and be sued, to make contracts, to hold and own copyrights and to adopt and use a common seal and to alter the same as may be deemed expedient;
(2) May make all necessary contracts and arrangements with any parties which will serve the purposes and facilitate the business of the North Carolina Agency for Public Telecommunications; except that, the Agency may not contract or enter into any agreement for the production by the Agency of programs or programming materials with any person, group, or organization other than government agencies; principal State departments; public and noncommercial broadcast licensees;
(3) May rent, lease, buy, own, acquire, mortgage, or otherwise encumber and dispose of such property, real or personal; and construct, maintain, equip and operate any facilities, buildings, studios, equipment, materials, supplies and systems as said Board may deem proper to carry out the purposes and provisions of this Part;
(4) May establish an office for the transaction of its business at such place or places as the Board deems advisable or necessary in carrying out the purposes of this Part;
(5) May apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources for any and all of the purposes authorized in this Part; may extend or distribute the funds

in accordance with directions and requirements attached thereto or imposed thereon by the federal agency, the State of North Carolina or any political subdivision thereof, or any public or private lender or donor; and may give such evidences of indebtedness as shall be required, but no indebtedness of any kind incurred or created by the Agency shall constitute an indebtedness of the State of North Carolina or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina or any political subdivision thereof. At no time may the total outstanding indebtedness of the Agency, excluding bond indebtedness, exceed five hundred thousand dollars ($500,000) unless the Agency has consulted with the Director of the Budget;

(6) May pay all necessary costs and expenses involved in and incident to the formation and organization of the Agency and incident to the administration and operation thereof, and may pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(7) Under such conditions as the Board may deem appropriate to the accomplishment of the purposes of this Part, may distribute in the form of grants, gifts, or loans any of the revenues and earnings received by the Agency from its operations;

(8) May adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be exercised, and may provide for the creation of such divisions and for the appointment of such committees, and the functions thereof, as the Board deems necessary or expedient in facilitating the business and purposes of the Agency;

(9) The Board shall be responsible for all management functions of the Agency. The chairman shall serve as the chief executive officer, and shall have the responsibility of executing the policies of the Board. The Executive Director shall be the chief operating and administrative officer and shall be responsible for carrying out the decisions made by the Board and its chairman. The Executive Director shall be appointed by the Governor upon the recommendation of the Board and shall serve at the pleasure of the Governor. The salary of the Executive Director shall be fixed by the General Assembly in the Current Operations Appropriations Act. Subject to the provisions of the State Personnel Act and with the approval of the Board, the Executive Director may appoint, employ, dismiss and fix the compensation of such professional, administrative, clerical and other employees as the Board deems necessary to carry out the purposes of this Part; but any employee who serves as the director of any division of the Agency which may be established by the Board shall be appointed with the additional approval of the Secretary of Administration. There shall be an executive committee consisting of three of the appointed members and three of the ex officio members elected by the Board and the chairman of the Board, who shall serve as chairman of the executive committee. The executive committee may do all acts which are authorized by the bylaws of the Agency. Members of the executive committee shall serve until their successors are elected;

(10) May do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section; and

(11) May do any and all things necessary to accomplish the purposes of this Part.

Nothing herein authorizes the Agency to exercise any control over any public noncommercial broadcast licensee, its staff or facilities or over any community antenna television system (Cable TV; CATV), its staff, employees or facilities operating in North Carolina, or the Police Information Network (PIN), its staff, employees or facilities or the Judicial Department.

The property of the Agency shall not be subject to any taxes or assessments. (1979, c. 900, s. 1; 1983, c. 666; c. 717, s. 82; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1985, c. 122, ss. 3, 4; 1985 (Reg. Sess., 1986), c. 955, ss. 99-101; 2006-203, s. 107.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-426.12. Public Radio Advisory Committee — policy; creation; duties; members.

It is the policy of the State of North Carolina that at least one public radio signal shall be made available to every resident of North Carolina, that there be diversity in the kinds of public radio licensees, that there be a uniform policy for extending State financial aid to stations eligible to participate in federal funds for public radio, that State financial support shall constitute less than one half of the operating budget of any station, that program content shall not be influenced by the State by virtue of State financial support to the stations, and that technical facilities be established and operated to achieve station interconnection.

The Public Radio Advisory Committee of the North Carolina Agency on Public Telecommunications is created. That Committee shall advise the Board on the distribution of State funds to public radio licensees in North Carolina and on any matter which the Board may refer to it. There shall be nine members of said Committee; three of whom shall be representatives selected by the public radio broadcast licensees in the State; six of whom shall be at-large members chosen by the Governor from the general public. The members shall choose one of the at-large members to serve as chairman of the Committee; and that chairman shall serve ex officio as a member of the Board. The terms of the members of the Committee shall be established by the Board. (1979, c. 900, s. 1.)

Legal Periodicals. — For note, "First Amendment Claims Against Public Broadcasters: Testing the Public's Right to a Balanced Presentation," see 5 Duke L.J. 1386 (1989).

CASE NOTES

Cited in Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

§ 143B-426.13. Approval of acquisition and disposition of real property.

Any transaction relating to the acquisition or disposition of any estate or interest in real property by the North Carolina Agency for Public Telecommunications shall be subject to prior review by the Governor and Council of State, and shall become effective only after the transaction has been approved by the Governor and Council of State. Upon the acquisition of an estate in real property by the North Carolina Agency for Public Telecommunications, the fee title or other estate shall vest in and the instrument of conveyance shall name

"North Carolina Agency for Public Telecommunications" as grantee, lessee, or transferee. Upon the disposition of an interest or estate in real property, the instrument of lease conveyance or transfer shall be executed by the North Carolina Agency for Public Telecommunications. The approval of any transaction by the Governor or Council of State shall be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and the Council of State, attested by the Governor or by the private secretary to the Governor, reciting the approval, affixed to the instrument of acquisition or transfer; the certificate may be recorded as a part of the instrument, and shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement or right-of-way transactions as he deems advisable, and he may likewise delegate the review and approval of the severance of buildings and timber from the land. (1979, c. 900, s. 1.)

§ 143B-426.14. Issuance of bonds.

As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, telecommunications equipment or systems or any other matter or thing which the Agency is herein authorized to acquire, construct, equip, maintain, or operate, the Agency may at one time or from time to time issue negotiable revenue bonds of the Agency. The principal and interest of the revenue bonds shall be payable solely from the revenues to be derived from the operation of all or any part of the Agency's properties and facilities. A pledge of the net revenues derived from the operation of specified properties and facilities of the Agency may be made to secure the payment of the bonds as they mature. Revenue bonds issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The bonds and the income therefrom shall be exempt from all taxation within the State. (1979, c. 900, s. 1; 2006-203, s. 108.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-426.15. Exchange of property; removal of building, etc.

The Agency may exchange any property or properties acquired under the authority of this Chapter for other property or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, facilities, equipment, telecommunications systems or other structures, upon the payment of just compensation. (1979, c. 900, s. 1.)

§ 143B-426.16. Treasurer of the Agency.

The Board shall select its own treasurer from among the at-large members. The Board shall require a corporate surety bond of the treasurer in an amount fixed by the Board, and the premium or premiums thereon shall be paid by the Board as a necessary expense of the Agency. (1979, c. 900, s. 1.)

§ 143B-426.17. Deposit and disbursement of funds.

All Agency funds shall be handled in accordance with the Executive Budget Act. (1979, c. 900, s. 1.)

§ 143B-426.18. Audit.

The operations of the North Carolina Agency for Public Telecommunications shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1979, c. 900, s. 1; 1983, c. 913, s. 42.)

§ 143B-426.19. Purchase of supplies, material and equipment.

All the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are applicable to the North Carolina Agency for Public Telecommunications. (1979, c. 900, s. 1.)

§ 143B-426.20. Liberal construction of Part.

It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein. (1979, c. 900, s. 1.)

Part 23. Information Technology [Resource Management] Commission.

§ 143B-426.21: Recodified as § 143B-472.41 by Session Laws 1997-148, s. 2.

Editor's Note. — Section 143B-472.41 was repealed by Session Laws 2000-174, s. 1, effective September 1, 2000. As to the Information Resource Management Commission, see now G.S. 147-33.78.

Part 24. Governor's Management Committee.

§ 143B-426.22. Governor's Management Council.

(a) Creation; Membership. — The Governor's Management Council is created in the Department of Administration. The Council shall contain the following members: The Secretary of Administration, who shall serve as chairman, a senior staff officer responsible for productivity and management programs from the Departments of Commerce, Revenue, Environment and Natural Resources, Transportation, Crime Control and Public Safety, Cultural Resources, Correction, Health and Human Services, Juvenile Justice and Delinquency Prevention, and Administration; and an equivalent officer from the Offices of State Personnel, State Budget and Management, and the Governor's Program for Executive and Organizational Development. The following persons may also serve on the Council if the entity represented chooses to participate: a senior staff officer responsible for productivity and management programs from any State department not previously specified in this section, and a representative from The University of North Carolina.

(b) Powers. — The Council may:

(1) Coordinate efforts to make State government more efficient and productive;

(2) Review plans and policies submitted by participating agencies to improve agency management and productivity;
(3) Recommend to the Governor the issuance of specific Management Directive and Executive Orders that will establish management policies and procedures to be implemented by the agencies to improve agency management and productivity;
(4) Provide a clearinghouse for productivity initiatives and communicate these initiatives to all agencies;
(5) Authorize special projects on specific management and productivity improvement issues;
(6) Review plans and policies of statewide management programs such as the Incentive Pay Program, the North Carolina Employee Suggestion System, the Work Options Program, and similar productivity improvement programs; and
(7) Develop criteria for annual recognition for outstanding Government Executives. (1983, c. 540, s. 1; c. 907, s. 3; 1989, c. 727, s. 218(152); c. 751, s. 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 43; 1997-443, ss. 11A.109, 11A.119(a); 2000-137, s. 4(pp).)

§ 143B-426.23. Meetings; clerical services report.

The Council shall meet monthly or at the call of the chairman. The Department of Administration is responsible for providing clerical and other services required by the Council. The Council shall make an annual report of its work to the Governor and to the Joint Appropriations Committee of the General Assembly. (1983, c. 540, s. 1.)

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

§ 143B-426.24. North Carolina Public Employee Deferred Compensation Plan.

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of State Treasurer. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for employees of the State, any county or municipality, the North Carolina Community College System, and any political subdivision of the State. Until so established, the Board heretofore established pursuant to Executive Order XII dated November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established. Effective July 1, 2008, the Plan shall be administered by the Supplemental Retirement Board of Trustees established under G.S. 135-96.

(b)-(f) Repealed by Session Laws 2008-132, s. 3, effective July 1, 2009.

(g) It shall be the duty of the Supplemental Retirement Board to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Supplemental Retirement Board to devise a uniform Deferred Compensation Plan for teachers and employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(h1) Notwithstanding any other law, an employee of any county or municipality, an employee of the North Carolina Community College System, or an employee of any political subdivision of the State may participate in any 457 Plan adopted by the State, with the consent of the Supplemental Retirement Board and with the consent of the proper governing authority of such county, municipality, community college, or political subdivision of the State where such employee is employed.

(i) The Supplemental Retirement Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Supplemental Retirement Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. All assets of the Plan, including all deferred amounts, property and rights purchased with deferred amounts, and all income attributed thereto shall be held in trust for the exclusive benefit of the Plan participants and their beneficiaries.

(k), (*l*) Repealed by Session Laws 2008-132, s. 3, effective July 1, 2009.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Supplemental Retirement Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The State Treasurer is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) Repealed by Session Laws 2008-132, s. 3, effective July 1, 2009.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein. (1983, c. 559, s. 1; 1991, c. 389, s. 2; 1995, c. 490, s. 40; 1999-456, s. 42; 2004-137, s. 1; 2006-66, s. 20.1; 2008-132, s. 3.)

Editor's Note. — Session Laws 2008-132, s. 4, provides: "Notwithstanding the provisions of G.S. 135-91, G.S. 143B-426.24, or any other provision of law, effective from July 1, 2008, through June 30, 2009, the North Carolina 401(k) Plan and the North Carolina Public Employee Deferred Compensation Plan shall be administered by a transitional Board of Trustees. The transitional Board of Trustees shall consist of nine members, as follows:

"(1) The two members of the Board of Trustees of the North Carolina 401(k) Plan who serve by virtue of their appointment to the Board of Trustees of the Teachers' and State Employees' Retirement System by the General Assembly pursuant to G.S. 135-6(b)(4);

"(2) The two members of the Board of Trustees of the North Carolina Deferred Compensation Plan appointed by the General Assembly pursuant to G.S. 143B-426.24(2) and (3);

"(3) Two of the members of the Board of Trustees of the North Carolina 401(k) Plan who serve by virtue of their appointment to the Board of Trustees of the Teachers' and State Employees' Retirement System by the Governor pursuant to G.S. 135-6(b)(3), to be determined by the Governor;

"(4) Two of the members of the Board of Trustees of the North Carolina Deferred Compensation Plan appointed by the Governor pursuant to G.S. 143B-426.24(1), to be determined by the Governor;

"(5) The State Treasurer, ex officio, who shall serve as Chair."

Effect of Amendments. — Session Laws 2008-132, s. 3, effective July 1, 2009, rewrote the section heading; in subsection (a), added the last sentence; deleted subsections (b) through (f), (k), (l), and (n), relating to membership, terms, vacancies, ex officio members, per diems, clerical services and personnel provision and quorum; inserted "Supplemental Retirement" before "Board" throughout the section; and made minor stylistic changes.

Part 26. North Carolina Farmworker Council.

§ 143B-426.25. North Carolina Farmworker Council — creation; membership; meetings.

(a) There is established within the Department of Administration the North Carolina Farmworker Council.

(b) The North Carolina Farmworker Council shall consist of 13 members as follows:

(1) Four shall be appointed by the Governor.
(2) Two shall be appointed by the Speaker of the House of Representatives.
(3) Two shall be appointed by the President Pro Tempore of the Senate.
(4) The Secretary of the Department of Health and Human Services or the Deputy Secretary of the Department if designated by the Secretary shall serve ex officio.
(5) The Commissioner of Labor or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.
(6) The Commissioner of Agriculture or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.
(7) The Chairman of the Employment Security Commission or his designee shall serve ex officio.
(8) The Secretary of Environment and Natural Resources or his designee shall serve ex officio.

(c) Vacancies in membership of the Council shall be filled by the original appointing authority for the remainder of the unexpired term.

(d) The Governor shall appoint the chairman of the Council. At its first meeting the Council shall select a vice-chairman from its membership and a secretary. The chairman shall preside at all meetings and in his absence the vice-chairman shall act as chairman.

(e) A majority of the membership shall constitute a quorum.

(f) The initial meeting of the Council shall be called by the Governor. Subsequent meetings shall be held upon the call of the chairman or upon the written request of four members. The Council shall meet at least four times per year.

(g) Council members who are members of the General Assembly shall receive subsistence and travel allowances at the rate set forth in G.S. 120-3.1. Council members and ex officio members who are employees of the State of North Carolina shall receive travel allowances at the rate set forth in G.S. 138-6. All other Council members shall receive per diem, subsistence and travel expenses at the rate set forth in G.S. 138-5.

(h) The Department of Administration shall provide necessary clerical equipment and administrative services to the Council, provided the Council may hire and discharge its own staff if it so desires. (1983, c. 923, s. 205; 1987, c. 876, s. 29.1; 1991, c. 130, s. 1; 1995, c. 490, s. 19; 1997-443, ss. 11A.118(a), 11A.119(a).)

§ 143B-426.26. North Carolina Farmworker Council — duties; annual report.

(a) The Council shall have the following duties:

(1) Study and evaluate the existing system of delivery of services to farmworkers.

(2) Seek effective methods for the improvement of living, working, and related problems affecting farmworkers.

(3) Recommend a mechanism for coordinating all farmworkers' activities in the State.

(4) Identify and make recommendations to alleviate gaps and duplication of services or programs.

(5) Propose and review legislation relating to farmworkers.

(b) By February 1 of each year, the Council shall make a report describing its activities for the preceding calendar year to the Governor and General Assembly. (1983, c. 923, s. 205.)

§§ 143B-426.27 through 143B-426.29: Reserved for future codification purposes.

Part 27. North Carolina Board of Science and Technology.

§§ 143B-426.30, 143B-426.31: Recodified as §§ 143B-472.87, 143B-472.88 by Session Laws 2001-424, s. 7.6, effective July 1, 2001.

§§ 143B-426.32 through 143B-426.34: Reserved for future codification purposes.

Part 27A. Martin Luther King, Jr. Commission.

§ 143B-426.34A. Martin Luther King, Jr. Commission — creation; powers and duties.

There is hereby created the Martin Luther King, Jr. Commission of the Department of Administration. The Martin Luther King, Jr. Commission shall have the following functions and duties:

(1) To encourage appropriate ceremonies and activities throughout the State relating to the observance of the legal holiday honoring Martin Luther King, Jr.'s birthday;

(2) To provide advice and assistance to local governments and private organizations across the State with respect to the observance of such holiday; and

(3) To promote among the people of North Carolina an awareness and appreciation of the life and work of Martin Luther King, Jr. (1993, c. 502, s. 1.)

§ 143B-426.34B. Martin Luther King, Jr. Commission — members; selection; quorum; compensation.

(a) The Martin Luther King, Jr. Commission of the Department of Administration shall consist of 16 members. The Governor shall appoint 12 members, one of whom he shall designate as the chair of the Commission. The Governor shall make reasonable efforts to assure that his appointees are equally distributed geographically throughout the State. The President Pro Tempore of the Senate shall appoint two members and the Speaker of the House of Representatives shall appoint two members. The terms of four of the members appointed by the Governor shall expire June 30, 1997. The terms of four of the members appointed by the Governor shall expire June 30, 1996. The terms of four of the members appointed by the Governor shall expire June 30, 1994. The terms of the members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire June 30, 1995. At the end of the respective terms of office of the initial members of the Commission, the appointment of their successors shall be for terms of four years. No member of the Commission shall serve more than two consecutive terms. A member having served two consecutive terms shall be eligible for reappointment one year after the expiration of the second term. A member who fails to attend any three meetings of the Commission shall be dismissed automatically from the Commission upon failure to attend the third such meeting. Provided, however, that the Commission may, by majority vote, reinstate any such dismissed member for the remainder of the unexpired term for good cause shown for failing to attend the meetings. Vacancies shall be filled by the appointing officer for the unexpired term.

(b) A majority of the Commission shall constitute a quorum for the transaction of business.

(c) Members of the Commission shall be compensated for their services as authorized by G.S. 138-5. Members of the Commission who are State officials or employees shall be reimbursed as authorized by G.S. 138-6.

(d) The Department of Administration shall provide necessary clerical and administrative support services to the Commission. (1993, c. 502, s. 1.)

Part 28. Office of the State Controller.

§ 143B-426.35. Definitions.

As used in this Part, unless the context clearly indicates otherwise:

(1) "Accounting system" means the total structure of records and procedures which discover, record, classify, and report information on the financial position and operating results of a governmental unit or any of its funds, balanced account groups, and organizational components.
(2) "Office" means the Office of the State Controller.
(3) "State agency" means any State agency as defined in G.S. 147-64.4(4).
(4) "State funds" means any moneys appropriated by the General Assembly, or moneys collected by or for the State, or any agency of the State, pursuant to the authority granted in any State laws. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1991, c. 542, s. 13.)

§ 143B-426.36. Office of the State Controller; creation.

There is created the Office of the State Controller. This office shall be located administratively within the Department of Administration but shall exercise all of its prescribed statutory powers independently of the Secretary of Administration. (1985 (Reg. Sess., 1986), c. 1024, s. 1.)

§ 143B-426.37. State Controller.

(a) The Office of the State Controller shall be headed by the State Controller who shall maintain the State accounting system and shall administer the State disbursing system.

(b) The State Controller shall be a person qualified by education and experience for the office and shall be appointed by the Governor subject to confirmation by the General Assembly. The term of office of the State Controller shall be for seven years; the first full term shall begin July 1, 1987.

The Governor shall submit the name of the person to be appointed, for confirmation by the General Assembly, to the President of the Senate and the Speaker of the House of Representatives by May 1 of the year in which the State Controller is to be appointed. If the Governor does not submit the name by that date, the President of the Senate and the Speaker of the House of Representatives shall submit a name to the General Assembly for confirmation.

In case of death, incapacity, resignation, removal by the Governor for cause, or vacancy for any other reason in the Office of State Controller prior to the expiration of the term of office while the General Assembly is in session, the Governor shall submit the name of a successor to the President of the Senate and the Speaker of the House of Representatives within four weeks after the vacancy occurs. If the Governor does not do so, the President of the Senate and the Speaker of the House of Representatives shall submit a name to the General Assembly for confirmation.

In case of death, incapacity, resignation, removal by the Governor for cause, or vacancy for any other reason in the Office of State Controller prior to the expiration of the term of office while the General Assembly is not in session, the Governor shall appoint a State Controller to serve on an interim basis pending confirmation by the General Assembly.

(c) The salary of the State Controller shall be set by the General Assembly in the Current Operations Appropriations Act. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 27.)

§ 143B-426.38. Organization and operation of office.

(a) The State Controller may appoint a Chief Deputy State Controller. The salary of the Chief Deputy State Controller shall be set by the State Controller.

(b) The State Controller may appoint all employees necessary to carry out his powers and duties. These employees shall be subject to the State Personnel Act.

(c) All employees of the office shall be under the supervision, direction, and control of the State Controller. Except as otherwise provided by this Part, the State Controller may assign any function vested in him or his office to any subordinate officer or employee of the office.

(d) The State Controller may, subject to the provisions of G.S. 147-64.7(b)(2), obtain the services of independent public accountants, qualified management consultants, and other professional persons or experts to carry out his powers and duties.

(e) The State Controller shall have legal custody of all books, papers, documents, and other records of the office.

(f) The State Controller shall be responsible for the preparation of and the presentation of the office budget request, including all funds requested and all receipts expected for all elements of the budget.

(g) The State Controller may adopt regulations for the administration of the office, the conduct of employees of the office, the distribution and performance of business, the performance of the functions assigned to the State Controller and the office of the State Controller, and the custody, use, and preservation of the records, documents, and property pertaining to the business of the office. (1985 (Reg. Sess., 1986), c. 1024, s. 1.)

§ 143B-426.39. Powers and duties of the State Controller.

The State Controller shall:

(1) Prescribe, develop, operate, and maintain in accordance with generally accepted principles of governmental accounting, a uniform state accounting system for all state agencies. The system shall be designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds. The State Controller may elect to review a State agency's compliance with prescribed uniform State accounting system standards, as well as applicable legal and constitutional requirements related to compliance with such standards.

(2) On the recommendation of the State Auditor, prescribe and supervise the installation of any changes in the accounting systems of an agency that, in the judgment of the State Controller, are necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful statements and reports. The State Controller shall be responsible for seeing that a new system is designed to accumulate information required for the preparation of budget reports and other financial reports.

(3) Maintain complete, accurate and current financial records that set out all revenues, charges against funds, fund and appropriation balances, interfund transfers, outstanding vouchers, and encumbrances for all State funds and other public funds including trust funds and institutional funds available to, encumbered, or expended by each State agency, in a manner consistent with the uniform State accounting system.

(4) Prescribe the uniform classifications of accounts to be used by all State agencies including receipts, expenditures, assets, liabilities, fund types, organization codes, and purposes. The State Controller shall also, after consultation with the Office of State Budget and Management, prescribe a form for the periodic reporting of financial accounts, transactions, and other matters that is compatible with systems and reports required by the State Controller under this section. Additional records, accounts, and accounting systems may be maintained by agencies when required for reporting to funding sources provided prior approval is obtained from the State Controller.

(4a) Prescribe that, unless exempted by the State Controller, newly created or acquired component units of the State are required to have the same fiscal year as the State.

(5) Prescribe the manner in which disbursements of the State agencies shall be made and may require that warrants, vouchers, electronic payments, or checks, except those drawn by the State Auditor, State Treasurer, and Administrative Officer of the Courts, shall bear two signatures of officers as designated by the State Controller.

(6) Prescribe, develop, operate, and maintain a uniform payroll system, in accordance with G.S. 143B-426.40G and G.S. 143C-6-6 for all State agencies. This uniform payroll system shall be designed to assure compliance with all legal and constitutional requirements. When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to operate its own payroll system. Any State agency authorized by the State Controller to operate its own payroll system shall comply with the requirements adopted by the State Controller.

(7) Keep a record of the appropriations, allotments, expenditures, and revenues of each State agency.

(8) Make appropriate reconciliations with the balances and accounts kept by the State Treasurer.

(9) Develop, implement, and amend as necessary a uniform statewide cash management plan for all State agencies in accordance with G.S. 147-86.11.

(9a) Implement a statewide accounts receivable program in accordance with Article 6B of Chapter 147 of the General Statutes.

(10) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management each month, a report summarizing by State agency and appropriation or other fund source, the results of financial transactions. This report shall be in the form that will most clearly and accurately set out the current fiscal condition of the State. The State Controller shall also furnish each State agency a report of its transactions by appropriation or other fund source in a form that will clearly and accurately present the fiscal activities and condition of the appropriation or fund source.

(11) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management, at the end of each quarter, a report on the financial condition and results of operations of the State entity for the period ended. This report shall clearly and accurately present the condition of all State funds and appropriation balances and shall include comments, recommendations, and concerns regarding the fiscal affairs and condition of the State.

(12) Prepare on or before October 31 of each year, a Comprehensive Annual Financial Report in accordance with generally accepted accounting principles of the preceding fiscal year, in accordance with G.S. 143B-426.40H. The report shall include State agencies and component units of the State, as defined by generally accepted accounting principles.

(13) Perform additional functions and duties assigned to the State Controller, within the scope and context of the State Budget Act, Chapter 143C of the General Statutes.

(14) through (16) Recodified as G.S. 143B-472.42 (1), (2), and (3) by Session Laws 1997-148, s. 3. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1987, c. 738, s. 59(a)(2); 1989, c. 239, s. 4; 1989 (Reg. Sess., 1990), c. 1024, s. 37; 1991, c. 542, s. 14; 1993, c. 512, s. 2; 1993 (Reg. Sess., 1994), c. 777, s. 1(a); 1997-148, s. 3; 2000-67, s. 7(b); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2005-65, s. 1; 2005-276, s. 6.19; 2006-66, s. 6.19(a), (c); 2006-203, s. 8; 2006-221, s. 3A; 2006-259, s. 40(a), (c).)

BEACON Data Integration. — Session Laws 2008-107, s. 6.16(a)-(e), as amended by Session Laws 2008-118, s. 2.3, provides: "(a) The Office of the State Controller, in cooperation with the State Chief Information Officer, shall begin implementation of the Beacon Strategic Plan for Data Integration, issued in April 2008. This plan shall be implemented under the governance of the BEACON Project Steering Committee and in conjunction with leadership in appropriate State agencies and with the support and cooperation of the Office of State Budget and Management.

"While it is the intent that this initiative provide broad access to information across State government, the plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal and State law shall be limited to appropriate and authorized persons.

"(b) The State Controller shall serve as the Chairman of the BEACON Project Steering Committee. The other members of the committee shall be the State Chief Information Officer, the State Treasurer, the Attorney General, the Secretary of Correction, the Administrative Officer of the Courts, the State Budget Officer, the Secretary of Administration, and the Chief Financial Officer of the Department of Transportation.

"(c) Of the funds appropriated from the General Fund to the North Carolina Information Technology Fund, the sum of five million dollars ($5,000,000) for the 2008-2009 fiscal year shall be used for BEACON data integration as provided by subsection (a) of this section. Funds to support this activity shall also be the unexpended balance from the funds appropriated for BEACON/Data Integration Funds in Section 5.3(b) of S.L. 2007-323. The Office of the State Controller, with the support of the Office of State Budget and Management, shall identify and make all efforts to secure any matching funds or other resources to assist in funding this initiative.

"(d) Funds authorized in this section may be used for the following purposes:

"(1) To support the cost of a project manager to conduct the activities outlined herein reportable to the Office of the State Controller.

"(2) To support two business analysts to provide support to the program manager and agencies in identifying requirements under this program.

"(3) To establish a Business Intelligence Competency Center (BICC), a collaborative organization comprised of both technical and business stakeholders, to support and manage the business need for analytics through the development of standards and best practices.

"(4) To engage a vendor to implement the Strategic Implementation Plan as required herein.

"(5) To conduct integration activities as approved by the BEACON Project Steering Committee. The State Chief Information Officer shall use current enterprise licensing to implement these integration activities.

"(e) Prior to the convening of the 2009 General Assembly, the Office of the State Controller shall provide semiannual reports to the Joint Legislative Oversight Committee for Information Technology. Written reports shall be submitted not later than October 1, 2008, and April 1, 2009, with presentations of the reports at the first session of the Joint Legislative Oversight Committee on Information Technology following the written report submission date. The Joint Legislative Oversight Committee on Information Technology shall then report to the Joint Legislative Commission on Governmental Operations." For prior similar provisions, see Session Laws 2007-323, s. 6.8.

Session Laws 2009-451, s. 6.9(a)-(c), provides: "(a) The Office of the State Controller, in cooperation with the State Chief Information Officer, shall continue the implementation of the BEACON Strategic Plan for Data Integration, issued in April 2008. The plan shall be implemented under the governance of the BEACON Project Steering Committee and in conjunction with leadership in appropriate State agencies and with the support and cooperation of the Office of State Budget and Management.

"While it is the intent that this initiative provide broad access to information across State government, the plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal or State law shall be limited to appropriate and authorized persons.

"(b) The Office of State Controller shall give the Criminal Justice Data Integration Pilot Program first priority for funding and for system development and implementation.

"The Office of State Controller shall determine the amount of funding required to (i) fully support the Criminal Justice Data Integration Pilot Program effort and (ii) develop full operational capability in Wake County during the 2009-2010 fiscal year. The Office of State Controller shall not otherwise obligate these funds.

"(c) By September 1, 2009, the Office of State Controller shall report to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division on (i) funding requirements and sources of funds for the Criminal Justice Data Integration Pilot Program for the 2009-2010 fiscal year and (ii) the anticipated uses of any remaining funds for the BEACON Data Integration Program. The Office of State Controller shall spend funds to support the BEACON Data Integration Program only as is specifically authorized in Section 6.16(d) of S.L. 2008-107.

"By October 1, 2009, the Office of State Controller, in coordination with the State Chief Information Officer, shall also report on future costs for implementing the BEACON Data Integration Program, including outside vendor costs. This report shall include a detailed explanation of potential costs and the efforts participating agencies are making to reduce these costs. This report shall be presented to the Joint Legislative Oversight Committee on Information Technology and written reports shall be provided to the House of Representatives and Senate Appropriations Committees and to the Fiscal Research Division."

Editor's Note. — Section 143B-472.42, referred to in subdivision (14) of this section, was repealed by Session Laws 2000-174, s. 1, effective September 1, 2000.

Session Laws 2006-66, s. 6.19(a) and (c), as added by Session Laws 2006-221, s. 3A, substituted "G.S. 143B-426.39E" for "G.S. 143B-426.39B," which had been substituted for "G.S. 143-3.2" by Session Laws 2006-203, s. 8, and substituted "G.S. 143B-426.39F" for "G.S. 143B-426.39C" which had been substituted for "G.S. 143-20.1" by Session Laws 2006-203, s. 8. The references to G.S. 143B-426.39E and G.S. 143B-426.39F have been changed to G.S. 143B-426.40G and G.S. 143B-426.40H, respectively, at the direction of the Revisor of Statutes.

Session Laws 2006-259, s. 40(a) and (c), which made identical changes to those made by Session Laws 2006-66, s. 6.19(a) and (c), as added by Session Laws 2006-221, s. 3A, was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

Session Laws 2007-323, s. 6.8(a), provides: "The Office of the State Controller, in cooperation with the State Chief Information Officer, shall develop a Strategic Implementation Plan for the integration of databases and the sharing of information among State agencies and programs. This plan shall be developed and implemented under the governance of the BEACON Project Steering Committee and in conjunction with leadership in State agencies and with the support and cooperation of the Office of State Budget and Management. This plan shall include the following:

"(1) Definition of requirements for achieving statewide data integration.

"(2) An implementation schedule to be reviewed and adjusted by the General Assembly annually based on funding availability.

"(3) Priorities for database integration, commencing with the integration of databases that the BEACON Project Steering Committee identifies as most beneficial in terms of maximizing fund availability and realizing early benefits.

"(4) Identification of current statewide and agency data integration efforts and a long-term strategy for integrating those projects into this effort.

"(5) Detailed cost information for development and implementation, as well as five years of operations and maintenance costs.

"While it is the intent that this initiative provide broad access to information across State government, the plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal and State law shall be limited to appropriate and authorized persons."

Session Laws 2007-323, s. 6.8(b), provides: "The State Controller shall serve as Chairman of the BEACON Project Steering Committee (Committee). The other members of the Committee shall include the State Chief Information Officer, the State Personnel Director, the Deputy State Budget Director, and the Department of Transportation's Chief Financial Officer."

Session Laws 2007-323, s. 6.8(c) provides: "Of the funds appropriated from the General Fund to the North Carolina Information Technology Fund, the sum of five million dollars ($5,000,000) for the 2007-2008 fiscal year shall be used for BEACON data integration as provided by subsection (a) of this section. The Office of the State Controller, in coordination with State agencies and with the support of the Office of State Budget and Management, shall identify and make all efforts to secure any federal matching funds or other resources to assist in funding this initiative."

"Funds authorized in this section may be used for the following purposes:

"(1) To support the cost of a project manager to conduct the activities outlined herein reportable to the Office of the State Controller.

"(2) To support two business analysts to provide support to the program manager and agencies in identifying requirements under this program.

"(3) To engage a vendor to develop the Strategic Implementation Plan as required herein.

"(4) To conduct integration activities as approved by the BEACON Project Steering Committee. The State Chief Information Officer shall utilize current enterprise licensing to implement these integration activities."

Session Laws 2007-323, s. 6.8(d), provides: "The Office of the State Controller, with the assistance of the State Chief Information Officer, shall present the Strategic Implementation Plan outlined by this section to the 2007 Regular Session of the General Assembly when it convenes in 2008 for action as deemed appropriate. This plan shall be completed not later than April 30, 2008.

"Prior to the reconvening of the 2007 Regular Session of the General Assembly in 2008, the Office of the State Controller shall provide semiannual reports to the Joint Legislative Oversight Committee for Information Technology. Written reports shall be submitted not later than October 1, 2007, and April 1, 2008, with presentations of the reports at the first session of the Joint Legislative Oversight Committee on Information Technology following the written report submission date. The Joint Legislative Oversight Committee on Information Technology shall then report to the Joint Legislative Commission on Governmental Operations."

Session Laws 2007-323, s. 6.8(e), provides: "Neither the development of the Strategic Information Plan nor the provisions of this section shall place any new or additional requirements upon The University of North Carolina or the North Carolina Community College System."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provi-

sions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5, is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-203, s. 8, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subdivision (5), substituted "made and may require that warrants, vouchers, electronic payments, or checks, except those drawn by the State Auditor, State Treasurer, and Administrative Officer of the Courts, shall bear two signatures of officers as designated by the State Controller" for "made, in accordance with G.S. 143-3"; in subdivision (6), substituted "G.S. 143B-426.39B and G.S. 143C-6-6" for "G.S. 143-3.2 and 143-34.1"; in subdivision (7), substituted "State agency" for "State agency, in accordance with G.S. 143-20"; in subdivision (12), substituted "G.S. 143B-426.39C" for "G.S. 143-20.1"; and in subdivision (13), substituted "the State Budget Act, Chapter 143C of the General Statutes." for "the Executive Budget Act, Chapter 143, Article 1 of the General Statutes." See Editor's note.

§ 143B-426.39A: Recodified as § 143B-472.43 by Session Laws 1997-148, s. 4.

Editor's Note. — Section 143B-472.43 was repealed by Session Laws 2000-174, s. 1, effective September 1, 2000.

§ 143B-426.39B. Compliance review work papers not public records.

Work papers and other supportive material created as a result of a compliance review conducted under G.S. 143B-426.39(1) are not public records under Chapter 132 of the General Statutes. The State Controller shall make all work papers and other supportive materials available to the State Auditor. The State Controller may, unless otherwise prohibited by law, make work papers available for inspection by duly authorized representatives of the State and federal governments in connection with matters officially before them. Any report resulting from a compliance review is a public record under Chapter 132 of the General Statutes. (2005-65, s. 2.)

Part 28A. State Information Processing Services.

§ 143B-426.40: Recodified as § 143B-472.44 by Session Laws 1997-148, s. 5.

Editor's Note. — Section 143B-472.44 was repealed by Session Laws 2000-174, s. 1, effective September 1, 2000. As to the Office of Information Technology Services, see now G.S. 147-33.77.

§ 143B-426.40A. Assignments of claims against State.

(a) Definitions. — The following definitions apply in this section:

(1) Assignment. An assignment or transfer of a claim, or a power of attorney, an order, or another authority for receiving payment of a claim.

(2) Claim. A claim, a part or a share of a claim, or an interest in a claim, whether absolute or conditional.
(3) Qualified charitable organization. A charitable organization that is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.
(4) State employee credit union. A credit union organized under Chapter 54 of the General Statutes whose membership is at least one-half employees of the State.
(5) The State. The State of North Carolina and any department, bureau, or institution of the State of North Carolina.

(b) Assignments Prohibited. — Except as otherwise provided in this section, any assignment of a claim against the State is void, regardless of the consideration given for the assignment, unless the claim has been duly audited and allowed by the State and the State has issued a warrant for payment of the claim. Except as otherwise provided in this section, the State shall not issue a warrant to an assignee of a claim against the State.

(c) Assignments in Favor of Certain Entities Allowed. — This section does not apply to an assignment in favor of:
(1) A hospital.
(2) A building and loan association.
(3) A uniform rental firm in order to allow an employee of the Department of Transportation to rent uniforms that include Day-Glo orange shirts or vests as required by federal and State law.
(4) An insurance company for medical, hospital, disability, or life insurance.

(d) Assignments to Meet Child Support Obligations Allowed. — This section does not apply to assignments made to meet child support obligations pursuant to G.S. 110-136.1.

(e) Assignments for Prepaid Legal Services Allowed. — This section does not apply to an assignment for payment for prepaid legal services.

(f) Payroll Deduction for State Employees' Credit Union Accounts Allowed. — An employee of the State who is a member of a State employee credit union may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum for deposit to any credit union accounts, purchase of any credit union shares, or payment of any credit union obligations agreed to by the employee and the State Employees' Credit Union.

(f1) Payroll Deduction for Contributions to the Parental Savings Fund Allowed. — An employee of the State may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum for deposit in the Parental Savings Trust Fund administered by the State Education Assistance Authority.

(g) Payroll Deduction for Payments to Certain Employees' Associations Allowed. — An employee of the State or any of its political subdivisions, institutions, departments, bureaus, agencies or commissions, or any of its local boards of education or community colleges, who is a member of a domiciled employees' association that has at least 2,000 members, 500 of whom are employees of the State, a political subdivision of the State, or public school employees, may authorize, in writing, the periodic deduction each payroll period from the employee's salary or wages a designated lump sum to be paid to the employees' association. A political subdivision may also allow periodic deductions for a domiciled employees' association that does not otherwise meet the minimum membership requirements set forth in this paragraph.

An employee of any local board of education who is a member of a domiciled employees' association that has at least 40,000 members, the majority of whom are public school teachers, may authorize in writing the periodic deduction each payroll period from the employee's salary or wages a designated lump sum or sums to be paid for dues and voluntary contributions for the employees' association.

An authorization under this subsection shall remain in effect until revoked by the employee. A plan of payroll deductions pursuant to this subsection for employees of the State and other association members shall become void if the employees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. This subsection does not apply to county or municipal governments or any local governmental unit, except for local boards of education.

(h) Payroll Deduction for State Employees Combined Campaign Allowed. — Subject to rules adopted by the State Controller, an employee of the State may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum to be paid to satisfy the employee's pledge to the State Employees Combined Campaign.

(i) Payroll Deduction for Public School and Community College Employees' Contributions to Charitable Organizations Allowed. — Subject to rules adopted by the State Controller, an employee of a local board of education or community college may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the board of education or community college of a designated lump sum to be contributed to a qualified charitable organization that has first been approved by the employee's board of education or community college board.

(j) Payroll Deduction for University of North Carolina System Employees' Contributions to Certain Charitable Organizations Allowed. — Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution of a designated lump sum to be contributed to a qualified charitable organization that exists to support athletic or charitable programs of the constituent institution and that has first been approved by the President of The University of North Carolina as existing to support athletic or charitable programs. If a payroll deduction plan under this subsection results in additional costs to a constituent institution, these costs shall be paid by the qualified charitable organizations receiving contributions under the plan.

(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. — Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities.

(*l*) Assignment of Payments From the Underground Storage Tank Cleanup Funds. — This section does not apply to an assignment of any claim for payment or reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94B or the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94D. (2006-66, s. 6.19(a), (b); 2006-203, s. 9; 2006-221, s. 3A; 2006-259, s. 40(a), (b); 2006-264, s. 67(b).)

Editor's Note. — Session Laws 2006-203, s. 9, enacted this section as G.S. 143B-426.39A, and was recodified as G.S. 143B-426.39D by Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A; it was recodified as G.S. 143B-426.40A at the direction of the Revisor of Statutes.

Session Laws 2006-66, s. 6.19(b), as added by Session Laws 2006-221, s. 3A, effective July 1, 2007, stated that if House Bill 914, 2005 Regular Session [2006-203], becomes law, effective July 1, 2007, the same amendment to G.S. 143-3.3(g) made by Section 6.35 of S.L. 2005-276 is also made to G.S. 143B-426.39D(g) [now G.S. 143B-426.40A(g)], as enacted by Section 9 of House Bill 914 [2006-203] and recodified by Section 6.19(a) of this section.

Session Laws 2006-203, s. 126, makes this Part effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-259, s. 40(a) and (b), which made identical changes to those made by Session Laws 2006-66, s. 6.19(a) and (b), as added by Session Laws 2006-221, s. 3A, was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

Session Laws 2006-264, s. 67(b), provided that if House Bill 914, 2005 Regular Session [2006-203], became law, then the same amendment made to G.S. 143-3.3(g) by Session Laws 2006-264, s. 67(a), would be made to G.S. 143B-426.39D(g) [now 143B-426.40A(g)].

Legal Periodicals. — As to assignments in general, see 13 N.C. L. Rev. 113, 118 (1935).

CASE NOTES

Policy behind this "anti-assignment" statute does not require that an unpaid indemnitee be precluded from bringing its claim. Ledbetter Bros. v. North Carolina Dep't of Transp., 68 N.C. App. 97, 314 S.E.2d 761 (1984).

Applied in Bolton Corp. v. State, 95 N.C. App. 596, 383 S.E.2d 671 (1989).

OPINIONS OF ATTORNEY GENERAL

Deduction from State Employee's Check of Wage Earner's Plan Payments Pursuant to Chapter XIII of the Bankruptcy Act Is Permissible. — See opinion of Attorney General to Mr. Henry Bridges, State Auditor, 41 N.C.A.G. 277 (1971), opinion rendered under G.S. 147-62.

Employee contributions to charitable organizations may not be deducted from the University payroll at the request of the employee for payment to such charitable organization by the University. See opinion of Attorney General to Mr. Clairborne S. Jones, 44 N.C.A.G. 264 (1975), opinion rendered under G.S. 147-62.

Qualification for Payroll Deductions by Employee Association. — In order to qualify for the privilege of payroll deductions, an employee association must meet the following criteria: (1) the association must be domiciled in North Carolina, i.e., it must have a registered agent for service of process in the state and maintain an office in the state with a resident officer, director, managing agent or member of the governing body authorized to accept payment of the payroll deductions; (2) the association must have at least 2000 members; (3) the majority of the association's members must be employees of the state or public schools; and (4) an employee must authorize the deduction in writing. See opinion of Attorney General to Susan H. Ehringhaus, Vice Chancellor and General Counsel, University of North Carolina, 1999 N.C. AG LEXIS 34 (10/19/99).

Part 28C. Accounting Systems.

§ 143B-426.40G. Issuance of warrants upon State Treasurer; delivery of warrants and disbursements for non-State entities.

(a) The State Controller shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer. All warrants upon the State Treasurer shall be signed by the State Controller, who before issuing them shall determine the legality of payment and the correctness of the accounts. All warrants issued for non-State entities shall be delivered by the appropriate agency to the entity's legally designated recipient by United States mail or its equivalent, including electronic funds transfer.

When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to make expenditures through a disbursing account with the State Treasurer. The State Controller shall authorize the Judicial Department and the General Assembly to make expenditures through such disbursing accounts. All disbursements made to non-State entities shall be delivered by the appropriate agency to the entity's legally designated recipient by United States mail or its equivalent, including electronic funds transfer. All deposits in these disbursing accounts shall be by the State Controller's warrant. A copy of each voucher making withdrawals from these disbursing accounts and any supporting data required by the State Controller shall be forwarded to the Office of the State Controller monthly or as otherwise required by the State Controller. Supporting data for a voucher making a withdrawal from one of these disbursing accounts to meet a payroll shall include the amount of the payroll and the employees whose compensation is part of the payroll.

A central payroll unit operating under the Office of the State Controller may make deposits and withdrawals directly to and from a disbursing account. The disbursing account shall constitute a revolving fund for servicing payrolls passed through the central payroll unit.

The State Controller may use a facsimile signature machine in affixing his signature to warrants.

(b) The State Treasurer may impose on an agency a fee of fifteen dollars ($15.00) for each check drawn against the agency's disbursing account that causes the balance in the account to be in overdraft or while the account is in overdraft. The financial officer shall pay the fee from non-State or personal funds to the General Fund to the credit of the miscellaneous nontax revenue account by the agency. (2006-66, s. 6.19(a); 2006-203, s. 9; 2006-221, s. 3A; 2006-259, s. 40(a).)

Editor's Note. — Session Laws 2006-203, s. 9, enacted this section as G.S. 143B-426.39B, and was recodified as G.S. 143B-426.39F by Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A; it was recodified as G.S. 143B-426.40G at the direction of the Revisor of Statutes.

Session Laws 2006-203, s. 126, makes this Part effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-259, s. 40(a), which made identical changes to those made by Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A, was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

§ 143B-426.40H. Annual financial information.

Every fiscal year, all State agencies and component units of the State, as defined by generally accepted accounting principles, shall prepare annual financial information on all funds administered by them no later than 60 days after the end of the State's fiscal year then ended in accordance with generally accepted accounting principles as described in authoritative pronouncements and interpreted or prescribed by the State Controller, and in the form and time frame required by the State Controller. The State Controller shall publish guidelines specifying the procedures to implement the necessary records, procedures, and accounting systems to reflect these statements on the proper basis of accounting.

Accordingly, the State Controller shall combine the financial information for the various agencies into a Comprehensive Annual Financial Report for the State of North Carolina in accordance with generally accepted accounting principles. These statements, along with the opinion of the State Auditor, shall be published as the official financial statements of the State and shall be distributed to the Governor, the Office of State Budget and Management, members of the General Assembly, heads of departments, agencies, and institutions of the State, and other interested parties. The State Controller shall notify the Director of the Budget of any State agencies and component units of the State, as defined by generally accepted accounting principles, that have not complied fully with the requirements of this section within the specified time, and the Director of the Budget shall employ whatever means necessary, including the withholding of allotments, to ensure immediate corrective actions. (2006-66, s. 6.19(a); 2006-203, s. 9; 2006-221, s. 3A; 2006-259, s. 40(a).)

Editor's Note. — Session Laws 2006-203, s. 9, enacted this section as G.S. 143B-426.39C, and was recodified as G.S. 143B-426.39F by Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A; it was recodified as G.S. 143B-426.40H at the direction of the Revisor of Statutes.

Session Laws 2006-259, s. 40(a), which made identical changes to those made by Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A, was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

Part 29. Board of Trustees of the North Carolina Public Employee Special Pay Plan.

§ 143B-426.41. Board of Trustees of the North Carolina Public Employee Special Pay Plan.

(a) The Governor shall, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Special Pay Plan, which when established shall be constituted as an agency of the State of North Carolina within the Department of Administration. The Board shall adopt and implement an Internal Revenue Service approved Special Pay Plan for State employees, which shall enhance, and not diminish, existing Special Pay benefits. A Special Pay Plan is a qualified retirement plan under section 401(a) of the Internal Revenue Code, which is approved by the Internal Revenue Service, that reduces the federal tax burden on special compensation payments made on behalf of State employees which if paid directly to a State employee would be compensation income within the meaning of the Internal Revenue Code.

(b) The Board shall consist of seven voting members, as follows:

(1) The State Personnel Director.
(2) The State Budget Officer, who shall serve as chair.
(3) The State Treasurer.
(4) A State employee who has knowledge of benefits and benefit administration appointed by the Governor.
(5) An employee of a public school system administrative unit who is knowledgeable about payroll and benefit matters, appointed by the Governor.
(6) An employee of The University of North Carolina System who is knowledgeable about payroll and benefit matters, appointed by the Governor.
(7) An employee of the Community College System who is knowledgeable about payroll and benefit matters, appointed by the Governor.

Any member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present at that meeting. The initial term of the member appointed pursuant to subdivisions (4) and (5) of this subsection shall end July 1, 2004, and, thereafter, the member shall serve terms of four years. The initial term of the member appointed pursuant to subdivisions (6) and (7) of this subsection shall end July 1, 2006, and, thereafter, the member shall serve terms of four years.

(c) The Board may delegate the performance of its administrative duties as it deems appropriate, including coordination and administration of the Plan. Prior to contracting for such services, the Board shall seek written proposals.

(d) The Plan shall be limited to employees age 55 or older whose Special Pay totals five thousand dollars ($5,000) or more per year. The Board may designate appropriate investment vehicles, trust services, and administrative services from any company duly authorized to conduct business in this State. Prior to contracting for any such services, the Board shall seek written proposals. The Board may establish, alter, amend, and modify the Special Pay Plan, to the extent it deems necessary or desirable, for the purpose of facilitating the administration, investment, and maintenance of assets acquired by the investment of Special Pay Plan funds. The Board of Trustees, may, however, exclude any categories of compensation or set floors or ceilings in order to ameliorate any hardships or unintended consequences.

Prior to implementing a Special Pay Plan, the Board shall investigate participation options and weigh the advantages and disadvantages to both the State and State employees of various participation options available.

The Special Pay Plan approved by the Board shall include the following components:

(1) The Plan shall require permanent savings for all State employees participating in the Special Pay Plan of no less than the lesser of seven and sixty-five hundredths percent (7.65%) or the FICA percentage applicable to all Special Pay subject to the Plan.

(2) State employees who elect and are entitled to immediate distribution from the Plan shall be guaranteed payment of the entire amount of Special Pay, plus earnings, and less any mandatory income tax withholding in no more than seven days from the date payment is made to the Plan on behalf of the State employee.

(3) The Plan shall phase in participation in the Special Pay Plan by State agencies as directed by the Board.

(e) A majority of the Board shall constitute a quorum for the transaction of business. (2002-126, s. 28.6.)

Article 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-427. Department of Commerce — creation.

There is hereby recreated and reconstituted a Department to be known as the "Department of Commerce," with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article. (1977, c. 198, s. 1; 1989, c. 751, s. 7(23); 1991 (Reg. Sess., 1992), c. 959, ss. 44, 45.)

Legal Periodicals. — For article, "The Evolution of Modern North Carolina Environmental and Conservation Policy Legislation," see 29 Campbell L. Rev. 535 (2007).

§ 143B-428. Department of Commerce — declaration of policy.

It is hereby declared to be the policy of the State of North Carolina to actively encourage the expansion of existing environmentally sound North Carolina industry; to actively encourage the recruitment of environmentally sound national and international industry into North Carolina through industrial recruitment efforts and through effective advertising, with an emphasis on high-wage-paying industry; to promote the development of North Carolina's labor force to meet the State's growing industrial needs; to promote the growth and development of our travel and tourist industries; to promote the development of our State ports; and to assure throughout State government, the coordination of North Carolina's economic development efforts. (1977, c. 198, s. 1; 1989, c. 751, s. 7(24); 1991 (Reg. Sess., 1992), c. 959, s. 46; 2003-340, s. 1.10.)

§ 143B-429. Department of Commerce — duties.

It shall be the duty of the Department of Commerce to provide for and promote the implementation of the declared policy of the State of North Carolina as provided in G.S. 143B-428, to promote and assist in the total economic development of North Carolina in accord with such declared policy and to perform such other duties and functions as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. (1977, c. 198, s. 1; 1989, c. 751, s. 7(25); 1991 (Reg. Sess., 1992), c. 959, s. 47.)

Editor's Note. — Session Laws 2003-284, ss. 12.4(a) through (e), provide: "(a) Funds appropriated to the Department of Commerce for the One North Carolina — Industrial Recruitment Competitive Fund, unless specifically allocated in this act for another purpose, shall be used to continue the Fund. The purpose of the Fund is to provide financial assistance to those businesses or industries deemed by the Governor to be vital to a healthy and growing State economy and that are making significant efforts to establish or expand in North Carolina.

"(b) Moneys allocated from the One North Carolina — Industrial Recruitment Competitive Fund shall be used for the following purposes:

"(1) Installation or purchase of equipment.

"(2) Structural repairs, improvements, or renovations of existing buildings to be used for expansion.

"(3) Construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment for existing buildings.

"(4) Any other purposes specifically provided by an act of the General Assembly.

"Moneys may also be used for construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment to serve new or proposed industrial buildings used for manufacturing and industrial operations. The Governor shall adopt guidelines and procedures for the commitment of moneys from the Fund.

"(c) The Department of Commerce shall report on or before September 30, 2003, and quarterly thereafter to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on the commitment, allocation, and use of funds allocated from the One North Carolina — Industrial Recruitment Competitive Fund.

"(d) Funds appropriated to the Department of Commerce for the 2002-2003 fiscal year for the One North Carolina — Industrial Recruitment Competitive Fund that are unexpended and unencumbered as of June 30, 2003, shall not revert to the General Fund on June 30, 2003, but shall remain available to the Department for providing financial assistance to those businesses and industries deemed by the Governor to be vital to a healthy and growing State economy and that are making significant efforts to establish or expand in North Carolina.

"(e) This section becomes effective June 30, 2003."

For similar provisions, see Session Laws 2001-424, ss. 20.3(a) and (b).

Session Laws 2003-284, s. 1.2, provides:

"This act shall be known as the 'Current Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5, is a severability clause.

§ 143B-430. Secretary of Commerce — powers and duties.

(a) The head of the Department of Commerce is the Secretary of Commerce. The Secretary of Commerce shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. The Secretary of Commerce shall be responsible for effectively and efficiently organizing the Department of Commerce to promote the policy of the State of North Carolina as outlined in G.S. 143B-428 and to promote statewide economic development in accord with that policy. Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the functions, powers, duties and obligations of every agency or subunit in the Department of Commerce shall be prescribed by the Secretary of Commerce.

(b) The Secretary of Commerce shall have the power and duty to accept and administer federal funds provided to the State through the Job Training Partnership Act, Pub. L. No. 97-300, 96 Stat. 1322, 29 U.S.C. § 1501 et seq., as amended.

(c) The Secretary of Commerce may adopt rules to administer a program or fulfill a duty assigned to the Department of Commerce or the Secretary of Commerce. (1977, c. 198, s. 1; 1989, c. 727, s. 6, c. 751, ss. 7(26), 8(18); 1991 (Reg. Sess., 1992), c. 959, s. 48; 2003-284, s. 12.6A(c).)

Working Group. — Session Laws 2001-13, ss. 1 to 5, effective April 4, 2001, and expiring June 30, 2005, provide: "Working Group. — The Secretary of Commerce shall convene a working group of interested parties knowledgeable in the different facets of doing business with the Department of Defense. The working group must include representatives from the following government agencies and nonprofit organizations: the Department of Commerce, the Community Colleges System, the Employment Security Commission, the Department of Administration, the Department of the Secretary of State, Concurrent Technologies Corporation, the Small Business Technology and Development Center, the Procurement Technical Assistance Center, the Governor's Advisory Commission on Military Affairs, the DoD Business Committee of the Governor's Advisory Commission on Military Affairs, and any other organization that the Department of Commerce or this working group may identify with an expertise in this area.

"Meetings. — The Secretary of Commerce must convene the working group created in Section 1 of this act at least once quarterly. The Secretary may chair the meetings or designate another member of the working group to chair the meetings.

"Goals and Objectives. — The working group created in Section 1 of this act [section 1 of Session Laws 2001-13] is charged with the goal of increasing the amount of dollars from federal contracts paid to businesses in North Carolina and of utilizing the skilled workforce represented by the more than 17,000 service members which transition from active duty each year in North Carolina. In fulfilling its goals, the working group should consider studies prepared by agencies and organizations in this area, including the studies prepared by the DoD Business Committee of the Governor's Advisory Commission on Military Affairs and by Concurrent Technologies Corporation. To accomplish these goals, the working group should strive to meet the following objectives:

"(1) Investigate requirements for and establish a Single Point Registration for North Carolina vendors with automatic linked registration to DLIS Central Contractor Registration, VendorLink, and other established programs.

"(2) Coordinate within the various agencies and organizations that help North Carolina businesses obtain federal contracts to develop a unified approach to delivering these services in an efficient and effective manner.

"(3) Determine the gaps between government needs and industry capability and needs and develop an approach to encourage industry to utilize its capabilities to meet those government needs.

"(4) Complete a skills assessment program for transitioning Department of Defense personnel and develop a job placement database that may be used to promote this skilled workforce with industries that need employees with those particular skills.

"(5) Any other issue the working group determines needs to be addressed to meet its goals.

"Consultants. — The Department of Commerce may contract for consultant services as determined necessary by the working group.

"The Department of Commerce shall report on the progress of the working group to the Natural and Economic Resources-Governmental Operations Subcommittee by April 2002 and by January 2003."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.5, is a severability clause.

§ 143B-431. Department of Commerce — functions.

(a) The functions of the Department of Commerce, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

(1) All of the executive functions of the State in relation to economic development including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:

a. The State Board of Alcoholic Control,
b. The North Carolina Utilities Commission,
c. The Employment Security Commission,
d. The North Carolina Industrial Commission,
e. State Banking Commission and the Commissioner of Banks,
f. Savings Institutions Division,
g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
h. Credit Union Commission,
i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17, 2004.
j. The North Carolina Mutual Burial Association Commission,
k. The North Carolina Rural Electrification Authority,
l. The North Carolina State Ports Authority,

all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and

(3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of Commerce by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article.

(b) The Department of Commerce is authorized to establish and provide for the operation of North Carolina nonprofit corporations for any of the following purposes:

(1) To aid the development of small businesses.

(2) To achieve the purposes of the United States Small Business Administration's 504 Certified Development Company Program.
(3) To acquire options and hold options for the purchase of land under G.S. 143B-437.02.

(b1) The Department of Commerce is authorized to contract for the preparation of proposals and reports in response to requests for proposals for location or expansion of major industrial projects.

(c) The Department of Commerce shall have the following powers and duties with respect to local planning assistance:

(1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning problems. Planning assistance as used in this section shall consist of making population, economic, land use, traffic, and parking studies and developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, capital budgets, and similar measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.
(2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.
(3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.
(4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.
(5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.
(6) To establish and conduct, either with its own staff or through contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities.

(d) The Department of Commerce, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual and may comply with the terms, conditions, and limitations of such grants in order to accomplish the Department's purposes. Grant funds shall be expended pursuant to the Executive Budget Act. In addition, the Department shall have the following powers and duties with respect to its duties in administering federal programs:

(1) To negotiate, collect, and pay reasonable fees and charges regarding the making or servicing of grants, loans, or other evidences of indebtedness.
(2) To establish and revise by regulation, in accordance with Chapter 150B of the General Statutes, schedules of reasonable rates, fees, or charges for services rendered, including but not limited to, reasonable fees or charges for servicing applications. Schedules of rates, fees, or charges may vary according to classes of service, and different

schedules may be adopted for public entities, nonprofit entities, private for-profit entities, and individuals.

(3) To pledge current and future federal fund appropriations to the State from the Community Development Block Grant (CDBG) program for use as loan guarantees in accordance with the provisions of the Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700, et seq., authorized by the Housing and Community Development Act of 1974 and amendments thereto. The Department may enter into loan guarantee agreements in support of projects sponsored by individual local governments or in support of pools of two or more projects supported by local governments with authorized State and federal agencies and other necessary parties in order to carry out its duties under this subdivision. In making loan guarantees and grants under this subdivision the Department shall take into consideration project applications, geographic diversity and regional balance in the entire community development block grant program. In making loan guarantees authorized under this subdivision, the Department shall ensure that apportionment of the risks involved in pledging future federal funds in accordance with State policies and priorities for financial support of categories of assistance is made primarily against the category from which the loan guarantee originally derived. A pledge of future CDBG funds under this subdivision is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subdivision does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes, nor may pledges exceed twice the amount of annual CDBG funds.

Prior to issuing a Section 108 Loan Guarantee agreement, the Department of Commerce must make the following findings:

a. The minimum size of the Section 108 Loan Guarantee is (i) seven hundred fifty thousand dollars ($750,000) for a project supported by an individual local government and (ii) two hundred fifty thousand dollars ($250,000) for a project supported as part of a loan pool; and the maximum size is five million dollars ($5,000,000) per project.

b. The Section 108 Loan Guarantee cannot constitute more than fifty percent (50%) of total project costs.

c. The project has ten percent (10%) equity from the corporation, partnership, or sponsoring party. "Equity" means cash, real estate, or other hard assets contributed to the project and loans that are subordinated in payment and collateral during the term of the Section 108 Loan Guarantee.

d. The project has the personal guarantee of any person owning ten percent (10%) or more of the corporation, partnership, or sponsoring entity, except for projects involving Low-Income Housing Tax Credits under section 42 of the Internal Revenue Code or Historic Tax Credits under section 47 of the Internal Revenue Code. Collateral on the loan must be sufficient to cover outstanding debt obligations.

e. The project has sufficient cash flow from operations for debt service to repay the Section 108 loan.

f. The project meets all underwriting and eligibility requirements of the North Carolina Section 108 Guarantee Program Guidelines and of the Department of Housing and Urban Development regulations, except that projects involving hotels, motels, private recreational facilities, private entertainment facilities, and convention centers are ineligible for Section 108 loan guarantees.

The Department shall create a loan loss reserve fund as additional security for loans guaranteed under this section and may deposit federal program income or other funds governed by this section into the loan loss reserve fund. The Department shall maintain a balance in the reserve fund of no less than ten percent (10%) of the outstanding indebtedness secured by Section 108 loan guarantees.

(e) The Department of Commerce may establish a clearinghouse for State business license information and shall perform the following duties:

(1) Establish a license information service detailing requirements for establishing and engaging in business in the State.

(2) Provide the most recent forms and information sheets for all State business licenses.

(3) Prepare, publish, and distribute a complete directory of all State licenses required to do business in North Carolina.

(4) Upon request, the Department shall assist a person as provided below:

a. Identify the type and source of licenses that may be required and the potential difficulties in obtaining the licenses based on an informal review of a potential applicant's business at an early stage in its planning. Information provided by the Department is for guidance purposes only and may not be asserted by an applicant as a waiver or release from any license requirement. However, an applicant who uses the services of the Department as provided in this subdivision, and who receives a written statement identifying required State business licenses relating to a specific business activity, shall not be assessed a penalty for failure to obtain any State business license which was not identified, provided that the applicant submits an application for each such license within 60 days after written notification by the Department or the agency responsible for issuing the license.

b. Arrange an informal conference between the person and the appropriate agency to clarify licensing requirements or standards, if necessary.

c. Assist in preparing the appropriate application and supplemental forms.

d. Monitor the license review process to determine the status of a particular license. If there is a delay in the review process, the Department may demand to know the reasons for the delay, the action required to end the delay, and shall provide this information to the applicant. The Department may assist the applicant in resolving a dispute with an agency during the application process. If a request for a license is refused, the Department may explain the recourse available to the person under the Administrative Procedure Act.

(5) Collaborate with the business license coordinator designated in State agencies in providing information on the licenses and regulatory requirements of the agency, and in coordinating conferences with applicants to clarify license and regulatory requirements.

Each agency shall designate a business license coordinator. The coordinator shall have the following responsibilities:

a. Provide to the Department the most recent application and supplemental forms required for each license issued by the agency, the most recent information available on existing and proposed agency rules, the most recent information on changes or proposed changes in license requirements or agency rules and how those changes will affect the business community, and agency publications that would be of aid or interest to the business community.

b. Work with the Department in scheduling conferences for applicants as provided under this subsection.

c. Determine, upon request of an applicant or the Department, the status of a license application or renewal, the reason for any delay in the license review process, and the action needed to end the delay; and to notify the applicant or Department, as appropriate, of those findings.

d. Work with the Department or applicant, upon request, to resolve any dispute that may arise between the agency and the applicant during the review process.

e. Review agency regulatory and license requirements and to provide a written report to the Department that identifies the regulatory and licensing requirements that affect the business community; indicates which, if any, requirements should be eliminated, modified, or consolidated with other requirements; and explains the need for continuing those requirements not recommended for elimination.

f. Report, on a quarterly basis, to the Department on the number of licenses issued during the previous quarter on a form prescribed by the Department. (1977, c. 198, s. 1; 1987, c. 214; 1989, c. 76, s. 25; c. 751, s. 2; 1991, c. 689, s. 153; 1991 (Reg. Sess., 1992), c. 959, s. 49; 1995, c. 310, s. 1; 1995 (Reg. Sess., 1996), c. 575, s. 1; 2001-193, s. 10; 2004-124, ss. 6.26(c), 6.26(d), 13.9A(c); 2004-199, s. 27(c).)

Editor's Note. — G.S. 143A-171 through 143A-180 and 143A-182 through 143A-185.1, included in Article 15 of Chapter 143A, referred to in subdivision (a)(2) of this section, were repealed by Session Laws 1977, c. 198, s. 25. G.S. 143A-180.1, 143A-180.2, and 143A-181, also included in Article 15 of Chapter 143A, were recodified as G.S. 143B-448, 143B-449, and 143B-439, respectively, by Session Laws 1977, c. 198, s. 26. This same 1977 act enacted this Article.

Session Laws 1997-313, which, effective January 1, 1998, transferred the authority, powers, duties, and functions vested in the North Carolina Mutual Burial Association Commission and in the Burial Association Administrator to the North Carolina Board of Mortuary Science, and abolished the North Carolina Mutual Burial Association Commission, provides in s. 7:

"(a) Effective January 1, 1998, references in the Session Laws to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator shall be deemed to refer to the Board of Mortuary Science. Every Session Law that refers to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator and that relates to any power, duty, function, or obligation of the Commission or the Administrator that continues in effect after the provisions of this act become effective shall be construed in a manner consistent with this act.

"(b) The Revisor of Statutes may on and after the effective date of this act, correct any reference or citation in the General Statutes that is amended by this act by deleting incorrect references and substituting correct references.

"(c) The Revisor of Statutes may, on and after the first day of January 1998, delete any reference to the North Carolina Mutual Burial Association Commission or to the Burial Association Administrator in any portion of the General Statutes to which conforming amendments are not made by this act and substitute, as appropriate and consistent with this act, any of the following terms: North Carolina Board of Mortuary Science, Board of Mortuary Science, or Board."

Subdivision (2)j of this section is set out above as directed by the Revisor of Statutes.

Session Laws 2000-67, ss. 14.18(a) through (e), renames the State Energy Conservation Plan as the State Energy Efficiency Program. Effective September 30, 2000, the statutory authority, powers, duties and functions, records, property, funds, etc., of the Residential Energy Conservation Assistance Program in the Energy Division of the Department of Commerce are transferred from the Department of Commerce to the Department of Health and Human Services. Similarly, effective September 30, 2000, the statutory authority, powers, duties and functions, records, property, funds, etc., of the Energy Policy Council and State Energy Efficiency Program in the Energy Division of the Department of Commerce are transferred from the Department of Commerce to the Department of Administration. Effective July 1, 2000, all vacant positions in the Energy Division of the Department of Commerce are abolished.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2004-199, s. 27(c), repealed G.S. 143B-431(a)(2)(i). The apparent intent of the General Assembly was to repeal G.S. 143B-431(a)(2)i., which has been set out as repealed at the direction of the Revisor of Statutes.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 13.9A(d), provides: "The Department of Commerce shall consider hiring the personnel in the Business License Information Office of the Department of the Secretary of State to conduct the business license information functions in the Department of Commerce."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2009-446, s. 1(a), provides: "The State Energy Office is transferred from the Department of Administration to the Department of Commerce. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6."

Session Laws 2009-446, s. 1(i), provides: "The Residential Energy Conservation Assistance Program is transferred from the Department of Health and Human Services to the Energy Office of the Department of Commerce, which was transferred to that Department by Section 1 of this act. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6."

CASE NOTES

Cited in Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 299 S.E.2d 618 (1983).

§ 143B-431.1. Toll-free number for information on housing assistance.

There shall be established in the Department of Commerce a toll-free telephone number to provide information on housing assistance to the citizens of the State. (1989, c. 751, s. 6; 1991 (Reg. Sess., 1992), c. 959, s. 50.)

§ 143B-431.2. Department of Commerce — limitation on grants and loans.

The Department of Commerce may not make a loan nor award a grant to any individual, organization, or governmental unit if that individual, organization, or governmental unit is currently in default on any loan made by the Department of Commerce. (2000-56, s. 4.)

§ 143B-432. Transfers to Department of Commerce.

(a) The Division of Economic Development of the Department of Natural and Economic Resources, the Science and Technology Committee of the Department of Natural and Economic Resources, the Science and Technology Research Center of the Department of Natural and Economic Resources, and the North Carolina National Park, Parkway and Forests Development Council of the Department of Natural and Economic Resources are each hereby transferred to the Department of Commerce by a Type I transfer, as defined in G.S. 143A-6.

(b) All functions, powers, duties, and obligations heretofore vested in the following subunits of the Department of Natural Resources and Community Development are hereby transferred to and vested in the Department of Commerce by a Type I transfer as defined in G.S. 143A-6:

(1) Community Assistance Division.
(2) Employment and Training Division.

(c) All functions, powers, duties, and obligations heretofore vested in the following councils of the Department of Natural Resources and Community Development are hereby transferred to and vested in the Department of Commerce by a Type II transfer as defined in G.S. 143A-6:

(1) Community Development Council.
(2) Job Training Coordinating Council. (1977, c. 198, s. 1; 1989, c. 727, s. 7; c. 751, s. 7(27); 1989 (Reg. Sess., 1990), c. 1004, s. 32; 1991 (Reg. Sess., 1992), c. 959, s. 51.)

§ 143B-432.1. Department of Commerce — Small Business Ombudsman.

A Small Business Ombudsman is created in the Department of Commerce to work with small businesses to ensure they receive timely answers to questions and timely resolution of issues involving State government. The Small Business Ombudsman shall have the authority to make inquiry of State agencies on behalf of a business, to receive information concerning the status of a business's inquiry, and to convene representatives of various State agencies to discuss and resolve specific issues raised by a business. The Small Business Ombudsman shall also work with the small business community to identify problems in State government related to unnecessary delays, inconsistencies between regulatory agencies, and inefficient uses of State resources. (2004-124, s. 13.9A(e).)

§ 143B-433. Department of Commerce — organization.

The Department of Commerce shall be organized to include:

(1) The following agencies:
  a. The North Carolina Alcoholic Beverage Control Commission.
  b. The North Carolina Utilities Commission.
  c. The Employment Security Commission.
  d. The North Carolina Industrial Commission.
  e. State Banking Commission.
  f. Savings Institutions Division.
  g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.
  h. Credit Union Commission.
  i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17, 2004.
  j. The North Carolina Mutual Burial Association Commission.
  k. North Carolina Cemetery Commission.
  l. The North Carolina Rural Electrification Authority.
  m. Repealed by Session Laws 1985, c. 757, s. 179(d).
  n. North Carolina Science and Technology Research Center.
  o. The North Carolina State Ports Authority.
  p. North Carolina National Park, Parkway and Forests Development Council.
  q. Economic Development Board.
  r. Labor Force Development Council.
  s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective September 30, 2000.

u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
v. Repealed by Session Laws 1993, c. 321, s. 313b.

(2) Those agencies which are transferred to the Department of Commerce including the:
a. Community Assistance Division.
b. Community Development Council.
c. Employment and Training Division.
d. Job Training Coordinating Council.

(3) Such divisions as may be established pursuant to Article 1 of this Chapter. (1977, c. 198, s. 1; 1979, c. 668, s. 2; 1981, c. 412, ss. 4, 5; 1983, c. 899, s. 1; 1985, c. 757, s. 179(d); 1989, c. 76, s. 26; c. 727, s. 8; c. 751, s. 7(28); 1991 (Reg. Sess., 1992), c. 959, s. 52; 1993, c. 321, s. 313(b); 1998-217, s. 19; 2000-140, s. 76(j); 2001-193, s. 11; 2004-199, s. 27(d).)

Editor's Note. — Session Laws 1997-313, which, effective January 1, 1998, transferred the authority, powers, duties, and functions vested in the North Carolina Mutual Burial Association Commission and in the Burial Association Administrator to the North Carolina Board of Mortuary Science, and abolished the North Carolina Mutual Burial Association Commission, provides in s. 7:

"(a) Effective January 1, 1998, references in the Session Laws to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator shall be deemed to refer to the Board of Mortuary Science. Every Session Law that refers to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator and that relates to any power, duty, function, or obligation of the Commission or the Administrator that continues in effect after the provisions of this act become effective shall be construed in a manner consistent with this act.

"(b) The Revisor of Statutes may on and after the effective date of this act, correct any reference or citation in the General Statutes that is amended by this act by deleting incorrect references and substituting correct references.

"(c) The Revisor of Statutes may, on and after the first day of January 1998, delete any reference to the North Carolina Mutual Burial Association Commission or to the Burial Association Administrator in any portion of the General Statutes to which conforming amendments are not made by this act and substitute, as appropriate and consistent with this act, any of the following terms: North Carolina Board of Mortuary Science, Board of Mortuary Science, or Board."

However, subdivision (1)j of this section is set out above as directed by the Revisor of Statutes.

Session Laws 2001-193, s. 15, provides: "All (i) statutory authority, powers, duties, and functions, including rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Savings Institutions Division of the Department of Commerce are transferred to and vested in the Office of Commissioner of Banks authorized by Article 8 of Chapter 53 of the General Statutes. Though transferred to the Office of Commissioner of Banks pursuant to this section, the Savings Institutions Division shall continue to function under that name. All statutory authority, powers, duties, and functions of the Administrator of the Savings Institutions Division are transferred to and vested in the Commissioner of Banks. This transfer has all the elements of a Type I transfer, as defined in G.S. 143A-6."

Session Laws 2004-199, s. 27(d), repealed G.S. 143B-433(1)(i). The apparent intent of the General Assembly was to repeal G.S. 143B-433(1)i., which has been set out as repealed at the direction of the Revisor of Statutes.

Part 1A. Housing Coordination and Policy Council.

§§ 143B-433.1 through 143B-433.3: Repealed by Session Laws 1993, c. 321, s. 305(c).

Cross References. — For present provisions relating to the Housing Coordination and Policy Council, see G.S. 122A-5.10 et seq.

Editor's Note. — Session Laws 1993, c. 321, s. 305(a), provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Housing Coordination and Policy Council, the HOME program, the Permanent Housing Affordability Strategy, are transferred from the Division of Community Assistance, Department of Commerce, to the Housing Finance Agency."

Part 2. Economic Development.

§ 143B-434. Economic Development Board — creation, duties, membership.

(a) Creation and Duties. — There is created within the Department of Commerce an Economic Development Board. The Board shall have the following duties:

(1) To provide economic and community development planning for the State.

(2) To recommend economic development policy to the Secretary of Commerce, the General Assembly, and the Governor. The recommendations may cover the following issues as well as any other economic development policy issues:

  a. Use of tax abatements and other incentives to motivate economic development.

  b. Definition of which specific activities and programs should be considered economic development activities and programs for the purpose of receiving State appropriations.

  c. The role of institutions of higher education in economic development.

  d. The use of State funds to leverage private nonprofit economic development initiatives.

  e. The linkage of workforce preparedness activities and initiatives, and economic development planning.

(3) To recommend annually to the Governor biennial and annual appropriations for economic development programs.

(4) To develop and update annually a comprehensive strategic economic development plan, as provided in G.S. 143B-434.1.

The Board shall meet at least quarterly at the call of its chair or the Secretary. Each quarter the Secretary shall report to the Board on the program and progress of this State's economic development.

(b) Membership. — The Economic Development Board shall consist of 37 members. The Secretary of Commerce shall serve ex officio as a member and as the secretary of the Economic Development Board. The Secretary of Revenue shall serve as an ex officio, nonvoting member. Four members of the House of Representatives appointed by the Speaker of the House of Representatives, four members of the Senate appointed by the President Pro Tempore of the Senate, the President of The University of North Carolina, or designee, the President of the North Carolina Community College System, or designee, the Secretary of State, and the President of the Senate (or the designee of the President of the Senate), shall serve as members of the Board. The Governor shall appoint the remaining 23 members of the Board. Effective with the terms beginning July 1, 1997, one of the Governor's appointees shall be a representative of a nonprofit organization involved in economic development and two of the Governor's appointees shall be county economic development representatives. The Governor shall designate a chair and a vice-chair from among the members of the Board. Appointments to the Board made by the Governor for terms beginning July 1, 1997, and appointments to the Board made by the Speaker of the House of Representatives and the President Pro Tempore of the

Senate for terms beginning July 9, 1993, should reflect the ethnic and gender diversity of the State as nearly as practical.

The initial appointments to the Board shall be for terms beginning on July 9, 1993. Of the initial appointments made by the Governor, the terms shall expire July 1, 1997. Of the initial appointments made by the Speaker of the House of Representatives and by the President Pro Tempore of the Senate two appointments of each shall be designated to expire on July 1, 1995; the remaining terms shall expire July 1, 1997. Thereafter, all appointments shall be for a term of four years.

The appointing officer shall make a replacement appointment to serve for the unexpired term in the case of a vacancy.

The members of the Economic Development Board shall receive per diem and necessary travel and subsistence expenses payable to members of State Boards and agencies generally pursuant to G.S. 138-5 and G.S. 138-6, as the case may be. The members of the Economic Development Board who are members of the General Assembly shall not receive per diem but shall receive necessary travel and subsistence expenses at rates prescribed by G.S. 120-3.1.

(c) Advice and Staff. — The Secretaries of Administration, State, and Transportation, the Commissioners of Agriculture and Labor, and the State Treasurer, or their designees, shall advise the Board on economic development activities within the responsibility of their respective departments. Clerical and professional staff support to the Economic Development Board shall be provided by an Interagency Economic Development Group composed of representatives of the following State agencies:

(1) The Department of Administration.
(2) The Department of Agriculture and Consumer Services.
(3) The Employment Security Commission.
(4) The Department of Labor.
(5) The Department of Transportation.

The Department of Commerce shall have the responsibility for coordinating the activities and efforts of the Interagency Economic Development Group. (1977, c. 198, s. 1; 1981, c. 47, s. 6; 1981 (Reg. Sess., 1982), c. 1191, s. 18; 1983, c. 717, s. 83; 1989, c. 751, ss. 7(29), 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 85; c. 1038, s. 22; 1993, c. 321, s. 313(a); c. 561, s. 12; 1993 (Reg. Sess., 1994), c. 773, s. 15.1; 1997-261, s. 105; 2001-487, s. 32; 2001-513, s. 13.)

Editor's Note. — Session Laws 1981, c. 47, which amended this section, in s. 7, provided: "When the Speaker, President of the Senate, or Lieutenant Governor has designated a person to serve in his place as permitted by this act, that person shall be compensated in accordance with G.S. 120-3.1 if a member of the General Assembly, in accordance with G.S. 138-6 if a State officer or employee, and in accordance with G.S. 138-5 in any other case, except that a member of the General Assembly so designated may not receive per diem if the Speaker, President of the Senate or Lieutenant Governor may not receive per diem."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 8.3, provides: "The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

"The policy shall direct each task force to develop a five-year vision plan for its economic development region. At a minimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

"If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6, is a severability clause.

Session Laws 2004-124, s. 13.6(c), repealed Session Laws 2002-126, s. 8.3, effective July 1, 2004.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

§ 143B-434.01. Comprehensive Strategic Economic Development Plan.

(a) Definitions. — The following definitions apply in this section:

(1) Board. — The Economic Development Board.

(2) Department. — The Department of Commerce.

(3) Economic distress. — The presence of at least one trend indicator or at least one status indicator:

a. Trend indicators:

1. Weighted average age of industrial plants exceeding statewide average age.
2. Loss of population over the most recent three- to five-year period.
3. Below average job growth over the most recent three- to five-year period.
4. Outmigration over the most recent three- to five-year period.
5. Decline in real wages over the most recent three- to five-year period.
6. Above average rate of business failures over the most recent three- to five-year period.

b. Status indicators:

1. Per capita income below the State average.
2. Earnings or wages per job below the State average.
3. Unemployment above the State average.
4. Poverty rate above the State average.
5. Below average fiscal capacity.

(4) Plan. — The Comprehensive Strategic Economic Development Plan.

(5) Region. — One of the major geographic regions of the State defined in the Plan as an economic region based on compatible economic development factors.

(b) Board to Prepare Plan. — The Board shall prepare the Plan by April 1, 1994. The Board shall review and update this Plan by April 1 of each year. The original Plan shall cover a period of four years and each annual update shall extend the time frame by one year so that a four-year plan is always in effect. The Board shall provide copies of the Plan and each annual update to the Governor and the Joint Legislative Commission on Governmental Operations. The Plan shall encompass all of the components set out in this section.

(c) Purpose. — The purpose of this section is to require the Board to apply strategic planning principles to its economic development efforts. This requirement is expected to result in:

(1) The selection of a set of priority development objectives that recognizes the increasingly competitive economic environment and addresses the changing needs of the State in a more comprehensive manner.
(2) The effective utilization of available and limited resources.
(3) A commitment to achieve priority objectives and to sustain the process.

(d)(1) Public and Private Input. — At each stage as it develops and updates the Plan, the Board shall solicit input from all parties involved in economic development in North Carolina, including:

a. Each of the programs and organizations that, for State budget purposes, identifies economic development as one of its global goals.
b. Local economic development departments and regional economic development organizations.
c. The Board of Governors of The University of North Carolina.

(2) The Board shall also hold hearings in each of the Regions to solicit public input on economic development before the initial Plan is completed. The purposes of the public hearings are to:

a. Assess the strengths and weaknesses of recent regional economic performance.
b. Examine the status and competitive position of the regional resource base.
c. Identify and seek input on issues that are key to improving the economic well-being of the Region.

The Board shall hold additional hearings from time to time to solicit public input regarding economic development activities.

(3) Each component of the Plan shall be based on this broad input and, to the extent possible, upon a consensus among all affected parties. The Board shall coordinate its planning process with any State capital development planning efforts affecting State infrastructure such as roads and water and sewer facilities.

(e) Environmental Scan. — The first step in developing the Plan shall be to develop an environmental scan based on the input from economic development parties and the public and on information about the economic environment in North Carolina. To prepare the scan, the Board shall gather the following information. Thereafter, the information shall be updated periodically.

(1) Compilation of the latest economic and demographic data on North Carolina by State, Region, and county including population, population projections, employment, and employment projections, income and earnings status and outlook, migration and commuting patterns, unemployment, poverty, and other similar data.
(2) Compilation of the latest data on the strength of the business environment by State, Region, and county with emphasis on the dynamics of job creation: start-ups, expansions, locations, contractions, and failures. Special assessments are to be made of rural, small, and minority business components of overall activity.
(3) Compilation of the latest data on labor compensation, construction costs, utility rates, payroll costs, taxes, and other cost data normally considered by manufacturing firms and new businesses and shall be tabulated by State, Region, and county.
(4) Compilation of data on assets within the State and by Region and county to include the following:

a. Available buildings, bona fide industrial parks, and sites.
b. Characteristics of the available labor force (number, demographic attributes, skill levels, etc.).
c. Special labor situations, such as military base discharges and large plant closings.
d. Available infrastructure capacities by county and Region including water, sewer, electrical, natural gas, telecommunication, highway access, and other pertinent services.
e. The fiscal capacity of counties and localities within counties to support the infrastructure development necessary to participate in the development process.
f. Analyses of assimilative capacity of riverine, estuarine, or ocean outfalls, or other environmental cost considerations.
g. Proximity analyses of counties in close alignment with major urban areas in bordering states.
h. Special educational and research capabilities.
i. Special transportation situations such as major airports, ports, and railyards.
j. Available data on the performance, contribution, and impact each economic sector (including, but not limited to, agriculture, finance, manufacturing, public utilities, trade, services, tourism, and government) is having on individual counties, Regions, and the State.
k. Available tourist and service assets.
l. Analyses of seasonal population and absentee ownership in resort and tourism areas and their impact on the delivery of public services.
m. Cost and availability of natural gas and electricity.

(5) Compilation and analyses of data on economic and industrial changes in competitor states by Region, as applicable. This data shall be entered into a database and kept current. It shall include, specifically, all new plant location information such as origin of the plant, Standard Industrial Classification Code, employment, and investment.
(6) Compilation of cost data, policies, and strategies in competitive Southeastern states as well as other United States regions and foreign countries.
(7) Compilation of incentives and special programs being offered by other states.
(8) Compilation and analyses of other data relating to economic development such as regulatory or legal matters, structural problems, and social considerations, e.g. unemployment, underemployment, poverty, support services, equity concerns, etc.
(9) The cost of doing business in North Carolina and other competing states, as it may affect decisions by firms to locate in this State.
(10) Competitive assets within the State and by Region and county, including infrastructure, tourist assets, natural resources, labor, educational and research resources, and transportation.
(11) Other information relating to economic development such as regulatory or legal matters and social considerations.

(f) Needs Assessment. — The Board, using data from the public input sessions and the environmental scan, shall prepare an assessment of economic development strengths, weaknesses, threats, and opportunities within the State by Region and by county. An assessment shall also be conducted of each county to determine distressed areas existing within the county. The assessment will include the identification of key development issues within each geographic area and options available to address each issue.

(g) Vision and Mission Statements. — The Board shall develop a vision statement for economic development that would describe the preferred future for North Carolina and what North Carolina would be like if all economic development efforts were successful. The Board shall then develop a mission statement that outlines the basic purpose of each of North Carolina's economic development programs. Because special purpose nonprofit organizations are uniquely situated to conduct the entrepreneurial and high-risk activity of investing in and supporting new business creation in the State, they should be assigned a dominant role in this key component of economic development activity.

(h) Goals and Objectives. — The Board using data from the public input and the environmental scan, shall formulate a list of goals and objectives. Goals shall be long-range, four years or more, and shall address both needs of economically distressed Regions and counties as well as opportunities for Regions and counties not distressed. The goals shall be developed with realism but should also be selected so as to encourage every Region and county within the State to develop to its maximum potential. Objectives shall be one year or less in scope and shall, if achieved, lead to the realization of the goals formulated by the Board as provided in this section.

Both goals and objectives should be stated largely in economic terms, that is, they should be related to specific population, employment, demographic targets, or economic sector targets. Both efficiency and equity considerations are to be addressed and balanced with special emphasis placed on the needs of disadvantaged or economically distressed populations and communities. The goals and objectives should not state how the economic targets are to be reached, but rather what the economic conditions will be if they are obtained. So that the progress of North Carolina's economic development efforts can be monitored, the Board shall set objectives for each goal that allow measurement of progress toward the goal. Objectives should be quantifiable and time-specific in order to serve as performance indicators.

(i) Formulation of Economic Development Strategy. — The Plan shall have as its action component a strategy set forth in a blueprint for directing resources of time and dollars toward the satisfaction of the goals and objectives stated in subsection (h) of this section. As a practical consequence of the economic environment, a focus on the competitiveness of indigenous industries and entrepreneurial development is required. The Plan shall include a strategy for the coordination of initiatives and activities for workforce preparedness, funded by federal or State sources, including, but not limited to, vocational education, applied technology education, remedial education, and job training, and the achievement of the economic development goals of the Plan. A balance of opportunity between rural and urban regions and between majority and minority populations should be an overriding consideration. Equity of opportunity for counties and communities across the State will involve the explicit consideration of local fiscal capacity and the fiscal ability to support development activities.

The concept of differentiation should be employed. The Plan should recognize the various strengths and weaknesses of the State and its component regions, subregions, and, in some cases, individual counties. The concept of market segmentation should be employed. Different Regions and subregions of the State should be promoted to different markets.

(j) Implementation Plan. — Based upon all of the foregoing steps, the Board shall establish an implementation plan assigning to the appropriate parties specific responsibilities for meeting measurable objectives. The implementation plan shall contain all necessary elements so that it may be used as a means to monitor performance, guide appropriations, and evaluate the outcomes of the parties involved in economic development in the State.

(k) Annual Report. — The Plan shall contain a section devoted to measuring results, to be called "An Annual Report on Economic Development for the State of North Carolina". The Annual Report shall contain a comparison of actual results with stated goals and objectives and significant and meaningful statistics to allow policymakers to adjust strategy and tactics as necessary to achieve the formulated goals.

The Annual Report shall break down data by Regions and counties including:

(1) The net job change (expansions minus contractions) by the various economic sectors of the county, Region, and State.

(2) Realized capital investment in plants and equipment by new and expanding industry in each county, Region, and State.

(3) Manufacturing changes by county, Region, and State that affect the value of firms, total payrolls, average wages, value of shipments, contributions to gross State product, and value added.

(4) The net change in the number of firms by county, Region, and State with statistics on the dynamics of change: relocations in versus relocations out; births versus deaths; and expansions versus contractions.

(5) A measure of the status and performance of all sectors of the county, Region, and State economy including, but not limited to, manufacturing, agriculture, trade, finance, communications, transportation, utilities, services, and travel and tourism.

(6) An assessment of the relative status and performance of rural business development as opposed to that in urban areas.

(7) An analysis of the status of minority-owned businesses throughout the State.

(8) An assessment of the development capability of the various Regions of the State in terms of their environmental, fiscal, and administrative capacity. Those areas that are handicapped by barriers to development should be highlighted.

(9) An evaluation of the State's economic performance as indicated by the above statistics with the goals and objectives outlined in the Plan.

(*l*) Accountability. — The Board shall make all data, plans, and reports available to the General Assembly and the Joint Legislative Commission on Governmental Operations at appropriate times and upon request. The Board shall prepare and make available on an annual basis public reports on each of the major sections of the Plan and the Annual Report indicating the degree of success in attaining each development objective. (1993, c. 321, s. 313(c); 1997-456, s. 27.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 321, s. 313(c), having been G.S. 143B-434.1.

The subdivisions in subsection (d) of this section were renumbered pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 143B-434.1. The North Carolina Travel and Tourism Board — creation, duties, membership.

(a) There is created within the Department of Commerce the North Carolina Travel and Tourism Board. The Secretary of Commerce and the Director of the Division of Tourism, Film, and Sports Development will work with the Board to fulfill the duties and requirements set forth in this section, and to promote the sound development of the travel and tourism industry in North Carolina.

(b) The function and duties of the Board shall be:

(1) To advise the Secretary of Commerce in the formulation of policy and priorities for the promotion and development of travel and tourism in the State.

(2) To advise the Secretary of Commerce in the development of a budget for the Division of Tourism, Film, and Sports Development.

(3) To recommend programs to the Secretary of Commerce that will promote the State as a travel and tourism destination and that will develop travel and tourism opportunities throughout the State.

(4) To advise the Secretary of Commerce every three months as to the effectiveness of agencies with which the Department has contracted for advertising and regarding the selection of an advertising agency that will assist the Department in the promotion of the State as a travel and tourism destination.

(5) To name a three-member subcommittee, with one member from each of the eastern, central, and western regions of the State, to make recommendations to the Secretary of Commerce regarding any revisions in the matching funds tourism grants program, project applications, and criteria for projects that qualify for participation in the program.

(6) To advise the Secretary of Commerce from time to time as to the effectiveness of the overall operations of the Division of Tourism, Film, and Sports Development.

(7) To promote the exchange of ideas and information on travel and tourism between State and local governmental agencies, and private organizations and individuals.

(8) To advise the Secretary of Commerce upon any matter that the Secretary, Governor, or Director of the Division of Tourism, Film, and Sports Development may refer to it.

(c) The Board shall consist of 29 members as follows:

(1) The Secretary of Commerce, who shall not be a voting member.

(2) The Director of the Division of Tourism, Film, and Sports Development, who shall not be a voting member.

(3) Two members designated by the Board of Directors of the North Carolina Restaurant and Lodging Association, representing the lodging sector.

(4) Two members designated by the Board of Directors of the North Carolina Restaurant and Lodging Association, representing the restaurant sector.

(5) Three Directors of Convention and Visitor Bureaus designated by the Board of Directors of the North Carolina Association of Convention and Visitor Bureaus.

(6) The Chairperson of the Travel and Tourism Coalition or the Chairperson's designee.

(7) The President of the North Carolina Travel Industry Association.

(8) A member designated by the Board of Directors of the North Carolina Travel Industry Association.

(9) The President of the North Carolina Chamber.

(10) One member designated by the North Carolina Petroleum Marketers Association.

(11) One person associated with tourism attractions in North Carolina, appointed by the Speaker of the House of Representatives. One person who is not a member of the General Assembly, appointed by the Speaker of the House of Representatives.

(12) One person associated with the tourism-related transportation industry, appointed by the President Pro Tempore of the Senate. One

person who is not a member of the General Assembly, appointed by the President Pro Tempore of the Senate.

(13) Four public members each interested in matters relating to travel and tourism, two appointed by the Governor (one from a rural area and one from an urban area), one appointed by the Speaker of the House, and one appointed by the President Pro Tempore of the Senate.

(14) One member associated with the major cultural resources and activities of the State in North Carolina, appointed by the Governor.

(15) Two members of the House of Representatives, appointed by the Speaker of the House of Representatives.

(16) Two members of the Senate, appointed by the President Pro Tempore of the Senate.

(17) Two members designated by the Board of Directors of North Carolina Watermen United who represent the charter boat/headboat industry.

(d) The members of the Board shall serve the following terms: the Secretary of Commerce, the Director of the Division of Tourism, Film, and Sports Development, the Chairperson of the Travel and Tourism Coalition, the President of the North Carolina Travel Industry Association, and the President of the North Carolina Chamber shall serve on the Board while they hold their respective offices. Each member of the Board appointed by the Governor shall serve during his or her term of office. The members of the Board appointed by the General Assembly shall serve two-year terms beginning on January 1 of odd-numbered years and ending on December 31 of the following year. The first such term shall begin on January 1, 1991, or as soon thereafter as the member is appointed to the Board, and end on December 31, 1992. All other members of the Board shall serve a term which consists of the portion of calendar year 1991 that remains following their appointment or designation and, thereafter, two-year terms which shall begin on January 1 of an even-numbered year and end on December 31 of the following year. The first such two-year term shall begin on January 1, 1992, and end on December 31, 1994.

(e) No member of the Board, except a member serving by virtue of his or her office, shall serve during more than five consecutive calendar years, except that a member shall continue to serve until his or her successor is appointed.

(f) Appointments to fill vacancies in the membership of the Board that occur due to resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term and shall be made by the same appointing authority that made the initial appointment.

(g) Board members who are employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. Board members who are legislators shall be reimbursed for travel and subsistence in accordance with G.S. 120-3.1. All other Board members, except those serving pursuant to subdivisions (3) through (10) of subsection (c) of this section, shall receive per diem, subsistence, and travel expenses at the rate set forth in G.S. 138-5. Board members serving pursuant to subdivisions (3) through (10) of subsection (c) of this section shall not receive per diem, subsistence, or travel expenses. The expenses set forth in this section shall be paid by the Division of Tourism, Film, and Sports Development of the Department of Commerce.

(h) At its first meeting in 1991, the Board shall elect one of its voting members to serve as Chairperson during calendar year 1991. At its last regularly scheduled meeting in 1991, and at its last regularly scheduled meeting in each year thereafter, the Board shall elect one of its voting members to serve as Chairperson for the coming calendar year. No person shall serve as Chairperson during more than three consecutive calendar years. The Chairperson shall continue to serve until his or her successor is elected.

(i) A majority of the current voting membership shall constitute a quorum.

(j) The Secretary of Commerce shall provide clerical and other services as required by the Board. (1991, c. 406, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 54;

1997-495 s. 89(a); 2000-140, s. 79(a); 2007-67, s. 1; 2007-484, ss. 32(a), (b); 2009-550, s. 7; 2009-570, s. 8(f), (g).)

Editor's Note. — Session Laws 2007-67, s. 2, provides: "The members of the Board added under Section 1 of this act shall serve a first term beginning on the date of their designation and ending on December 31, 2009. Thereafter, they shall serve two-year terms which shall begin on January 1 of an even-numbered year and end on December 31 of the following year."

Effect of Amendments. — Session Laws 2009-550, s. 7, effective August 28, 2009, added "or the Chairperson's designee" at the end of subdivision (c)(6).

Session Laws 2009-570, s. 8(f) and (g), effective August 28, 2009, substituted "the North Carolina Chamber" for "North Carolina Citizens for Business and Industry" in subdivision (c)(9) and in the first sentence of subsection (d).

§ 143B-434.2. Travel and Tourism Policy Act.

(a) This section shall be known as the Travel and Tourism Policy Act.

(b) The General Assembly of North Carolina finds that:

(1) The State of North Carolina is endowed with great scenic beauty, historical sites, and cultural resources, and with a population whose ethnic diversity and traditions are attractive to visitors.

(2) These resources should be preserved and nurtured, not only because they are appreciated by other Americans and by visitors from other lands, but because they are valued by the State's own residents.

(3) Tourism provides economic well-being by contributing to employment and economic development, generating State revenues and receipts for local businesses, and increasing international trade.

(4) Tourism is an educational and informational medium for personal growth which informs residents about their State's geography and history, their political institutions, their cultural resources, and their environment, and about each other.

(5) Tourism instills State pride and a sense of common interest among the people of the State.

(6) Tourism enhances the quality of life and well-being of the State's residents by affording recreation, new experiences, and opportunities for relief from job stress.

(7) Tourism promotes international understanding and goodwill, and contributes to intercultural appreciation.

(8) Tourism engenders appreciation of the State's cultural, architectural, technological, and industrial achievements.

(9) The development and promotion of tourism to and within the State is in the interest of the people of North Carolina.

(10) Tourism should develop in an orderly manner in order to provide the maximum benefit to the State and its residents.

(11) A comprehensive tourism policy is essential if tourism is to grow in an orderly way.

(c) The policy of the State of North Carolina is to:

(1) Encourage the orderly growth and development of travel and tourism to and within the State.

(2) Promote the State's travel and tourism resources to the residents of the State, and to potential visitors from other states and other countries.

(3) Instill a sense of history in the State's young people by encouraging family visits to State historic sites, and by promoting the preservation and restoration of historic sites, trails, buildings, and districts.

(4) Promote the mental, emotional, and physical well-being of the people of North Carolina by encouraging outdoor recreational activities within the State.

(5) Strengthen a sense of common interest among the residents of the State by encouraging them to visit each other's communities and discover each other's traditions and ways of life.
(6) Increase national and international awareness of the State's cultural contributions by encouraging attendance at orchestral, operatic, dramatic, and other productions by artistic groups performing in the State.
(7) Cultivate the State's commercial interests by encouraging local and county fairs so that visitors may learn about local products and crafts.
(8) Encourage the talents and strengthen the economic independence of State residents by encouraging the preservation of traditional craft skills; the production of handicrafts and folk art by private artisans and craftspeople; and the holding of craft demonstrations.
(9) Provide visitors to the State with a hospitable reception.
(10) Develop and maintain a statewide tourism data base.
(11) Encourage the protection of wildlife and natural resources and the preservation of geological, archaeological, and cultural treasures in tourist areas.
(12) Encourage, assist, and coordinate, where possible, the tourism activities of local and area promotional organizations.
(13) Ensure that the tourism interest of the State is fully considered by State agencies and the General Assembly in their deliberations; and coordinate, to the maximum extent possible, all State activities in support of tourism with the needs of the general public, the political subdivisions of the State, and the tourism industry.

(d) The Department of Commerce, and the Division of Tourism, Film, and Sports Development within that Department, shall implement the policies set forth in this section. The Division of Tourism, Film, and Sports Development shall make an annual report to the General Assembly regarding the status of the travel and tourism industry in North Carolina; the report shall be submitted to the General Assembly by January 15 of each year beginning January 15, 1992. The duties and responsibilities of the Department of Commerce through the Division of Tourism, Film, and Sports Development shall be to:
(1) Organize and coordinate programs designed to promote tourism within the State and to the State from other states and foreign countries.
(2) Measure and forecast tourist volume, receipts, and impact, both social and economic.
(3) Develop a comprehensive plan to promote tourism to the State.
(4) Encourage the development of the State's tourism infrastructure, facilities, services, and attractions.
(5) Cooperate with neighboring states and the federal government to promote tourism to the State from other countries.
(6) Develop opportunities for professional education and training in the tourism industry.
(7) Provide advice and technical assistance to local public and private tourism organizations in promoting tourism to the State.
(8) Encourage cooperation between State agencies and private individuals and organizations to advance the State's tourist interests and seek the views of these agencies and the private sector in the development of State tourism programs and policies.
(9) Give leadership to all concerned with tourism in the State.
(10) Perform other functions necessary to the orderly growth and development of tourism.
(11) Develop informational materials for visitors which, among other things, shall:

a. Describe the State's travel and tourism resources and the State's history, economy, political institutions, cultural resources, outdoor recreational facilities, and principal festivals.
b. Urge visitors to protect endangered species, natural resources, archaeological artifacts, and cultural treasures.
c. Instill the ethic of stewardship of the State's natural resources.

(12) Foster an understanding among State residents and civil servants of the economic importance of hospitality and tourism to the State.

(13) Work with local businesses, including banks and hotels, with educational institutions, and with the United States Travel and Tourism Administration, to provide special services for international visitors, such as currency exchange facilities.

(14) Encourage the reduction of architectural and other barriers which impede travel by physically handicapped persons. (1991, c. 144, ss. 1-4; 1991 (Reg. Sess., 1992), c. 959, s. 85; 2000-140, s. 79(b).)

Editor's Note. — The number of this section was designated by the Revisor of Statutes.

§ 143B-434.3: Repealed by Session Laws 2003-284, s. 12.6A.(a), effective on and after August 2, 2000.

§ 143B-434.4: Repealed by Session Laws 2005-276, s. 39.1(d), effective July 1, 2005.

§ 143B-435. Publications.

The Department of Commerce may also cause to be prepared for publication, from time to time, reports and statements, with illustrations, maps and other descriptions, which may adequately set forth the natural and material resources of the State and its industrial and commercial developments, with a view to furnishing information to educate the people with reference to the material advantages of the State, to encourage and foster existing industries, and to present inducements for investment in new enterprises. Such information shall be published and distributed as the Department of Commerce may direct. The costs of publishing and distributing such information shall be paid from:

(1) State funds as other public documents; or
(2) Private funds received:
a. As donations, or
b. From the sale of appropriate advertising in such published information. (1925, c. 122, s. 11; 1973, c. 1262, s. 28; 1977, c. 198, ss. 20, 26; 1989, c. 751, s. 7(30); 1989 (Reg. Sess., 1990), c. 1066, s. 55; 1991 (Reg. Sess., 1992), c. 959, s. 55.)

Editor's Note. — The above section was formerly G.S. 113-14. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

§ 143B-435.1. Clawbacks.

(a) Clawback Defined. — For the purpose of this Article, a clawback is a requirement that all or part of an economic development incentive will be returned or forfeited if the recipient business does not fulfill its responsibilities under the incentive law, contract, or both.

(b) Findings. — The General Assembly finds that in order for a clawback to be effective, there must be monitoring and reporting regarding the business's performance of its responsibilities and a mechanism for obtaining repayment if the clawback requiring the return of previously disbursed funding is triggered. Clawback provisions are essential to protect the State's investment in a private business and ensure that the public benefits from the incentive will be secured.

(c) Catalog. — The Department of Commerce shall catalog all clawbacks in State and federal programs it administers, whether provided by statute, by rule, or under a contract. The catalog must include a description of each clawback, the program to which it applies, and a citation to its source. The Department shall publish the catalog on its Web site and update it every six months.

(d) Report. — The Department of Commerce shall report to the Revenue Laws Study Committee by April 1 and October 1 of each year on all clawbacks that have been triggered under programs it administers and its progress on obtaining repayments. The report must include the name of each business, the event that triggered the clawback, and the amount forfeited or to be repaid. (2007-515, s. 6.)

Editor's Note. — Session Laws 2007-515, s. 8, made this section effective August 30, 2007.

§ 143B-436. Advertising of State resources and advantages.

It is hereby declared to be the duty of the Department of Commerce to map out and to carry into effect a systematic plan for the nationwide advertising of North Carolina, properly presenting, by the use of any available advertising media, the true facts concerning the State of North Carolina and all of its resources. (1937, c. 160; 1953, c. 808, s. 4; 1973, c. 1262, s. 86; 1977, c. 198, ss. 20, 26; 1989, c. 751, s. 7(31); 1991 (Reg. Sess., 1992), c. 959, s. 56.)

Editor's Note. — The above section was formerly G.S. 113-15. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

§ 143B-437. Investigation of impact of proposed new and expanding industry.

The Department of Commerce shall conduct an evaluation in conjunction with the Department of Environment and Natural Resources of the effects on the State's natural and economic environment of any new or expanding industry or manufacturing plant locating in North Carolina. (1971, c. 824; 1973, c. 1262, ss. 28, 86; 1977, c. 198, ss. 19, 26; c. 771, s. 4; 1989, c. 727, s. 218(153); c. 751, s. 7(32); 1991 (Reg. Sess., 1992), c. 959, s. 57; 1997-443, s. 11A.119(a).)

Editor's Note. — The above section was formerly G.S. 113-15.2. It was rewritten by Session Laws 1977, c. 198, s. 19, and recodified in this Article by s. 26 of the same act.

§ 143B-437.01. Industrial Development Fund.

(a) Creation and Purpose of Fund. — There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the

G.S. 143B-437.01(a1)(4) and (b1) are set out twice. See note.

State in creating and retaining jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation or retention of new jobs. The funds shall be expended at a maximum rate of ten thousand dollars ($10,000) per new job created or per job retained up to a maximum of five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in a county that has one of the 25 highest rankings under G.S. 143B-437.08 or that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment.

(6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b).

(a1) Definitions. — The following definitions apply in this section:

(1) Air courier services. — Defined in G.S. 105-129.81.

(2) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.

(2a) Company headquarters. — Defined in G.S. 105-129.81.

(3) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.

(4) **(Effective until July 1, 2012)** Economically distressed county. — A county that is defined as a tier one or tier two county under G.S. 143B-437.08 after the adjustments of that section are applied.

G.S. 143B-437.01(a1)(4) and (b1) are set out twice. See note.

(4) **(Effective July 1, 2012)** Economically distressed county. — A county that has one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.

(5) Eligible industry. — A company headquarters or a person engaged in the business of air courier services, information technology and services, manufacturing, or warehousing and wholesale trade.

(6) Information technology and services. — Defined in G.S. 105-129.81.

(7) Major economic dislocation. — The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(8) Manufacturing. — Defined in G.S. 105-129.81.

(9) Reserved.

(10) Warehousing. — Defined in G.S. 105-129.81.

(11) Wholesale trade. — Defined in G.S. 105-129.81.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) **(Effective until July 1, 2012)** Utility Account. — There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of the counties that are defined as a tier one or tier two county under G.S. 143B-437.08 after the adjustments of that section are applied in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(b1) **(Effective July 1, 2012)** Utility Account. — There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of the counties that have one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. — The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5. (1989, c. 751, s. 9(c); c. 754, s. 54; 1991 (Reg. Sess., 1992), c. 959, s. 60; 1993, c. 444, s. 1; 1996, 2nd Ex. Sess., c. 13, s. 3.5; 1997-456, s. 27; 1998-55, s. 6; 1999-360, s. 17; 2000-56, s. 3(b); 2002-172, ss. 2.2(a), (b); 2003-416, s. 2; 2005-276, s. 13.5; 2006-252, s. 2.4; 2007-323, s. 13.18(i); 2009-523, s. 1(a) - (c).)

Subdivision (a1)(4) and Subsection (b1) Set Out Twice. — The first versions of subdivision (a1)(4) and subsection (b1) set out above are effective until July 1, 2012. The second versions of subdivision (a1)(4) and subsection (b1) set out above are effective July 1, 2012.

Editor's Note. — This section was formerly numbered G.S. 143B-437A. It was renumbered as this section pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Session Laws 1996, Second Extra Session, c. 18, s. 26.5(b), was codified as subsection (c1) of this section at the direction of the Revisor of Statutes.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-323, s. 13.18(i), effective January 1, 2008, substituted "or that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census" for "after the adjustments of that section are applied" at the end of subdivision (a)(3).

Session Laws 2009-523, s. 1(a), effective August 26, 2009, inserted "and retaining" in the introductory paragraph of subsection (a) and, in subdivision (a)(2), inserted "or retention" in the first sentence, and, in the second sentence, substituted "ten thousand dollars ($10,000)" for "five thousand dollars ($5,000)" and inserted "or per job retained."

Session Laws 2009-523, s. 1(b) and (c), effective August 26, 2009, and expiring July 1, 2012, substituted "is defined as a tier one or tier two county" for "has one of the 65 highest rankings" at the beginning of subdivision (a1)(4); and substituted "are defined as a tier one or tier two county" for "have one of the 65 highest rankings" in the first sentence of subsection (b1).

§ 143B-437.02. Site infrastructure development.

(a) Findings. — The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires the enactment of a new program as provided in this section that is designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this section is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina and this section will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this section is to stimulate economic activity and to create new jobs within the State.

(b) Fund. — The Site Infrastructure Development Fund is created as a restricted reserve in the Department of Commerce. Funds in the fund do not revert but remain available to the Department for these purposes. The Department may use the funds in the fund only for the following purposes:

(1) For site development in accordance with this section.

(2) To acquire options and hold options for the purchase of land in accordance with subsection (m) of this section.

(c) Definitions. — The definitions in G.S. 143B-437.51 apply in this section. In addition, the following definitions apply in this section:

(1) Department. — The Department of Commerce.

(2) Site development. — Any of the following:

a. A restricted grant or a forgivable loan made to a business to enable the business to acquire land, improve land, or both.

b. A grant to one or more State agencies or nonprofit corporations to enable the grantees to acquire land, improve land, or both and to lease the property to a business.

c. A grant to one or more local government units to enable the units to acquire land, improve land, or both and to lease the property to a business.

(d) Eligibility. — To be eligible for consideration for site development for a project, a business must meet both of the following conditions:

(1) The business will invest at least one hundred million dollars ($100,000,000) of private funds in the project.

(2) The project will employ at least 100 new employees.

(e) Health Insurance. — A business is eligible for consideration for site development under this section only if the business provides health insurance for all of the full-time employees of the project with respect to which the application is made. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a contract for site development under this section is in effect, the business must provide the Department of Commerce a certification that the business continues to provide health insurance for all full-time employees of the project governed by the contract. If the business ceases to provide health insurance to all full-time employees of the project, Department shall provide for reimbursement of an appropriate portion of the site development funds provided to the business.

(f) Safety and Health Programs. — In order for a business to be eligible for consideration for site development under this section, the business must have no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

(g) Environmental Impact. — A business is eligible for consideration for site development under this part only if the business certifies that, at the time of the application, the business has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources must notify the Department of Commerce annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years.

(h) Selection. — The Department of Commerce shall administer the selection of projects to receive site development. The selection process shall include the following components:

(1) Criteria. — The Department of Commerce must develop criteria to be used to identify and evaluate eligible projects for possible site development.

(2) Initial evaluation. — The Department must evaluate major competitive projects to determine if site development is merited and to determine whether the project is eligible and appropriate for consideration for site development.

(3) Application. — The Department must require a business to submit an application in order for a project to be considered for site development. The Department must prescribe the form of the application, the application process, and the information to be provided, including all information necessary to evaluate the project in accordance with the applicable criteria.

(4) Committee. — The Department must submit to the Economic Investment Committee the applications for projects the Department considers eligible and appropriate for consideration for site development. In evaluating each application, the Committee must consider all of the factors set out in Section 2.1(b) of S.L. 2002-172.

(5) Findings. — In order to recommend a project for site development, the Committee must make all of the following findings:

a. The conditions for eligibility have been met.

b. Site development for the project is necessary to carry out the public purposes provided in subsection (a) of this section.

c. The project is consistent with the economic development goals of the State and of the area where it will be located.

d. The affected local governments have participated in recruitment and offered incentives in a manner appropriate to the project.

e. The price and nature of any real property to be acquired is appropriate to the project and not unreasonable or excessive.

f. Site development under this section is necessary for the completion of the project in this State.

(6) Recommendations. — If the Committee recommends a project for site development, it must recommend the amount of State funds to be committed, the preferred form and details of the State participation, and the performance criteria and safeguards to be required in order to protect the State's investment.

(i) Agreement. — Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for site development, the Department shall enter into an agreement to provide site development within available funds for a project recommended by the Committee. Each site development agreement is binding and constitutes a continuing contractual obligation of the State and the business. The site development agreement must include all of the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department to secure the State's investment. Each site development agreement must contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Department of Administration and the Attorney General's Office in preparing the documentation for the site development agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section must be signed personally by the Attorney General.

(j) Safeguards. — To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives State-funded site development must agree to meet performance criteria to protect the State's investment and assure that the projected benefits of the project are secured. The performance criteria to be required shall include creation and maintenance of an appropriate level of employment and investment over the term of the agreement and any other criteria the Department considers appropriate. The agreement must require the business to repay or reimburse an appropriate portion of the State funds expended for the site development, based on the extent of any failure by the business to meet the performance criteria. The agreement must provide a method for securing these payments from the business, such as structuring the site development as a conditional grant, a forgivable loan, or a revocable lease.

(k) Monitoring and Reports. — The Department is responsible for monitoring compliance with the performance criteria under each site development agreement and for administering the repayment in case of default. The Department shall pay for the cost of this monitoring from funds appropriated to it for that purpose or for other economic development purposes.

On September 1 of each year until all funds have been expended, the Department shall report to the Joint Legislative Commission on Governmental Operations regarding the Site Infrastructure Development Program. This report shall include a listing of each agreement negotiated and entered into during the preceding year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the site development incentive expected to be paid under the agreement during the current fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding year. The Department shall publish this report on its web site and shall make printed copies available upon request.

(*l*) Reserved for future codification purposes.

(m) Options. — The Department of Commerce may acquire options and hold options for the purchase of land for an anticipated industrial site if all of the following conditions are met:

(1) The options are necessary to provide a large, regional industrial site that cannot be assembled by local governments.

(2) The acquisition of the options is approved by the Committee. (2003-435, 2nd Ex. Sess., s. 1; 2004-124, s. 6.26(a), (b); 2009-451, s. 14.5(a).)

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 14.5(a), effective July 1, 2009, in subsection (k), in the second paragraph, substituted "On September 1 of each year until all funds have been expended" for "Within two months after the end of each calendar quarter" at the beginning of the first sentence, and substituted "year" for "quarter" in the second and third sentences.

§ 143B-437.03. Allocation of economic development responsibilities.

The Economic Development Board created in G.S. 143B-434 shall coordinate economic development efforts among the various agencies and entities, including those created by executive order of the Governor, that receive economic development appropriations and the Board shall recommend to the Governor and to the General Assembly the assignment of key responsibilities for different aspects of economic development. The Board shall recommend to the Governor and to the General Assembly resource allocation and planning designed to encourage each agency to focus on its area of primary responsibility and not diffuse its resources by conducting activities assigned to other agencies. (1993, c. 321, s. 313(e); 1997-456, s. 27.)

Editor's Note. — This section was formerly numbered G.S. 143B-437C. It was renumbered as this section pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 143B-437.04. Community development block grants.

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants to ensure that:

(1) No local match is required for grants awarded for projects located in counties that have one of the 25 highest rankings under G.S. 143B-437.08 or counties that have a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census.

(2) To the extent practicable, priority consideration for grants is given to projects located in counties that have met the conditions of subdivision (a)(1) of this section or in urban progress zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated an urban progress zone under G.S. 143B-437.09, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish an urban progress zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce. (1996, 2nd Ex. Sess., c. 13, s. 3.6; 1997-456, s. 27; 1998-55, s. 3; 2006-252, s. 2.5; 2007-323, s. 13.18(h).)

Editor's Note. — This section was formerly numbered G.S. 143B-437D. It was renumbered as this section pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-323, s. 13.18.(h), effective January 1, 2008, substituted "or counties that have a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census" for "after the adjustments of that section are applied" in subdivision (a)(1) and substituted "that have met the conditions of subdivision (a)(1) of this section" for "that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied" in subdivision (a)(2).

Legal Periodicals. — See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

§ 143B-437.05. Regional Development.

The Department of Commerce shall review the Economic Development Board's annual report on economic development to evaluate the progress of development in each of the economic regions defined by the Board in its Comprehensive Strategic Economic Development Plan. In its recruitment and development work, the Department shall strive for balance and equality among the economic regions and shall use its best efforts to locate new industries in the less developed areas of the State. (1996, 2nd Ex. Sess., c. 13, s. 3.10; 1997-456, s. 27.)

Editor's Note. — This section was formerly numbered G.S. 143B-437E. The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1996, Second Extra Session, c. 13, s. 3.10, having been G.S. 143B-437D. This section was renumbered as G.S. 143B-437.05 pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 143B-437.06: Repealed by Session Laws 2004-124, s. 13.6(c) effective July 1, 2004.

Editor's Note. — Session Laws 2002-126, s. 8.3, effective July 1, 2002, was codified as this section at the direction of the Revisor of Statutes.

Session Laws 2004-124, s. 13.6(c), repealed Session Laws 2002-126, s. 8.3, effective July 1, 2004.

§ 143B-437.07. Economic development grant reporting.

The Department of Commerce must publish on or before March 1 of each year the following information, itemized by business entity, for all grant programs administered by the Department that disbursed or awarded grant monies to businesses during the previous calendar year:

(1) The amount of grant monies awarded during the previous year.
(2) The amount of grant monies disbursed during the previous year.
(3) The amount of grant monies that were disbursed in earlier years to business entities that received grant monies during the previous year.
(4) The amount of potential future liability under the grant program.

(5) The number, type, and wage level of jobs created or retained during the previous year as a result of a grant.
(6) A description of any other financial assistance received during the previous year from all economic development incentive programs administered by the Department.
(7) Any amount recaptured from the business entity during the previous year for failure to comply with the grant agreement or applicable law. (2005-429, s. 1.3.)

Editor's Note. — Session Laws 2005-429, s. 3, provides: "The Economic Development Oversight Committee shall study the issue of public disclosure as it relates to economic development efforts. Specifically, the Committee shall study ways of providing the public information about the employment levels, and any changes in employment levels, of businesses that receive economic development incentives from the State or local governments. The Committee may make an interim report on this study, including any recommendations for legislative proposals, to the 2006 Regular Session of the 2005 General Assembly and shall make a final report on this study to the 2007 General Assembly."

§ 143B-437.08. Development tier designation.

(a) Tiers Defined. — A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. — Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:
(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.
(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.
(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.
(4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. — After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. — In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Adjustment for Certain Small Counties. — Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, any county that has a

G.S. 143B-437.08(g) is set out twice. See note.

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population of less than 50,000 shall automatically be ranked one of the 80 highest counties, and any county that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census shall automatically be ranked one of the 40 highest counties.

(f) Adjustment for Development Tier One Areas. — Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) **(Effective until July 1, 2012)** Exception for Two-County Industrial Park. — An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.
(2) At least one-fifth of the park is located in the county with the lower tier designation.
(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.
(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.
(5) For parks established on or after August 1, 2009, when more than one-half of the park is located in the higher-tiered county, the counties have entered into an interlocal agreement that provides that the incremental increase in property tax revenues within the park shall be shared equally by the counties.

(g) **(Effective July 1, 2012)** Exception for Two-County Industrial Park. — An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.
(2) At least one-third of the park is located in the county with the lower tier designation.
(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.
(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.
(5) Expired, effective July 1, 2012, pursuant to Session Laws 2009-505, s. 2.

(h) Exception for Certain Multijurisdictional Industrial Parks. — An eligible industrial park created by interlocal agreement under G.S. 158-7.4, and parcels of land located within the industrial park that are subsequently transferred and used for industrial or commercial purposes authorized for cities and counties under G.S. 158-7.1, have the lowest development tier designation of the designations of the counties in which they are located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in three or more contiguous counties.
(2) At least one of the counties in which the industrial park is located is a development tier one area.
(3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.
(4) In each county in which the industrial park is located, the park has at least 250 developable acres. A transfer of acreage that reduces the number of developable acres below 250 developable acres in a county does not affect an industrial park's eligibility under this subsection if the transfer is to an owner who uses or develops the acreage for industrial or commercial purposes authorized for cities and counties under G.S. 158-7.1. For the purposes of this subdivision, "developable acres" includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.
(5) The total population of all of the counties in which the industrial park is located is less than 200,000.
(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.

(i) **(Expires July 1, 2012)** Exception for Seafood Industrial Parks. — A seafood industrial park created under Article 23C of Chapter 113 of the General Statutes has a development tier one designation. (2006-252, s. 1.2; 2008-147, s. 1; 2009-505, s. 1; 2009-524, s. 1.)

Subsection (g) Set Out Twice. — The first version of subsection (g) set out above is effective until July 1, 2012. The second version of subsection (g) set out above is effective July 1, 2012.

Editor's Note. — Session Laws 2006-252, s. 1.2A, provides: "Notwithstanding the provisions of G.S. 143B-437.08, as enacted by Section 1.2 of this act, for the 2007 taxable year, a development tier one area is a county whose annual ranking is one of the 41 highest in the State."

Session Laws 2006-252, s. 1.4, provides: "The Department of Commerce shall, in consultation with the North Carolina Rural Center, Inc. and lower-tiered counties, develop additional strategies to enhance economic growth and development in economically distressed areas. The Department shall report on the results of this study to the Joint Legislation Economic Development Oversight Committee by January 1, 2007. For the purposes of this section, 'economically distressed areas' means enterprise tier one areas as defined in G.S. 105-129.3."

Session Laws 2006-252, s. 1.5, made this section effective August 17, 2006.

Session Laws 2008-136, s. 5, effective July 1, 2009, and expiring October 1, 2023, provides: "A county designated as a development tier one or two area pursuant to G.S. 143B-437.08 may, upon resolution by the Board of Commissioners of their intent to (i) develop a plan for the management of abandoned manufactured homes and (ii) implement the plan once developed, request a planning grant of up to two thousand five hundred dollars ($2,500) from the Solid Waste Management Trust Fund. These funds shall be used by the county to prepare a plan as provided in G.S. 130A-309.99C, as enacted by Section 1 of this act [codified as G.S. 130A-309.99A through 130A-309.99H], and to identify abandoned manufactured homes."

Effect of Amendments. — Session Laws 2008-147, s. 1, effective August 2, 2008, in subsection (h), in the introductory paragraph, substituted "G.S. 158-7.4, and parcels of land located within the industrial park that are subsequently transferred and used for industrial or commercial purposes authorized for cities and counties under G.S. 158-7.1, have the lowest development tier designation of the designations of the counties in which they are" for "G.S. 158-7.4 has the lowest development tier designation of the designations of the counties in which it is," and in subdivision (h)(4), inserted the second sentence.

Session Laws 2009-505, s. 1, effective August 26, 2009, and expiring July 1, 2012, added subsection (i).

Session Laws 2009-524, s. 1, effective August 26, 2009, and expiring July 1, 2012, in subsection (g), substituted "one-fifth" for "one-third" in subdivision (g)(2), and added subdivision (g)(5).

§ 143B-437.09. Urban progress zone designation.

(a) Urban Progress Zone Defined. — An urban progress zone is an area that meets all of the following conditions:

(1) It is comprised of part or all of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.

(2) All of the area is located in whole within the primary corporate limits of a municipality with a population in excess of 10,000 according to the most recent annual population estimates certified by the State Budget Officer.

(3) Every census tract and census block group that comprises the area meets at least one of the following conditions:

a. It has a population that meets the poverty level threshold. The population of a census tract or census block group meets the poverty level threshold if more than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

b. It is located adjacent to a census tract or census block group whose population meets the poverty level threshold and at least fifty percent (50%) of the part of it that is included in the area is zoned as nonresidential. No more than thirty-five percent (35%) of the area of a zone may consist of census tracts or census block groups that satisfy this condition only.

c. It has a population that has a poverty level that is greater than the poverty level of the population of the State and a per capita income that is at least ten percent (10%) below the per capita income of the State according to the most recent federal decennial census, and it has experienced a major plant closing and layoff within the past 10 years. A census tract or census block group has experienced a major plant closing and layoff if one of its industries has closed one or more facilities in the census tract or census block group resulting in a layoff of at least 3,000 employees working in the census tract or census block group and if the number of employees laid off is greater than seven percent (7%) of the population of the municipality according to the most recent federal decennial census.

(b) Limitations. — No census tract or block group may be located in more than one urban progress zone. The total area of all zones within a municipality may not exceed fifteen percent (15%) of the total area of the municipality unless the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality. In the case of a municipality where the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality, the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section may be designated as an urban poverty zone.

(c) Designation. — Upon application of a local government, the Secretary of Commerce shall make a written determination whether an area is an urban progress zone that satisfies the conditions and limitations of subsections (a) and (b) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until

December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

(1) A map showing the census tracts and block groups that would comprise the zone.
(2) A detailed description of the boundaries of the area that would comprise the zone.
(3) A zoning map for the municipality with the proposed zone clearly delineated upon it.
(4) A certification regarding the size of the proposed zone and the areas within the proposed zone zoned as nonresidential.
(5) Detailed census information on the municipality and the proposed zone.
(6) A resolution of the governing body of the municipality requesting the designation of the area as an urban progress zone.
(7) Any other material required by the Secretary of Commerce.

(d) Parcel of Property Partially in Urban Progress Zone. — For the purposes of this section, a parcel of property that is located partially within an urban progress zone is considered entirely within the zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the zone.
(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary. (2006-252, s. 1.2; 2007-515, s. 2.)

Editor's Note. — Session Laws 2006-252, s. 1.4, provides: "The Department of Commerce shall, in consultation with the North Carolina Rural Center, Inc. and lower-tiered counties, develop additional strategies to enhance economic growth and development in economically distressed areas. The Department shall report on the results of this study to the Joint Legislation Economic Development Oversight Committee by January 1, 2007. For the purposes of this section, 'economically distressed areas' means enterprise tier one areas as defined in G.S. 105-129.3."

Session Laws 2006-252, s. 1.5, made this section effective August 17, 2006.

§ 143B-437.010. Agrarian growth zone designation.

(a) Agrarian Growth Zone Defined. — An agrarian growth zone is an area that meets all of the following conditions:

(1) It is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.
(2) All of the area is located in whole within a county that has no municipality with a population in excess of 10,000.
(3) Every census tract and census block group that comprises the area has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(b) Limitation and Designation. — The area of a county that is included in one or more agrarian growth zones shall not exceed five percent (5%) of the total area of the county. Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is an agrarian growth zone that satisfies the conditions of subsection (a) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all agrarian growth zones with a description of their boundaries.

(1) A map showing the census tracts and block groups that would comprise the zone.
(2) A detailed description of the boundaries of the area that would comprise the zone.
(3) A certification regarding the size of the proposed zone.
(4) Detailed census information on the county and the proposed zone.
(5) A resolution of the board of county commissioners requesting the designation of the area as an agrarian growth zone.
(6) Any other material required by the Secretary of Commerce.

(c) Parcel of Property Partially in Agrarian Growth Zone. — For the purposes of this section, a parcel of property that is located partially within an agrarian growth zone is considered entirely within the zone if all of the following conditions are satisfied:
(1) At least fifty percent (50%) of the parcel is located within the zone.
(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary. (2006-252, s. 1.2; 2007-484, s. 33(a); 2007-515, s. 3.)

Editor's Note. — Session Laws 2007-515, s. 3, effective August 30, 2007, amended former G.S. 143B-437.10, which was recodified as this section by Session Laws 2007-484, s. 33(a). At the direction of the Revisor of Statutes, Session Laws 2007-515, s. 3, has been given effect in this section.

Session Laws 2006-252, s. 1.4, provides: "The Department of Commerce shall, in consultation with the North Carolina Rural Center, Inc. and lower-tiered counties, develop additional strategies to enhance economic growth and development in economically distressed areas. The Department shall report on the results of this study to the Joint Legislation Economic Development Oversight Committee by January 1, 2007. For the purposes of this section, 'economically distressed areas' means enterprise tier one areas as defined in G.S. 105-129.3."

Session Laws 2006-252, s. 1.5, made this section effective August 17, 2006.

This section was formerly G.S. 143B-437.10, as enacted by Session Laws 2006-252, s. 1.2. It was recodified as this section by Session Laws 2007-484, s. 33(a), effective July 1, 2007.

§ 143B-437.011. Executive aircraft used for economic development; other uses.

The use of executive aircraft by the Department of Commerce for economic development purposes shall take precedence over all other uses. The Department of Commerce shall annually review the rates charged for the use of executive aircraft and shall adjust the rates, as necessary, to account for upgraded aircraft and inflationary increases in operating costs, including jet fuel prices. If an executive aircraft is not being used by the Department of Commerce for economic development purposes, the aircraft may be used by the Governor or a State official who is employed by an agency that does not have its own aircraft and is traveling on State business. If an executive aircraft is used to attend athletic events or for any other purpose related to collegiate athletics, the rate charged shall be equal to the direct cost of operating the aircraft as established by the aircraft's manufacturer, adjusted for inflation. (2007-323, s. 13.3; 2009-451, s. 14.7.)

Editor's Note. — Session Laws 2007-323, s. 32.6, made this section effective July 1, 2007.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 14.7, effective July 1, 2009, in the third sentence, inserted "by the Department of Commerce" near the beginning, and substituted "the aircraft may be used by the Governor or a State official who is employed by an agency that does not have its own aircraft and is" for "priority of use shall be given first to the Governor, second to the Council of State, and third to other State officials" near the middle.

§ 143B-437.11: Recodified as G.S. 143B-437.012 by Session Laws 2008-187, s. 26(a), effective August 7, 2008.

Editor's Note. — Session Laws 2007-552, 1st Ex. Sess., s. 2, provides: "There is appropriated from the General Fund to the Job Maintenance and Capital Development Fund, created under Section 1 of this act, the sum of five million dollars ($5,000,000) for the 2008-2009 fiscal year."

Session Laws 2007-552, 1st Ex. Sess., s. 4, provides: "The Joint Select Committee on Economic Development Incentives shall compile a report that lists and quantifies all economic development incentives offered by the State. The report shall be a comprehensive listing of economic development incentives and shall include information on tax expenditures, grant and loan programs, State appropriations that directly or indirectly support economic development, State appropriations to other public and private entities for economic development initiatives, and the use of State trust funds. The Committee shall make a final report, including any recommendations or legislative proposals, to the 2009 General Assembly and may make an interim report to the 2008 Regular Session of the 2007 General Assembly."

Session Laws 2007-552, 1st Ex. Sess., s. 5, made this section effective July 1, 2007.

Former G.S. 143B-437.11 was recodified as G.S. 143B-437.012 by Session Laws 2008-187, s. 26(a), effective August 7, 2008.

§ 143B-437.012. Job Maintenance and Capital Development Fund.

(a) Findings. — The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity, to maintain high-paying jobs for the citizens of the State, and to encourage capital investment by encouraging and promoting the maintenance of existing business and industry within the State.

(2) The economic condition of the State is not static, and recent changes in the State's economic condition have created economic distress that requires the enactment of a new program as provided in this section that is designed to encourage the retention of significant numbers of high-paying jobs and the addition of further large-scale capital investment.

(3) The enactment of this section is necessary to stimulate the economy and maintain high-quality jobs in North Carolina, and this section will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the maintenance of high-quality jobs, an enlargement of the overall tax base, continued diversity in the State's industrial base, and an increase in revenue to the State's political subdivisions.

(4) The purpose of this section is to stimulate economic activity and to maintain high-paying jobs within the State while increasing the property tax base for local governments.

(5) The benefits that flow to the State from job maintenance and capital investment are many and include increased tax revenues related to the capital investment, increased corporate income and franchise taxes due to the placement of additional resources in the State, a better trained, highly skilled workforce, and the continued receipt of personal income tax withholdings from workers who remain employed in high-paying jobs.

G.S. 143B-437.012(d), (j), (k), and (n) are set out twice. See note.

(b) Fund. — The Job Maintenance and Capital Development Fund is created as a restricted reserve in the Department of Commerce. Monies in the Fund do not revert but remain available to the Department for these purposes. The Department may use monies in the Fund only to encourage businesses to maintain high-paying jobs and make further capital investments in the State as provided in this section, and funds are hereby appropriated for these purposes in accordance with G.S. 143C-1-2.

(c) Definitions. — The definitions in G.S. 143B-437.51 apply in this section. In addition, as used in this section, the term "Department" means the Department of Commerce.

(d) **(Effective until July 1, 2010)** Eligibility. — A business that satisfies all of the following conditions is eligible for consideration for a grant under this section:

(1) The Department certifies that the business has invested or intends to invest at least two hundred million dollars ($200,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a six-year period beginning with the time the investment commences.

(2) The business employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.

(3) The project is located in a development tier one area at the time the business applies for a grant.

(4) All newly hired employees of the business must be citizens of the United States, or have proper identification and documentation of their authorization to reside and work in the United States.

(d) **(Effective July 1, 2010)** Eligibility. — A business is eligible for consideration for a grant under this section if it satisfies the conditions of either subdivision (1) or (2) of this subsection and satisfies the conditions of both subdivisions (3) and (4) of this subsection:

(1) The business is a major employer. A business is a major employer if the business meets the following requirements:
   a. The Department certifies that the business has invested or intends to invest at least two hundred million dollars ($200,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a six-year period beginning with the time the investment commences.
   b. The business employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.

(2) The business is a large manufacturing employer. A business is a large manufacturing employer if the business meets the following requirements:
   a. The business is in manufacturing, as defined in G.S. 105-129.81, and is converting its manufacturing process to change the product it manufactures.
   b. The Department certifies that the business has invested or intends to invest at least sixty-five million dollars ($65,000,000) of private

G.S. 143B-437.012(d), (j), (k), and (n) are set out twice. See note.

funds in improvements to real property and additions to tangible personal property in the project within a three-year period beginning with the time the investment commences.

c. The business employs at least 320 full-time employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 320 full-time employees at the project for the full term of the grant.

(3) The project is located in a development tier one area at the time the business applies for a grant.

(4) All newly hired employees of the business must be citizens of the United States, or have proper identification and documentation of their authorization to reside and work in the United States.

(e) Wage Standard. — A business is eligible for consideration for a grant under this section only if the business satisfies a wage standard at the project that is the subject of the agreement. A business satisfies the wage standard if it pays an average weekly wage that is at least equal to one hundred forty percent (140%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county. In making the wage calculation, the business shall include any jobs that were filled for at least 1,600 hours during the calendar year, regardless of whether the jobs are full-time positions or equivalent full-time contract positions. Each year that a grant agreement is in effect, the business shall provide the Department a certification that the business continues to satisfy the wage standard. If a business fails to satisfy the wage standard for a year, the business is not eligible for a grant payment for that year.

(f) Health Insurance. — A business is eligible for consideration for a grant under this section only if the business makes available health insurance for all of the full-time employees and equivalent full-time contract employees of the project with respect to which the application is made. For the purposes of this subsection, a business makes available health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage under G.S. 58-50-125.

Each year that a grant agreement under this section is in effect, the business shall provide the Department a certification that the business continues to make available health insurance for all full-time employees of the project governed by the agreement. If a business fails to satisfy the requirements of this subsection, the business is not eligible for a grant payment for that year.

(g) Safety and Health Programs. — A business is eligible for consideration for a grant under this section only if the business has no citations under the Occupational Safety and Health Act that have become a final order within the last three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

(h) Environmental Impact. — A business is eligible for consideration for a grant under this section only if the business has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural

G.S. 143B-437.012(d), (j), (k), and (n) are set out twice. See note.

Resources within the last three years with respect to the location for which the grant is made. For the purposes of this subsection, a significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d).

(i) Selection. — The Department shall administer the selection of projects to receive grants under this section. The selection process shall include the following components:

(1) Criteria. — The Department shall develop criteria to be used to identify and evaluate eligible projects for possible grants under this section.

(2) Initial evaluation. — The Department shall evaluate projects to determine if a grant under this section is merited and to determine whether the project is eligible and appropriate for consideration for a grant under this section.

(3) Application. — The Department shall require a business to submit an application in order for a project to be considered for a grant under this section. The Department shall prescribe the form of the application, the application process, and the information to be provided, including all information necessary to evaluate the project in accordance with the applicable criteria.

(4) Committee. — The Department shall submit to the Economic Investment Committee the applications for projects the Department considers eligible and appropriate for a grant under this section. The Committee shall evaluate applications to choose projects to receive a grant under this section. In evaluating each application, the Committee shall consider all criteria adopted by the Department under this section and, to the extent applicable, the factors set out in Section 2.1(b) of S.L. 2002-172.

(5) Findings. — The Committee shall make all of the following findings before recommending a project receive a grant under this section:
  a. The conditions for eligibility have been met.
  b. A grant under this section for the project is necessary to carry out the public purposes provided in subsection (a) of this section.
  c. The project is consistent with the economic development goals of the State and of the area where it is located.
  d. The affected local governments have participated in retention efforts and offered incentives in a manner appropriate to the project.
  e. A grant under this section is necessary for the sustainability and maintenance of the project in this State.

(6) Recommendations. — If the Committee recommends a project for a grant under this section, it shall recommend the amount of State funds to be committed, the preferred form and details of the State participation, and the performance criteria and safeguards to be required in order to protect the State's investment.

(j) **(Effective until July 1, 2010)** Agreement. — Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for a grant under this section, the Department shall enter into an agreement to provide a grant or grants for a project recommended by the Committee. Each grant agreement is binding and constitutes a continuing contractual obligation of the State and the business. The grant agreement shall include the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department. Each grant agreement shall contain a

G.S. 143B-437.012(d), (j), (k), and (n) are set out twice. See note.

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provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Each grant agreement shall contain a provision requiring the business to maintain the employment level at the project that is the subject of the agreement that is the lesser of the level it had at the time it applied for a grant under this section or that it had at the time that the investment required under subsection (d) of this section began. For the purposes of this subsection, the employment level includes full-time employees and equivalent full-time contract employees. The agreement shall further specify that the amount of a grant shall be reduced in proportion to the extent the business fails to maintain employment at this level and that the business shall not be eligible for a grant in any year in which its employment level is less than eighty percent (80%) of that required. A grant agreement may obligate the State to make a series of grant payments over a period of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Attorney General's office in preparing the documentation for the grant agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section shall be signed personally by the Attorney General.

(j) **(Effective July 1, 2010)** Agreement. — Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for a grant under this section, the Department shall enter into an agreement to provide a grant or grants for a project recommended by the Committee. Each grant agreement is binding and constitutes a continuing contractual obligation of the State and the business. The grant agreement shall include the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department.

Each grant agreement for a business that is a major employer under subdivision (1) of subsection (d) of this section shall contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Each grant agreement shall contain a provision requiring the business to maintain the employment level at the project that is the subject of the agreement that is the lesser of the level it had at the time it applied for a grant under this section or that it had at the time that the investment required under subsection (d) of this section began. For the purposes of this subsection, the employment level includes full-time employees and equivalent full-time contract employees. The agreement shall further specify that the amount of a grant shall be reduced in proportion to the extent the business fails to maintain employment at this level and that the business shall not be eligible for a grant in any year in which its employment level is less than eighty percent (80%) of that required.

Each grant agreement for a business that is a large manufacturing employer under subdivision (2) of subsection (d) of this section shall contain a provision requiring the business to maintain the employment level required under that subdivision at the project that is the subject of the grant. The agreement shall further specify that the business is not eligible for a grant in any year in which the business fails to maintain the employment level.

G.S. 143B-437.012(d), (j), (k), and (n) are set out twice. See note.

A grant agreement may obligate the State to make a series of grant payments over a period of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Attorney General's office in preparing the documentation for the grant agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section shall be signed personally by the Attorney General.

(k) **(Effective until July 1, 2010)** Safeguards. — To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives a grant under this section shall agree to meet performance criteria to protect the State's investment and ensure that the projected benefits of the project are secured. The performance criteria to be required shall include maintenance of an appropriate level of employment at specified levels of compensation, maintenance of health insurance for all full-time employees, investment of a specified amount over the term of the agreement, and any other criteria the Department considers appropriate. The agreement shall require the business to repay or reimburse an appropriate portion of the grant based on the extent of any failure by the business to meet the performance criteria. The agreement shall require the business to repay all amounts received under the agreement and to forfeit any future grant payments if the business fails to satisfy the investment eligibility requirement of subdivision (d)(1) of this section. The use of contract employees shall not be used to reduce compensation at the project that is the subject of the agreement.

(k) **(Effective July 1, 2010)** Safeguards. — To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives a grant under this section shall agree to meet performance criteria to protect the State's investment and ensure that the projected benefits of the project are secured. The performance criteria to be required shall include maintenance of an appropriate level of employment at specified levels of compensation, maintenance of health insurance for all full-time employees, investment of a specified amount over the term of the agreement, and any other criteria the Department considers appropriate. The agreement shall require the business to repay or reimburse an appropriate portion of the grant based on the extent of any failure by the business to meet the performance criteria. The agreement shall require the business to repay all amounts received under the agreement and to forfeit any future grant payments if the business fails to satisfy the investment eligibility requirement of subdivision (d)(1) or (d)(2) of this section. The use of contract employees shall not be used to reduce compensation at the project that is the subject of the agreement.

(*l*) Calculation of Grant Amounts. — The Committee shall consider the following factors in determining the amount of a grant that would be appropriate, but is not necessarily limited to these factors:

(1) Ninety-five percent (95%) of the privilege and sales and use taxes paid by the business on machinery and equipment installed at the project that is the subject of the agreement.

(2) Ninety-five percent (95%) of the sales and use taxes paid by the business on building materials used to construct, renovate, or repair facilities at the project that is the subject of the agreement.

G.S. 143B-437.012(d), (j), (k), and (n) are set out twice. See note.

(3) Ninety-five percent (95%) of the additional income and franchise taxes that are not offset by tax credits. For the purposes of this subdivision, "additional income and franchise taxes" are the additional taxes that would be due because of the investment in machinery and equipment and real property at the project that is the subject of the agreement during the investment period specified in subsection (d) of this section.

(4) Ninety-five percent (95%) of the sales and use taxes paid on electricity, the excise tax paid on piped natural gas, and the privilege tax paid on other fuel for electricity, piped natural gas, and other fuel consumed at the project that is the subject of the agreement.

(5) One hundred percent (100%) of worker training expenses, including wages paid for on-the-job training, associated with the project that is the subject of the agreement.

(6) One hundred percent (100%) of any State permitting fees associated with the capital expansion at the project that is the subject of the agreement.

(m) Monitoring and Reports. — The Department is responsible for monitoring compliance with the performance criteria under each grant agreement and for administering the repayment in case of default. The Department shall pay for the cost of this monitoring from funds appropriated to it for that purpose or for other economic development purposes.

On September 1 of each year until all funds have been expended, the Department shall report to the Joint Legislative Commission on Governmental Operations regarding the Job Maintenance and Capital Development Fund. This report shall include a listing of each grant awarded and each agreement entered into under this section during the preceding year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be paid under the agreement during the current fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding year. The Department shall publish this report on its Web site and shall make printed copies available upon request.

(n) **(Effective until July 1, 2010)** Limitations. — The Department may enter into no more than five agreements under this section. The total aggregate cost of all agreements entered into under this section may not exceed sixty million dollars ($60,000,000). The total annual cost of an agreement entered into under this section may not exceed four million dollars ($4,000,000).

(n) **(Effective July 1, 2010)** Limitations. — The Department may enter into no more than five agreements under this section. The total aggregate cost of all agreements entered into under this section may not exceed sixty-nine million dollars ($69,000,000). The total annual cost of an agreement entered into under this section may not exceed six million dollars ($6,000,000). (2007-552, 1st Ex. Sess., s. 1; 2008-187, s. 26(a); 2009-451, s. 14.5(b); 2009-520, s. 1.)

Subsections (d), (j), (k), and (n) Set Out Twice. — The first versions of subsections (d), (j), (k), and (n) set out above are effective until July 1, 2010. The second versions of subsections (d), (j), (k), and (n) set out above are effective July 1, 2010.

Editor's Note. — Session Laws 2007-552, 1st Ex. Sess., s. 2, provides: "There is appropriated from the General Fund to the Job Maintenance and Capital Development Fund, created under Section 1 of this act, the sum of five million dollars ($5,000,000) for the 2008-2009 fiscal year."

Session Laws 2007-552, 1st Ex. Sess., s. 4, provides: "The Joint Select Committee on Economic Development Incentives shall compile a report that lists and quantifies all economic development incentives offered by the State. The report shall be a comprehensive listing of economic development incentives and shall include information on tax expenditures, grant and loan programs, State appropriations that directly or indirectly support economic development, State appropriations to other public and private entities for economic development initiatives, and the use of State trust funds. The Committee shall make a final report, including any recommendations or legislative proposals, to the 2009 General Assembly and may make an interim report to the 2008 Regular Session of the 2007 General Assembly."

Session Laws 2007-552, 1st Ex. Sess., s. 5, made this section effective July 1, 2007.

This section was formerly G.S. 143B-437.11, as enacted by Session Laws 2007-552, 1st Ex. Sess., s. 1. It was recodified as this section by Session Laws 2008-187, s. 26(a), effective August 7, 2008.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 14.5(b), effective July 1, 2009, in subsection (m), in the second paragraph, substituted "On September 1 of each year until all funds have been expended" for "Within two months after the end of each calendar quarter" at the beginning of the first sentence, and substituted "year" for "quarter" in the second and third sentences.

Session Laws 2009-520, s. 1, effective July 1, 2010, rewrote subsection (d); in subsection (j), redesignated the former third through sixth sentences of the first paragraph as the present second paragraph and inserted "for a business that is a major employer under subdivision (1) of subsection (d) of this section" in the first sentence of the present second paragraph, added the present third paragraph, redesignated the former seventh and eighth sentences of the first paragraph as the present fourth paragraph, and redesignated the former second paragraph as the present last paragraph of the subsection; substituted "subdivision (d)(1) or (d)(2) of this section" for "subdivision (d)(1) of this section" at the end of the next to last sentence in subsection (k); and, in subsection (n), substituted "sixty-nine million dollars ($69,000,000)" for "sixty million dollars ($60,000,000)" at the end of the first sentence, and substituted "six million dollars ($6,000,000)" for "four million dollars ($4,000,000)" at the end of the second sentence.

Part 2A. Community Development Council.

§ 143B-437.1. Community Development Council — creation; powers and duties.

There is hereby created the Community Development Council to be located in the Department of Commerce. The Community Development Council shall have the following functions and duties:

(1) To advise the Secretary of Commerce with respect to promoting and assisting in the orderly development of North Carolina counties and communities.

(2) To advise the Secretary of Commerce with respect to the type and effectiveness of planning and management services provided to local government.

(3), (4) Repealed by Session Laws 1977, c. 198, s. 13.

(5) The Council shall consider and advise the Secretary of Commerce upon any matter the Secretary may refer to it. (1973, c. 1262, s. 48; 1977, c. 198, ss. 13, 14; c. 771, ss. 4, 8; 1989, c. 727, ss. 199, 200; c. 751, ss. 7(33), 8(19); 1991 (Reg. Sess., 1992), c. 959, s. 58.)

Editor's Note. — This Part is former Part 11 of Article 7 (G.S. 143B-305 through 143B-307), as recodified by Session Laws 1989, c. 727, s. 199. Where appropriate, the historical citations to the sections in the former Part have been added to corresponding sections in the Part as rewritten and recodified.

§ 143B-437.2. Community Development Council — members; chairman; selection; removal; compensation; quorum; services.

(a) The Community Development Council shall consist of 11 members appointed by the Governor. The composition of the Council shall be as follows: one member who shall be a local government official, one member who shall be the Executive Secretary of the League of Municipalities, one member who shall be the Executive Secretary of the County Commissioners Association, one member who shall represent industry, one member who shall represent labor, and six members at large.

(b) The Governor shall designate one member of the Council to serve as Chairman at the pleasure of the Governor.

(c) The initial members of the Council other than those members serving in an ex officio capacity shall be appointed to serve for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

(e) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the Council shall constitute a quorum for the transaction of business.

(g) All clerical and other services required by the Council shall be supplied by the Secretary of Commerce. (1973, c. 1262, s. 49; 1977, c. 198, s. 14; c. 771, ss. 4, 9; 1989, c. 727, ss. 199, 201; c. 751, s. 8(20); 1991 (Reg. Sess., 1992), c. 959, s. 59.)

§ 143B-437.3. Community Development Council — meetings.

The Community Development Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 50; 1977, c. 198, s. 14; 1989, c. 727, s. 199.)

Part 2B. NC Green Business Fund.

§ 143B-437.4. NC Green Business Fund established as a special revenue fund.

(a) Establishment. — The NC Green Business Fund is established as a special revenue fund in the Department of Commerce, and the Department shall be responsible for administering the Fund.

(b) Purposes. — Moneys in the NC Green Business Fund shall be allocated pursuant to this subsection. The Department of Commerce shall make grants from the Fund to private businesses with less than 100 employees, nonprofit organizations, local governments, and State agencies to encourage the expansion of small to medium size businesses with less than 100 employees to help grow a green economy in the State. Moneys in the NC Green Business Fund shall be used for projects that will focus on the following three priority areas:

(1) To encourage the development of the biofuels industry in the State. The Department of Commerce may make grants available to maxi-

mize development, production, distribution, retail infrastructure, and consumer purchase of biofuels in North Carolina, including grants to enhance biofuels workforce development.

(2) To encourage the development of the green building industry in the State. The Department of Commerce may make grants available to assist in the development and growth of a market for environmentally conscious and energy efficient green building processes. Grants may support the installation, certification, or distribution of green building materials; energy audits; and marketing and sales of green building technology in North Carolina, including grants to enhance workforce development for green building processes.

(3) To attract and leverage private-sector investments and entrepreneurial growth in environmentally conscious clean technology and renewable energy products and businesses, including grants to enhance workforce development in such businesses. (2007-323, s. 13.2(a).)

Editor's Note. — Session Laws 2007-323, s. 32.6, made this part effective July 1, 2007.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 143B-437.5. Green Business Fund Advisory Committee.

The Department of Commerce may establish an advisory committee to assist in the development of the specific selection criteria and the grant-making process of the NC Green Business Fund. (2007-323, s. 13.2(a).)

§ 143B-437.6. Agreements required.

Funds may be disbursed from the NC Green Business Fund only in accordance with agreements entered into between the Department of Commerce and an eligible grantee. Each agreement must contain the following provisions:

(1) A description of the acceptable uses of grant proceeds. The agreement may limit the use of funds to specific purposes or may allow the funds to be used for any lawful purposes.

(2) A provision allowing the Department of Commerce to inspect all records of the business that may be used to confirm compliance with the agreement or with the requirements of this Part.

(3) A provision establishing the method for determining compliance with the agreement.

(4) A provision establishing a schedule for disbursement of funds under the agreement.

(5) A provision requiring recapture of grant funds if a grantee subsequently fails to comply with the terms of the agreement.

(6) Any other provision the State finds necessary to ensure the proper use of State funds. (2007-323, s. 13.2(a).)

§ 143B-437.7. Program guidelines.

The Department of Commerce shall develop guidelines related to the administration of the NC Green Business Fund and to the selection of projects to receive allocations from the Fund, including project evaluation measures. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the Department of Commerce must publish the proposed guidelines on the Department's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this section, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.
(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment. (2007-323, s. 13.2(a).)

§ 143B-437.8. Reports.

Grants made to non-State entities through the NC Green Business Fund shall be subject to the oversight and reporting requirements of G.S. 143C-6-23. The Department of Commerce shall publish a report on the commitment, disbursement, and use of funds allocated from the NC Green Business Fund at the end of each fiscal year. The report is due no later than September 1 and must be submitted to the following:

(1) The Joint Legislative Commission on Governmental Operations.
(2) The chairs of the House of Representatives and Senate Finance Committees.
(3) The chairs of the House of Representatives and Senate Appropriations Committees.
(4) The Fiscal Research Division of the General Assembly. (2007-323, s. 13.2(a).)

§ 143B-437.9: Reserved for future codification purposes.

§ 143B-437.10: Recodified as G.S. 143B-437.010 by Session Laws 2007-484, s.33(a), effective July 1, 2007.

Editor's Note. — This section was enacted as G.S. 143B-437.10 and was recodified by Session Laws 2007-484, s. 33(a), effective July 1, 2007, as G.S. 143B-437.010.

§§ 143B-437.11 through 143B-437.19: Reserved for future codification purposes.

Part 2D. North Carolina Rural Redevelopment Authority.

§§ 143B-437.20 through 143-437.23: Repealed by Session Laws 2008-134, s. 73(a).

Editor's Note. — Session Laws 2005-364, s. 4, provides: "Any costs associated with the change of the name of the Global TransPark Development Zone to North Carolina's Eastern Region by this act shall be borne by North Carolina's Eastern Region Development Commission."

§§ 143B-437.24, 143B-437.25: Reserved for future codification purposes.

§§ 143B-437.26 through 143B-437.33: Repealed by Session Laws 2008-134, s. 73(a).

§§ 143B-437.34 through 143B-437.39: Reserved for future codification purposes.

Part 2E. North Carolina Rural Internet Access Authority.

§§ 143B-437.40 through 143B-437.43: Repealed by Session Laws 2000-149, s. 5, as amended by Session Laws 2003-425, s. 3, effective December 31, 2003.

Editor's Note. — Session Laws 2000-149, s. 4, provides that the act does not obligate the General Assembly to appropriate funds.

Session Laws 2000-149, s. 5, as amended by Session Laws 2003-425, s. 3, makes Part 2E effective August 2, 2000. The North Carolina Rural Internet Access Authority created in the act is dissolved effective December 31, 2003. The act is repealed effective December 31, 2003. Part 2E of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(73), as enacted by the act, are repealed effective December 31, 2003.

Part 2F. e-NC Initiative.

(This part has a delayed repeal date. See notes.)

§ 143B-437.44. (This part has a delayed repeal date. See notes.) Legislative findings.

The General Assembly finds that:

(1) The North Carolina Rural Internet Advisory Authority (RIAA) was created by the General Assembly in S.L. 2000-149 and, in large measure, successfully accomplished the goals set forth for the RIAA and then dissolved as required by law.

(2) An organized effort must continue to ensure that the citizens of North Carolina keep pace with the ever faster technological changes in telecommunications and information networks in order to assure the economic competitiveness of North Carolina with special focus on rural and urban distressed areas.

(3) Affordable, high-speed Internet access is a key competitive factor for economic development and quality of life in the New Economy of the global marketplace.

(4) High-speed Internet access and the broadband applications it delivers are the necessary platforms that will support development of emerging technology-based sectors of great economic promise, for example, biotechnology and nanotechnology, as well as the continued competitiveness of traditional industries.

(5) The intent of the e-NC Authority is to continue and conclude the work of the North Carolina Rural Internet Access Authority, as specified in G.S. 143B-347.47. (2003-425, s. 1.)

Editor's Note. — Session Laws 2003-425, s. 4, as amended by Session Laws 2006-66, s. 12.3(a), provides: "Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. The e-NC Authority created in this act is dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective December 31, 2011."

Session Laws 2005-276, s. 7.42, provides: "The North Carolina Rural Economic Development Center and the e-NC Authority, in collaboration with interested providers of broadband services, representatives from local school administrative units, The University of North Carolina, private colleges, the State Board of Education, the State Chief Information Officer, and the Community College System shall perform a feasibility study on developing regional education networks that provide and sustain broadband service access to individual students and teachers in schools, community colleges, and universities.

"The study shall include (i) an evaluation of existing technology and service applications such as the statewide infrastructure, those operated by the private sector, the North Carolina Research and Education Network, and networks such as Winston-Net and (ii) an evaluation of newer technology such as wireless broadband access. It shall recommend ways to maximize the use of these existing resources to support growth in broadband service access to the State, including underserved regions.

"The North Carolina Rural Economic Development Center and the e-NC Authority shall report the results of the study to the 2006 Regular Session of the 2005 General Assembly."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 12.3(c), provides: "(c) Of the funds appropriated in this act to the Department of Commerce, the sum of five hundred thousand dollars ($500,000) shall be allocated to the e-NC Authority.

"The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

"The e-NC Authority shall report to the 2007 General Assembly on the following:

"(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access high-speed Internet.

"(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

"(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in these communities and to use the Internet to enhance the productivity of their businesses.

"The e-NC Authority shall, by September 30, 2006, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 13.16, provides: "(a) The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

"(b) The e-NC Authority shall report to the 2008 General Assembly on the following:

"(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access high-speed Internet.

"(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

"(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in these communities and to use the Internet to enhance the productivity of their businesses.

"The e-NC Authority shall, by September 30, 2007, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 143B-437.45. (This part has a delayed repeal date. See notes.) Definitions.

The following definitions apply in this Part:

(1) Authority. — The e-NC Authority.

(2) Commission. — The governing body of the Authority.

(3) Distressed urban areas. — Areas where at least one of the following requirements is met: (i) more than ten percent (10%) of children enrolled in public schools meet the requirements for the Food Stamp Program of the United States Department of Agriculture, (ii) ten percent (10%) of the citizens meet the TANF guidelines of the United States Department of Health and Human Services, or (iii) twenty-five percent (25%) of the children in the public school district meet the requirements for a federal government-sponsored free lunch.

(4) High-speed broadband Internet access. — Internet access with transmission speeds that are consistent with requirements for high-speed broadband Internet access as defined by the Federal Communications Commission from time to time.

(5) Regional partnership. — Any of the following:
  a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.
  b. The North Carolina's Northeast Commission created in G.S. 158-8.2.
  c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.
  d. The North Carolina's Eastern Region Development Commission created in G.S. 158-35.
  e. The Charlotte Regional Partnership, Inc.
  f. The Research Triangle Regional Partnership.
  g. The Piedmont Triad Partnership.

(6) Rural county. — A county with a density of fewer than 250 people per square mile based on the 2000 United States decennial census. (2000-148, s. 1; 2003-425, s. 1; 2005-364, s. 2; 2007-93, s. 2.; 2008-134, s. 73(e).)

Editor's Note. — For repeal of Part 2F, and dissolution of the e-NC Authority, see the Editor's note under G.S. 143B-437.44.

Effect of Amendments. — Session Laws 2008-134, s. 73(e), effective July 28, 2008, rewrote subsection (5).

§ 143B-437.46. (This part has a delayed repeal date. See notes.) e-NC Authority.

(a) Creation. — The e-NC Authority is created within the Department of Commerce for organizational and budgetary purposes only, and the Commission shall exercise all of its statutory authority under this Part independent of the control of the Department of Commerce. The functions of the Secretary of Commerce are ministerial and shall be performed only pursuant to the direction and policy of the Commission.

The purpose of the Authority is to manage, oversee, promote, and monitor efforts to provide rural counties and distressed urban areas with high-speed broadband Internet access. The Authority shall also serve as the central rural and urban distressed areas Internet access policy planning body of the State and shall communicate and coordinate with State, regional, and local agencies and private entities in order to continue the development and facilitation of a coordinated Internet access policy for the citizens of North Carolina.

Part 2F has a delayed repeal date. See notes.

(b) Commission. — The Authority shall be governed by a Commission. The Commission shall consist of 15 voting members, as follows:

(1) Three members appointed by the Governor.
(2) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
(3) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
(4) Six ex officio members to include the Secretary of Commerce, the State Chief Information Officer, the President of the North Carolina Rural Economic Development Center, Inc., the Executive Director of the North Carolina Justice and Community Development Center, the Executive Director of the North Carolina League of Municipalities, the Executive Director of the North Carolina Association of County Commissioners, or their designees.

It is the intent of the General Assembly that the appointing authorities, in making appointments, shall consider members who represent the geographic, gender, and racial diversity of the State, members who represent rural counties, members who represent distressed urban areas, members who represent the regional partnerships, and members who represent the communications industry. For the purpose of this subsection, the term "communications industry" includes local telephone exchange companies, rural telephone cooperatives, Internet service providers, commercial wireless communications carriers, cable television companies, satellite companies, and other communications businesses.

(c) Oath. — As the holder of an office, each member of the Commission shall take the oath required by Section 7 of Article VI of the North Carolina Constitution before assuming the duties of a Commission member.

(d) Terms; Commencement; Staggering. — Except as provided in subsection (f) of this section, all terms of office shall commence on January 1, 2008. For purposes of staggering the terms of office, each appointing officer shall designate one appointee to serve a one-year term; one appointee to serve a two-year term; and one appointee to serve a three-year term. Upon the expiration of each staggered term, each appointing officer shall appoint a member for a term of three years.

(e) Chair. — The Governor shall designate one of the members appointed by the Governor as the Chair of the Commission.

(f) Vacancies. — All members of the Commission shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the unexpired term. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122. A person appointed to fill a vacancy shall qualify in the same manner as a person appointed for a full term.

(g) Removal of Commission Members. — The Governor may remove any member of the Commission for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Governor or the person who appointed a member may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(h) Compensation of the Commission. — No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Commission or officers or other private persons. The members of the Commission shall receive no salary for their services but may receive per diem and allowances in accordance with G.S. 138-5.

Part 2F has a delayed repeal date. See notes.

(i) Staff. — The North Carolina Rural Economic Development Center, Inc., shall provide administrative and professional staff support for the Authority under contract.

(j) Conflicts of Interest. — Members of the Authority shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest. In addition, if any member, officer, or employee of the Authority is interested either directly or indirectly, or is an officer or employee of or has an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly, in any contract with the Authority, the member, officer, or employee shall disclose the interest to the Commission, which shall set forth the disclosure in the minutes of the Commission. The member, officer, or employee having an interest may not participate on behalf of the Authority in the authorization of any contract. (2003-425, s. 1; 2005-276, s. 13.12(g); 2007-323, s. 13.16A(a).)

Editor's Note. — For repeal of Part 2F, and dissolution of the e-NC Authority, see the Editor's note under G.S. 143B-437.44.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."'

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-323, s. 13.16A.(a), effective January 1, 2008, and applicable to appointments commencing on or after January 1, 2008, in subsection (d), substituted "January 1, 2008. For purposes of staggering the terms of office, each" for "January 1, 2004. Each", added "; one appointee to serve a two-year term; and one appointee to serve a three-year term" at the end of the second sentence, and substituted the present last sentence for the former last three sentences which read: "Members may serve up to four consecutive one year terms. The appointing officers shall designate their remaining appointees to serve three year terms. Members may serve up to two consecutive three year terms."

§ 143B-437.47. (This part has a delayed repeal date. See notes.) Powers, duties, and goals of the Authority.

(a) Powers. — The Authority shall have the following powers:

(1) To employ, contract with, direct, and supervise all personnel and consultants.

(2) To apply for, accept, and utilize grants, contributions, and appropriations in order to carry out its duties and goals as defined in this Part.

(3) To enter into contracts and to provide support and assistance to local governments, nonprofit entities, for-profit entities, regional partnerships, and business and technology centers in carrying out its duties and goals under this Part.

(4) To review and recommend changes in all laws, rules, programs, and policies of this State or any agency or subdivision thereof to further the goals of rural and distressed urban area Internet access.

(b) Duties. — The Authority shall have the following duties:

(1) To monitor and safeguard the investments made and contracts negotiated by the Rural Internet Access Authority in carrying out its functions under S.L. 2000-149 until such time as all contracts negotiated by the RIAA are complete.

(2) To maintain a web site with accurate, current, and complete information about the availability of present telecommunications and Internet services with periodic updates on the deployment of new telecommunications and broadband Internet services, as well as

information on public access sites and digital literacy training programs in North Carolina.

(3) To continue efforts to ensure that high-speed broadband Internet access remains available to every citizen of North Carolina at affordable prices in rural counties and urban distressed areas.

(4) To attract and coordinate funding of federal, foundation, and corporate dollars for regional and Statewide technology initiatives and to assist local government, including e-communities (the 85 rural counties and the Eastern Band of the Cherokee who have completed the e-communities process), in obtaining grants to further enhance their technology infrastructure.

(5) To propose funding from other appropriate sources for incentives without technology bias for the private sector to make necessary investments to achieve the Authority's goals and objectives.

(6) To provide leadership, coordination, and support for grassroots efforts targeting technology-based economic development.

(7) To provide leadership, coordination, and support for telecommunications policy assessment as it relates to providing high-speed Internet access in rural counties and urban distressed areas.

(8) To promote collaborative technology projects, programs, and activities that reflect comprehensive efforts to develop technology-based economic development initiatives that utilize high-speed broadband Internet as a platform.

(9) To encourage replicable and scalable Internet applications in government, health care, education, and business that will assist the communities of North Carolina to remain competitive with respect to knowledge of, and use of, as well as affordable access to the high-speed Internet.

(10) To promote the use of constitutionally valid protective actions to limit the electronic distribution of material that is considered obscene, as defined by G.S. 14-190.1(b), to children via the Internet.

(c) Reserved for future codification purposes.

(d) Limitations. — The Authority shall not have the power of eminent domain or the power to levy any tax, or to impose any charge, surcharge, or fees on telephone or telecommunications services.

(e) Reports. — The Authority shall submit quarterly reports to the Governor, the Joint Legislative Oversight Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations. The reports shall summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Governor, the Committee, or the Commission. (2003-425, s. 1; 2004-129, s. 45A.)

Editor's Note. — For repeal of Part 2F, and dissolution of the e-NC Authority, see the Editor's note under G.S. 143B-437.44.

OPINIONS OF ATTORNEY GENERAL

Commission Has Authority to Make Award to For-Profit Organization. — The Rural Internet Access Authority Commission has the authority to award a telecenter grant to a for-profit organization if it determines such an organization meets the criteria for the grant. See opinion of Attorney General to Dr. James Leutze, Chair, Rural Internet Access Authority, 2001 N.C. AG LEXIS 17 (5/29/2001).

§§ 143B-437.48, 143B-437.49: Reserved for future codification purposes.

Part 2G. Job Development Investment Grant Program.

§ 143B-437.50. (See Editor's note) Legislative findings and purpose.

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Part that are designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Part is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina; and this Part will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this Part is to stimulate economic activity and to create new jobs within the State.

(6) It is not the intent of the General Assembly that grants provided through this Part be used as venture capital funds, business incubator funds, or business start-up funds or to otherwise fund the initial capitalization needs of new businesses.

(7) Nothing in this Part shall be construed to constitute a guarantee or assumption by the State of any debt of any business or to authorize the taxing power or the full faith and credit of the State to be pledged. (2002-172, s. 2.1(a); 2003-416, s. 2.)

Cross References. — For considerations when developing criteria for awarding grants and determining percentages upon which amounts of grants are based, see Editor's notes under G.S. 143B-437.52.

Qualified Capital Intensive Corporation Ineligible for Certain Grants. — Session Laws 2009-54, s. 4, provides: "A corporation that is a qualified capital intensive corporation under G.S. 105-130.4(s1) is not eligible for a grant under the Job Development Investment Grant Program established under Part 2G of Article 10 of Chapter 143B of the General Statutes or the One North Carolina Fund established under Part 2H of Article 10 of Chapter 143B of the General Statutes with respect to the facility that satisfies the condition of G.S. 105-130.4(s1)(2)."

Editor's Note. — This Part was enacted by Session Laws 2002-172, s. 2.1(a), as G.S. 143B-437.44 through 143B-437.56. It has been renumbered as G.S. 143B-437.50 through 143B-437.62, respectively, at the direction of the Revisor of Statutes.

This Part was redesignated as Part 2G at the direction of the Revisor of Statutes.

Session Laws 2002-172, s. 7.1, contains a severability clause.

Session Laws 2003-416, s. 2, provides: "S.L. 2002-172 is reenacted."

Session Laws 2006-168, s. 1.13, provides: "The Department of Commerce shall conduct a comprehensive, systematic study of the Job Development Investment Grant Program. The study shall be completed and submitted to the Chairs of the House of Representatives and Senate Finance Committees and the House of Representatives and Senate Appropriations Committees no later than February 1, 2007. The study shall include an examination of the following:

"(1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.

"(2) The costs of the program in relation to other State economic development incentive programs.

"(3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.

"(4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings."

§ 143B-437.51. Definitions.

The following definitions apply in this Part:

(1) Agreement. — A community economic development agreement under G.S. 143B-437.57.

(2) Base period. — The period of time set by the Committee during which new employees are to be hired for the positions on which the grant is based.

(3) Business. — A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.

(4) Committee. — The Economic Investment Committee established pursuant to G.S. 143B-437.54.

(4a) Development tier. — The classification assigned to an area pursuant to G.S. 143B-437.08.

(5) Eligible position. — A position created by a business and filled by a new full-time employee in this State during the base period.

(6) Full-time employee. — A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. — A full-time employee who represents a net increase in the number of the business's employees statewide.

(8) Overdue tax debt. — Defined in G.S. 105-243.1.

(9) Related member. — Defined in G.S. 105-130.7A.

(10) Withholdings. — The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.1; 2006-168, s. 1.1; 2006-252, s. 2.6; 2006-264, s. 69(a).)

Editor's Note. — Session Laws 2006-264, s. 69(a) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168, which amended this section, becoming law.

§ 143B-437.52. Job Development Investment Grant Program.

(a) Program. — There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. — The maximum number of grants the Committee may award in each calendar year is 25.

(c) Ceiling. — The maximum amount of total annual liability for grants awarded in any single calendar year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars ($15,000,000). No agreement may be entered into that, when considered together with other existing agreements governing grants awarded during a single calendar year, could cause the State's potential total annual liability for grants awarded in a single calendar year to exceed this amount.

(d) Measuring Employment. — For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

(1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.

(2) The agreement contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.2; 2004-124, ss. 32G.1(b), 32G.1(c), 32G.1(e); 2006-168, s. 1.2; 2006-264, s. 69(b); 2009-394, s. 1.)

Editor's Note. — Session Laws 2002-172, s. 2.1(b), provides: "In developing criteria under G.S. 143B-437.46 [now G.S. 143B-437.52] for the awarding of grants under Part 2G of Article 10 of Chapter 143B of the General Statutes and under G.S. 143B-437.50 [now G.S. 143B-437.56] for determining the percentage upon which the amount of a grant is based, the Economic Investment Committee, in consultation with the Attorney General, may consider criteria that address the following:

"(1) Factors related to the economic impact of the project, such as the following:

"a. Impact on gross regional product and gross State product.

"b. Costs and benefits of the project to the State, including the expected return on investment made in the project by the State.

"c. Number of direct jobs that will be created by the project, the wages of those jobs, and the total payroll for the project.

"d. Number of induced short-term, project-related jobs expected to be generated by the project as well as the number of long-term permanent jobs expected to be generated indirectly in the economy as a result of the project.

"e. Dollar value of the investment, including the size of the investment in real versus personal property and expected depreciation rates.

"f. Economic circumstances of the county and region, including the extent to which the project will serve to mitigate unemployment.

"g. The expected time frame during which the project is expected to pay back in State tax revenues the amount of any grants to be paid out.

"h. The economic demands the project is expected to place upon the community or communities in which it will locate.

"i. The number of eligible positions that would be filled by residents of development zones.

"(2) Factors related to the strategic importance of the project to the State, region, or locality, such as the following:

"a. The extent to which the project builds or enhances an industrial cluster.

"b. The extent to which the project falls within a classification of business and industry that the Department of Commerce regards as a target for growth and expansion in the State.

"c. The ability of the project to attract follow-on investment in the State by suppliers and vendors.

"d. The extent to which the project serves to maintain and grow jobs in the State in a business undergoing an internal restructuring or rationalization process.

"e. The extent to which the project can be expected to contribute significantly to and support the local community.

"(3) Factors related to the quality of jobs, such as the following:

"a. The wage level and status of the jobs to be created.

"b. The quality and value of benefits offered by the company.

"c. The potential for employee advancement.

"d. The extent of training programs offered by the company.

"e. The sustainability of the jobs in the future.

"f. The workplace safety record of the company.

"(4) Factors related to the quality of the industry and the project, such as the following:

"a. The nature of the project and the project's relationship to the larger business of the company.

"b. The nature of the industrial classification of the project and the nature of the business of the company undertaking it.

"c. The long-term prospects for growth at the project site or sites.

"d. The long-term prospects for growth of the company and the industry within the United States.

"e. The financial stability of the company associated with the project.

"(5) Factors related to the environmental impact of the project, such as the following:

"a. The nature of the business to be conducted.

"b. The ability of the project to satisfy State, federal, and local environmental law and regulations.

"(6) The degree to which use of the program has been geographically dispersed among the various regions of the State and between rural and urban areas.

"(7) Other factors that the Economic Investment Committee considers relevant that are not inconsistent with this section and that the Committee determines will further the purposes of Part 2G of Article 10 of Chapter 143B of the General Statutes."

References to "Part 2F" in the notes above have been changed to "Part 2G" at the direction of the Revisor of Statutes.

Session Laws 2003-416, s. 2, provides: "S.L. 2002-172 is reenacted."

Session Laws 2004-124, s. 32G.1(h), provides: "It is the intent of the General Assembly that the benefits of a robust and growing economy be shared by all citizens of the State regardless of their geographic location or whether they live in urban, suburban, or rural areas. In striving for balanced economic development throughout the State, the General Assembly has designed a system to identify areas of the State that are most in need of additional economic development and has designed economic development programs to provide for relatively stronger incentives in those areas. In keeping with this policy of balanced economic development, the General Assembly strongly encourages the Department of Commerce and the Economic Investment Committee to give priority consideration under the Job Development Investment Grant program to projects that are located or will locate in less economically developed areas."

Session Laws 2004-124, s. 32G.1(j), provides that s. 32G.1(b) and (e) are effective July 20, 2004, while s. 32G.1(c) is effective January 1, 2004, and applies to agreements entered into on or after that date.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2005-241, s. 8, provides: "The Economic Development Oversight Committee, created pursuant to Section 7 of this act, shall complete a comprehensive study of Article 3A of Chapter 105 of the General Statutes (the Bill Lee Act) and the Job Development Investment Grant Program (JDIG) established under Part 2G of Article 10 of Chapter 143B of the General Statutes. Before adopting a report on this issue, the Economic Development Oversight Committee must hold at least one joint meeting with the Revenue Laws Study Committee. The Economic Development Oversight Committee shall complete the study and submit it to the General Assembly, along with any recommendations or legislative proposals, before the beginning of the 2006 Regular Session of the 2005 General Assembly. The study shall focus on comprehensive reform of the Bill Lee Act, JDIG, and related economic development incentives. It is the intent of the General Assembly to replace the current Bill Lee Act beginning with the 2007 taxable year with a program recommended by the Committee and to revamp JDIG based on the Committee's recommendations."

Session Laws 2005-370, s. 3, provides: "As part of the study of the William S. Lee Act and the Job Development Investment Grant Program directed in Section 8 of S.L. 2005-241, the Economic Development Oversight Committee (Committee) shall study the use of reverse auctions for the procurement of professional services, including architectural, engineering, surveying and construction management at risk, or other construction services, by businesses that receive economic development incentives from the State or a local government. The Committee shall consider the advisability of making business incentives contingent upon a business's commitment not to use a reverse auction procurement process. The Economic Development Oversight Committee shall complete the study and submit it to the General Assembly before the beginning of the 2006 Regular Session of the 2005 General Assembly."

Session Laws 2006-264, s. 69(b) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168 becoming law.

Session Laws 2007-323, s. 13.1A, provides: "Notwithstanding G.S. 143B-437.52(c), the maximum amount of total annual liability for grants for agreements entered into in calendar year 2007 under the Job Development Investment Grant Program, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed twenty-five million dollars ($25,000,000)."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-147, s. 2, provides: "Notwithstanding G.S. 143B-437.52(c), the maximum amount of total annual liability for grants for agreements entered into in calendar year 2008 under the Job Development Investment Grant Program, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed twenty-five million dollars ($25,000,000)."

Effect of Amendments. — Session Laws 2009-394, s. 1, effective July 31, 2009, in subsection (a), in the introductory language, deleted "negotiated" preceding "agreements" in the first sentence; in subsection (b), substituted "grants the Committee may award in" for "agreements the Committee may enter into"; in subsection (c), in the first sentence, deleted "Except as provided in this section" from the beginning, and substituted "awarded" for "for agreements entered into" near the middle, deleted the former second sentence, which read: "The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed thirty million dollars ($30,000,000)," and in the last sentence, substituted "governing grants awarded during a single" for "entered into during that" near the middle, and "awarded in a single" for "entered into in that" near the end.

§ 143B-437.53. Eligible projects.

(a) Minimum Number of Eligible Positions. — A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one development tier area, the location with the highest development tier area designation determines the minimum number of eligible positions that must be created.

Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	20
Tier Three	20

(b) Ineligible Businesses. — A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or club, other than a professional motorsports racing team, is not eligible for a grant under this Part.

(c) Health Insurance. — A business is eligible for a grant under this Part only if the business provides health insurance for all of the applicable full-time employees of the project with respect to which the grant is made. For the purposes of this subsection, an applicable full-time employee is one who earns from the business less than one hundred fifty thousand dollars ($150,000) in taxable compensation on an annualized basis or three and one-half times the annualized average State wage for all insured private employers in the State employing between 250 and 1,000 employees, whichever is greater. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a business receives a grant under this Part, the business must provide with the submission required under G.S. 143B-437.58 a certification that the business continues to provide health insurance, as required by this subsection, for all applicable full-time employees of the project with respect to which the grant is made. If the business ceases to provide the required health insurance, the Committee shall amend or terminate the agreement as provided in G.S. 143B-437.59.

(d) Repealed by Session Laws 2003-435, 2nd Ex. Sess., s. 2.3, effective December 16, 2003.

(e) Safety and Health Programs. — In order for a business to be eligible for a grant under this Part, the business must have no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, Ex. Sess., s. 2.3; 2005-241, s. 5; 2006-168, s. 1.3; 2006-252, s. 2.7.)

§ 143B-437.54. Economic Investment Committee established.

(a) Membership. — The Economic Investment Committee is established. The Committee consists of the following members:

(1) The Secretary of Commerce.
(2) The Secretary of Revenue.
(3) The Director of the Office of State Budget and Management.
(4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
(5) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

The members of the Committee appointed by the General Assembly may not be members of the General Assembly. The members of the Committee appointed by the General Assembly serve two-year terms that begin upon appointment.

(b) Decision Required. — The Committee may act only upon a decision of three of its five members.

(c) Conflict of Interest. — It is unlawful for a current or former member of the Committee to, while serving on the Committee or within two years after the end of service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that is awarded a grant under this Part or under G.S. 143B-437.02 while the member is serving on the Committee. Violation of this subsection is a Class 1 misdemeanor. In addition to the penalties imposed under G.S. 15A-1340.23, the court shall also make a finding as to what compensation was received by the defendant for services in violation of this section and shall order the defendant to forfeit that compensation.

If a person is convicted under this section, the person shall not provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that was awarded a grant under this Part or under G.S. 143B-437.02 while the member was serving on the Committee until two years after the person's conviction under this section.

(d) Public Notice. — At least 20 days before the effective date of any criteria or nontechnical amendments to criteria, the Committee must publish the proposed criteria on the Department of Commerce's web site and provide notice to persons who have requested notice of proposed criteria. In addition, the Committee must accept oral and written comments on the proposed criteria during the 15 business days beginning on the first day that the Committee has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.
(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.

(e) Sunshine. — Meetings of the Committee are subject to the open meetings requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the Committee, including applications for grants, are public records governed by Chapter 132 of the General Statutes and any applicable provisions of the General Statutes protecting confidential information. (2002-172, s. 2.1(a); 2003-416, ss. 2, 25; 2003-435, 2nd Ex. Sess., ss. 1.4, 2.4.)

§ 143B-437.55. Applications; fees; reports; study.

(a) Application. — A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
(3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
(4) The number of eligible positions proposed to be created for the project and the salaries for these positions.
(5) An estimate of the total withholdings.
(6) Certification that the business will provide health insurance to full-time employees of the project as required by G.S. 143B-437.53(c).
(7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
(8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
(9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant that may include performance by related members of the business who may qualify under this Part.

The Committee will consider an application by a business for a grant that includes performance of its related members only if the related members for whom the application is submitted assign to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and agree to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant that includes performance by its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grant awarded shall be paid to the approved grantee business only. A grant received under this Part by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. — When filing an application under this section, the business must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(c) Annual Reports. — The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

(1) A listing of each grant awarded during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, the term of the grant, the percentage of withholdings used to determine the amount of the grant, the annual maximum State liability under the grant, and the maximum total lifetime State liability under the grant.

(2) An update on the status of projects under grants awarded before the preceding calendar year.

(3) The number and development tier area of eligible positions to be created by projects with respect to which grants have been awarded.

(3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.

(4) The wage levels of all eligible positions to be created by projects with respect to which grants have been awarded, aggregated and listed in increments of ten thousand dollars ($10,000) or other appropriate increments.

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants have been awarded.

(6) For the first annual report after adoption of the criteria developed by the Committee, in consultation with the Attorney General, to implement this Part, a copy of such criteria, and, for subsequent reports, identification of any changes `in those criteria from the previous calendar year.

(7) The number of awards made to new businesses and the number of awards made to existing, expanding businesses in the preceding calendar year.

(8) The environmental impact of businesses that have received grants under the program.

(9) The geographic distribution of grants, by number and amount, awarded under the program.

(10) Repealed by Session Laws 2009-394, s. 2, effective July 31, 2009.

(11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.

(12) Repealed by Session Laws 2006-168, s. 1.4, effective July 27, 2006.

(13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year.

(d) Quarterly Reports. — The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each grant awarded during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

(e) Study. — The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year. (2002-172, s. 2.1(a); 2003-416, s. 2; 2005-429, s. 2.1; 2006-168, s. 1.4; 2006-252, s. 2.8; 2006-264, s. 69(c); 2009-394, s. 2.)

Editor's Note. — Session Laws 2006-264, s. 69(c) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168, which amended this section, becoming law.

Effect of Amendments. — Session Laws 2009-394, s. 2, effective July 31, 2009, in subsection (a), in the second paragraph, substituted "that may include performance by" for "on its own behalf as a business and for grants on behalf of the", in the third paragraph, in the first sentence, substituted "a grant that includes performance by" for "grants on behalf" near the beginning, "assign" for "have assigned" and "agree" for "have agreed" near the middle, in the fourth paragraph, substituted "that includes performance" for "on behalf of" in the first sentence, and "grant awarded shall be paid to the approved grantee business only" for "grants awarded shall be paid to the applicant business" in the fourth sentence; in subdivision (c)(1), substituted "grant awarded" for "community economic development agreement negotiated and entered into" near the beginning, and "the grant, the percentage of withholdings used to determine the amount of the grant, the annual maximum State liability under the grant, and the maximum total lifetime State liability under the grant" for "the agreement, the percentage used to determine the amount of the grant, and the amount of the grant made under the agreement during that year" at the end; in subdivision (c)(2), substituted "grants awarded" for "agreements entered into"; in subdivision (c)(3), inserted "to be" and substituted "have been awarded" for "were awarded"; in subdivision (c)(4), inserted "to be" and substituted "have been awarded" for "are awarded" and "ten thousand dollars ($10,000) or other appropriate increments" for "five thousand dollars ($5,000)"; in subdivision (c)(5), substituted "have been awarded" for "were awarded"; in subdivision (c)(6), added "For the first annual report after adoption of" at the beginning and substituted "Part, a copy of such criteria, and, for subsequent reports, identification of" for "Part and"; rewrote subdivision (c)(7); deleted subdivision (c)(10), which read: "An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State."; and, in subsection (d), substituted "grant awarded" for "community economic development agreement negotiated and entered into" in the second sentence.

§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering at least the following:

(1) The number of eligible positions to be created.
(2) The expected duration of those positions.
(3) The type of contribution the business can make to the long-term growth of the State's economy.
(4) The amount of other financial assistance the project will receive from the State or local governments.
(5) The total dollar investment the business is making in the project.
(6) Whether the project utilizes existing infrastructure and resources in the community.
(7) Whether the project is located in a development zone.
(8) The number of eligible positions that would be filled by residents of a development zone.
(9) The extent to which the project will mitigate unemployment in the State and locality.

(b) The term of the grant shall not exceed 12 years starting with the first year a grant payment is made. The first grant payment must be made within six years after the date on which the grant was awarded. The number of years in the base period for which grant payments may be made shall not exceed five years.

(c) The grant may be based only on eligible positions created during the base period.

(d) For any eligible position that is located in a development tier three area, seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For any eligible position that is located in a development tier two area, eighty-five percent (85%) of the annual grant approved for disbursement shall be payable to the business, and fifteen percent (15%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. A position is located in the development tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) The amount of a grant associated with any specific eligible position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.5; 2006-168, s. 1.5; 2006-252, s. 2.9(a), (b); 2006-264, s. 69(d).)

Cross References. — For considerations when developing criteria for awarding grants and determining percentages upon which amounts of grants are based, see Editor's notes under G.S. 143B-437.52.

Editor's Note. — Session Laws 2006-252, s. 2.9(a), which amended subsection (d), was contingent on House Bill 2744, 2005 General Assembly [2006-168], not becoming law. It did become law.

Session Laws 2006-264, s. 69(d) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168, which amended this section, becoming law.

§ 143B-437.57. Community economic development agreement.

(a) Terms. — Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired during the base period.

(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.

(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.

(4) The amount of the grant based on a percentage of withholdings.

(5) A method for determining the number of new employees hired during a grant year.

(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.

(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.

(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.

(9) A provision that requires the Committee to reduce the amount or term of a grant pursuant to G.S. 143B-437.59.

(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at

least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.

(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base period.

(12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.59, and under which grant funds may be recaptured by the Committee.

(13) A provision stating that unless the agreement is terminated pursuant to G.S. 143B-437.59, the agreement, including any amendments pursuant to G.S. 143B-437.59, is binding and constitutes a continuing contractual obligation of the State and the business.

(14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to grant reduction, amendment, or termination of the agreement under G.S. 143B-437.59.

(15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.

(16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.

(17) A provision encouraging the business to hire North Carolina residents.

(18) A provision encouraging the business to use the North Carolina State Ports.

(19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings from the business in an amount that exceeds the amount of the grant payment.

(20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.52(c).

(21) A provision stating that any recapture of a grant and any reduction in the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.

(23) A provision stating that the amount of a grant associated with any specific eligible position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year.

(24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.

(25) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services.

(b) Approval of Attorney General. — The Attorney General shall review the terms of all proposed agreements entered into by the Committee. To be effective against the State, an agreement entered into under this Part must be signed personally by the Attorney General.

(c) Agreement Binding. — A community economic development agreement is a binding obligation of the State and is not subject to State funds being appropriated by the General Assembly. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, ss. 32G.1(f), 32G.1(g); 2006-168, s. 1.6; 2006-264, s. 69(e); 2009-394, s. 3.)

Editor's Note. — Session Laws 2004-124, s. 32G.1(h), provides: "It is the intent of the General Assembly that the benefits of a robust and growing economy be shared by all citizens of the State regardless of their geographic location or whether they live in urban, suburban, or rural areas. In striving for balanced economic development throughout the State, the General Assembly has designed a system to identify areas of the State that are most in need of additional economic development and has designed economic development programs to provide for relatively stronger incentives in those areas. In keeping with this policy of balanced economic development, the General Assembly strongly encourages the Department of Commerce and the Economic Investment Committee to give priority consideration under the Job Development Investment Grant program to projects that are located or will locate in less economically developed areas."

Session Laws 2004-124, s. 32G.1(j), provides that s. 32G.1(f) is effective on and after October 31, 2002, while s. 32G.1(g) is effective July 20, 2004, and applies to agreements entered into on or after that date.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2006-264, s. 69(e) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168, which amended this section, becoming law.

Effect of Amendments. — Session Laws 2009-394, s. 3, effective July 31, 2009, in subdivision (a)(9), substituted "reduce the amount or term of a grant" for "amend an agreement"; in subdivision (a)(13), deleted "amended or" preceding "terminated pursuant" and inserted "including any amendments pursuant to G.S. 143B-437.59"; in subdivision (a)(14), substituted "to grant reduction, amendment, or" for "to amendment or"; and in subdivision (a)(21), substituted "reduction in" for "amendment to an agreement reducing" near the middle.

§ 143B-437.58. Grant recipient to submit records.

(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee an annual payroll report showing withholdings as a condition of its continuation in the grant program and identifying eligible positions that have been created during the base period that remain filled at the end of each year of the grant. Annual reports submitted to the Committee shall include social security numbers of individual employees identified in the reports. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax information, including social security numbers of individual employees and State and federal tax returns, submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time.

(d) The reporting procedures of this section are in lieu of any other general reporting requirements relating to private entities that receive State funds. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, s. 32G.1(d); 2006-168, s. 1.7; 2006-264, s. 69(f); 2009-394, s. 4.)

Editor's Note. — Session Laws 2004-124, s. 32G.1(h), provides: "It is the intent of the General Assembly that the benefits of a robust and growing economy be shared by all citizens of the State regardless of their geographic location or whether they live in urban, suburban, or rural areas. In striving for balanced economic development throughout the State, the General Assembly has designed a system to identify areas of the State that are most in need of additional economic development and has designed economic development programs to provide for relatively stronger incentives in those areas. In keeping with this policy of balanced economic development, the General Assembly strongly encourages the Department of Commerce and the Economic Investment Committee to give priority consideration under the Job Development Investment Grant program to projects that are located or will locate in less economically developed areas."

Session Laws 2004-124, s. 32G.1(i), provides: "The Chairs of the Finance Committees of the House of Representatives and the Senate shall conduct a comprehensive, systematic study of the Job Development Investment Grant program. The General Assembly shall use funds available to conduct this study and may hire a consultant to conduct the study. The study shall be completed and submitted to the full 2005 General Assembly no later than April 1, 2005. The study shall include an examination of the following:

"(1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.

"(2) The costs of the program in relation to other State economic development incentive programs.

"(3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.

"(4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings.

"(5) Any other matter the General Assembly finds relevant to a study of the program."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2006-264, s. 69(f) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168, which amended this section, becoming law.

Effect of Amendments. — Session Laws 2009-394, s. 4, effective July 31, 2009, in subsection (a), substituted "an annual payroll" for "a", substituted "program and identifying" for "program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the", and substituted "base period" for "preceding calendar year, and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions".

§ 143B-437.59. Failure to comply with agreement.

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall reduce the amount of the grant or the term of the agreement, may terminate the agreement, or both. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred. The Committee may reduce the amount or term of a grant by formally approving a motion to reduce such grant in accordance with program policies adopted by the Committee for the treatment of failures by businesses to meet or comply with a condition or requirement set forth in the grant agreement, and it shall not be necessary to execute an amendment to the applicable grant agreement. The Committee shall notify any such affected business of the reduction to its grant payment, reflected in any such motion.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years:

(1) If the business is still within the base period established by the Committee, the Committee shall withhold the grant payment for any consecutive year after the second consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement, and the Committee may extend the base period for up to 24 additional months. Under no circumstances may the Committee extend the base period by more than a total of 24 months. In no event shall the term of the grant be extended beyond the date set by the Committee at the time the Committee awarded the grant.

(2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant. (2002-172, s. 2.1(a); 2003-416, s. 2; 2006-168, s. 1.8; 2009-394, s. 5.)

Effect of Amendments. — Session Laws 2009-394, s. 5, effective July 31, 2009, in subsection (a), in the first sentence, deleted "amend the agreement to" preceding "reduce the amount" near the middle, and substituted "the agreement, may terminate the agreement, or both" for "the agreement and may terminate the agreement" at the end, deleted the former second sentence, which read: "Any reduction of the grant is applicable to the grant year immediately following the grant year in which the business fails to comply with the agreement" and added the third and fourth sentences; and in subdivision (b)(1), inserted "after the second consecutive year" in the first sentence.

§ 143B-437.60. Disbursement of grant.

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall require the business to provide any necessary evidence of compliance to verify that the terms of the agreement have been met. The Committee shall certify the grant amount for which the business is eligible under the agreement and the grant amount for which the business would be eligible under the agreement without regard to G.S. 143B-437.56(d). The Department of Commerce shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee. (2002-172, s. 2.1(a); 2003-416, s. 2; 2006-168, s. 1.9.)

§ 143B-437.61. Transfer to Industrial Development Fund.

At the time the Department of Commerce remits a check to a business under G.S. 143B-437.60, the Department of Commerce shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.56(d). (2002-172, s. 2.1(a); 2003-416, s. 2; 2006-168, s. 1.10.)

Editor's Note. — Session Laws 2008-147, s. 2, provides: "Notwithstanding G.S. 143B-437.52(c), the maximum amount of total annual liability for grants for agreements entered into in calendar year 2008 under the Job Development Investment Grant Program, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed twenty-five million dollars ($25,000,000)." For prior similar provisions, see Session Laws 2007-323, s. 13.1A.

§ 143B-437.62. Expiration.

The authority of the Committee to award new grants expires January 1, 2016. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, s. 32G.1(a); 2005-241, s. 3; 2006-168, s. 1.11; 2009-394, s. 6.)

Editor's Note. — Session Laws 2004-124, s. 32G.1(h), provides: "It is the intent of the General Assembly that the benefits of a robust and growing economy be shared by all citizens of the State regardless of their geographic location or whether they live in urban, suburban, or rural areas. In striving for balanced economic development throughout the State, the General Assembly has designed a system to identify areas of the State that are most in need of additional economic development and has designed economic development programs to provide for relatively stronger incentives in those areas. In keeping with this policy of balanced economic development, the General Assembly strongly encourages the Department of Commerce and the Economic Investment Committee to give priority consideration under the Job Development Investment Grant program to projects that are located or will locate in less economically developed areas."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-394, s. 6, effective July 31, 2009, substituted "award new grants expires January 1, 2016" for "enter into new agreements expires January 1, 2010".

§ 143B-437.63. JDIG Program cash flow requirements.

Notwithstanding any other provision of law, grants made through the Job Development Investment Grant Program, including amounts transferred pursuant to G.S. 143B-437.61, shall be budgeted and funded on a cash flow basis. The Office of State Budget and Management shall periodically transfer funds from the JDIG Reserve established pursuant to G.S. 143C-9-6 to the Department of Commerce in an amount sufficient to satisfy grant obligations and amounts to be transferred pursuant to G.S. 143B-437.61 to be paid during the fiscal year. (2004-124, s. 6.12(b); 2009-445, s. 40; 2009-570, s. 22.)

Editor's Note. — Session Laws 2009-570, s. 22(b) provides that if Senate Bill 509, 2009 Regular Session becomes law, then the amendment to G.S. 143B-437.63 made by s. 22(a) of the act is repealed. Senate Bill 509 is Session Laws 2009-445, which was approved on August 7, 2009. The amendment by Session Laws 2009-570, s. 22(a) would have substituted "G.S. 143C-9-6" for "G.S. 143-15.3E" in the last sentence.

Effect of Amendments. — Session Laws 2009-445, s. 40, effective August 7, 2009, in the last sentence, deleted "Fund" following "JDIG Reserve" and substituted "G.S. 143C-9-6" for "G.S. 143-15.3E."

§§ 143B-437.64 through 143B-437.69: Reserved for future codification purposes.

Part 2H. One North Carolina Fund.

§ 143B-437.70. (See Editor's note) Legislative findings and purpose.

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the retention and expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The purpose of this Part is to stimulate economic activity and to create new jobs within the State.

(4) The enactment of this Part will maintain consistency and accountability in a key economic development program and will ensure that the program benefits the State and its citizens.

(5) Nothing in this Part shall be construed to constitute a guarantee or assumption by the State of any debt of any business or to authorize the taxing power or the full faith and credit of the State to be pledged. (2004-88, s. 1(d).)

Qualified Capital Intensive Corporation Ineligible for Certain Grants. — Session Laws 2009-54, s. 4, provides: "A corporation that is a qualified capital intensive corporation under G.S. 105-130.4(s1) is not eligible for a grant under the Job Development Investment Grant Program established under Part 2G of Article 10 of Chapter 143B of the General Statutes or the One North Carolina Fund established under Part 2H of Article 10 of Chapter 143B of the General Statutes with respect to the facility that satisfies the condition of G.S. 105-130.4(s1)(2)."

Editor's Note. — Session Laws 2004-88, ss. 1(a) through 1(c), provide: "(a) There is appropriated from the General Fund to the One North Carolina Fund the sum of twenty million dollars ($20,000,000) for the 2003-2004 fiscal year. Funds that are unexpended and unencumbered as of the end of the fiscal year do not revert to the General Fund but remain available for these purposes. It is the intent of the General Assembly that there be a recurring annual appropriation to the One North Carolina Fund of ten million dollars ($10,000,000) beginning with the 2006-2007 fiscal year.

"(b) Of the funds appropriated in this section to the One North Carolina Fund, the Department of Commerce may use up to three hundred thousand dollars ($300,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs during the 2004-2005 fiscal year.

"(c) There is appropriated from the General Fund to the Community Colleges System Office the sum of four million one hundred thousand dollars ($4,100,000) for the 2003-2004 fiscal year for new and expanding industry training. Funds that are unexpended and unencumbered as of the end of the fiscal year do not revert to the General Fund but remain available for these purposes."

Session Laws 2004-88, s. 1(g), made this Part effective June 30, 2004, and not applicable to commitments made under the One North Carolina Industrial Recruitment Competitive Fund prior to July 1, 2004.

§ 143B-437.71. One North Carolina Fund established as a special revenue fund.

(a) Establishment. — The One North Carolina Fund is established as a special revenue fund in the Department of Commerce.

(b) Purposes. — Moneys in the One North Carolina Fund may only be allocated pursuant to this subsection. Moneys may be allocated to local governments for use in connection with securing commitments for the recruitment, expansion, or retention of new and existing businesses and to the One North Carolina Small Business Account created pursuant to subsection (c) of this section in an amount not to exceed three million dollars ($3,000,000). Moneys in the One North Carolina Fund allocated to local governments shall be used for the following purposes only:

(1) Installation or purchase of equipment.
(2) Structural repairs, improvements, or renovations to existing buildings to be used for expansion.
(3) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for existing buildings.
(4) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for new or proposed buildings to be used for manufacturing and industrial operations.
(5) Any other purposes specifically provided by an act of the General Assembly.

(c) There is created in the One North Carolina Fund a special account, the One North Carolina Small Business Account, to be used for the North Carolina SBIR/STTR Incentive Program and the North Carolina SBIR/STTR Matching Funds Program, as specified in Part 2I of Article 10 of Chapter 143B of the General Statutes. (2004-88, s. 1(d); 2005-276, s. 13.14(a); 2006-162, s. 19.)

Editor's Note. — Session Laws 2005-276, s. 13.6(b), as amended by Session Laws 2006-66, s. 12.2, provides: "Notwithstanding the provisions of G.S. 143B-437.71, of the funds appropriated in this act to the One North Carolina Fund, the Department of Commerce shall allocate one million dollars ($1,000,000) for the 2006-2007 fiscal year to Johnson and Wales University in Charlotte for the purpose of providing financial assistance to the University."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143B-437.72. Agreements required; disbursement of funds.

(a) Agreements Required. — Funds may be disbursed from the One North Carolina Fund only in accordance with agreements entered into between the State and one or more local governments and between the local government and a grantee business.

(b) Company Performance Agreements. — An agreement between a local government and a grantee business must contain the following provisions:

(1) A commitment to create or retain a specified number of jobs within a specified salary range at a specific location and commitments regarding the time period in which the jobs will be created or retained and the minimum time period for which the jobs must be maintained.

(2) A commitment to provide proof satisfactory to the local government and the State of new jobs created or existing jobs retained and the salary level of those jobs.

(3) A provision that funds received under the agreement may be used only for a purpose specified in G.S. 143B-437.71(b).

(4) A provision allowing the State or the local government to inspect all records of the business that may be used to confirm compliance with the agreement or with the requirements of this Part.

(5) A provision establishing the method for determining compliance with the agreement.

(6) A provision establishing a schedule for disbursement of funds under the agreement that allows disbursement of funds only in proportion to the amount of performance completed under the agreement.

(7) A provision requiring recapture of grant funds if a business subsequently fails to comply with the terms of the agreement.

(8) Any other provision the State or the local government finds necessary to ensure the proper use of State or local funds.

(c) Local Government Grant Agreement. — An agreement between the State and one or more local governments shall contain the following provisions:

(1) A commitment on the part of the local government to match the funds allocated by the State. A local match may include cash, fee waivers, in-kind services, the donation of assets, the provision of infrastructure, or a combination of these.

(2) A provision requiring the local government to recapture any funds to which the local government is entitled under the company performance agreement.

(3) A provision requiring the local government to reimburse the State for any funds improperly disbursed or funds recaptured by the local government.

(4) A provision allowing the State access to all records possessed by the local government necessary to ensure compliance with the company performance agreement and with the requirements of this Part.

(5) A provision establishing a schedule for the disbursement of funds from the One North Carolina Fund to the local government that reflects the disbursement schedule established in the company performance agreement.

(6) Any other provision the State finds necessary to ensure the proper use of State funds.

(d) Disbursement of Funds. — Funds may be disbursed from the One North Carolina Fund to the local government only after the local government has demonstrated that the business has complied with the terms of the company performance agreement. The State shall disburse funds allocated under the

One North Carolina Fund to a local government in accordance with the disbursement schedule established in the local government grant agreement. (2004-88, s. 1(d).)

§ 143B-437.73. Program guidelines.

The Department of Commerce, in conjunction with the Governor's Office, shall develop guidelines related to the administration of the One North Carolina Fund and to the selection of projects to receive allocations from the Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the Department of Commerce must publish the proposed guidelines on the Department's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this section, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.
(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment. (2004-88, s. 1(d).)

Editor's Note. — Session Laws 2004-88, s. 1(f), provides: "Program guidelines developed by the Department of Commerce for the One North Carolina Industrial Recruitment Competitive Fund that are in effect when this act becomes effective shall apply to the One North Carolina Fund enacted by this act until guidelines for the One North Carolina Fund are adopted pursuant to G.S. 143B-437.73. Program guidelines for the One North Carolina Fund shall be adopted in accordance with G.S. 143B-437.73 on or before September 1, 2004."

§ 143B-437.74. Reports.

The Department of Commerce shall publish a report on the use of funds in the One North Carolina Fund at the end of each fiscal quarter. The report shall contain information on the commitment, disbursement, and use of funds allocated under the One North Carolina Fund. The report is due no later than one month after the end of the fiscal quarter and must be submitted to the following:

(1) The Joint Legislative Commission on Governmental Operations.
(2) The chairs of the House of Representatives and Senate Finance Committees.
(3) The chairs of the House of Representatives and Senate Appropriations Committees.
(4) The Fiscal Research Division of the General Assembly. (2004-88, s. 1(d).)

§§ 143B-437.75 through 143B-437.79: Reserved for future codification purposes.

Part 2I. One North Carolina Small Business Program.

§ 143B-437.80. North Carolina SBIR/STTR Incentive Program.

(a) Program. — There is established the North Carolina SBIR/STTR Incentive Program to be administered by the North Carolina Board of Science and

Technology. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to offset costs associated with applying to the United States Small Business Administration for Small Business Innovative Research (SBIR) grants or Small Business Technology Transfer Research (STTR) grants. The grants shall be paid from the One North Carolina Small Business Account established in G.S. 143B-437.71.

(b) Eligibility. — In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

(1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.
(2) The business must have submitted a qualified SBIR/STTR Phase I proposal to a participating federal agency in response to a specific federal solicitation.
(3) The business must satisfy all federal SBIR/STTR requirements.
(4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.
(5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase I proposal will be conducted in this State and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase I project.
(6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase I proposal.

(c) Grant. — The North Carolina Board of Science and Technology may award grants to reimburse an eligible business for up to fifty percent (50%) of the costs of preparing and submitting a SBIR/STTR Phase I proposal, up to a maximum of three thousand dollars ($3,000). A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal proposal submission. Costs that may be reimbursed include costs incurred directly related to preparation and submission of the grant such as word processing services, proposal consulting fees, project-related supplies, literature searches, rental of space or equipment related to the proposal preparation, and salaries of individuals involved with the preparation of the proposals. Costs that shall not be reimbursed include travel expenses, large equipment purchases, facility or leasehold improvements, and legal fees.

(d) Application. — A business shall apply, under oath, to the North Carolina Board of Science and Technology for a grant under this section on a form prescribed by the Board that includes at least all of the following:

(1) The name of the business, the form of business organization under which it is operated, and the names and addresses of the principals or management of the business.
(2) An acknowledgement of receipt of the Phase I proposal by the relevant federal agency.
(3) An itemized statement of the costs that may be reimbursed.
(4) Any other information necessary for the Board to evaluate the application. (2005-276, s. 13.14(b).)

Editor's Note. — Session Laws 2009-451, s. 14.3 would have amended Part 2I of Article 10 of Chapter 143B, by amending the part heading, adding Subparts A and B, and adding G.S. 143B-437.89, effective July 1, 2009. Session Laws 2009-575, s. 12(b), effective July 1, 2009, repealed Session Laws 2009-451, s. 14.3, so that the provisions of Session Laws 2009-451 never went into effect.

§ 143B-437.81. North Carolina SBIR/STTR Matching Funds Program.

(a) Program. — There is established the North Carolina SBIR/STTR Matching Funds Program to be administered by the North Carolina Board of Science and Technology. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to match funds received by a business as a SBIR or STTR Phase I award and to encourage businesses to apply for Phase II awards.

(b) Eligibility. — In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

(1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.

(2) The business must have received a SBIR/STTR Phase I award from a participating federal agency in response to a specific federal solicitation. To receive the full match, the business must also have submitted a final Phase I report, demonstrated that the sponsoring agency has interest in the Phase II proposal, and submitted a Phase II proposal to the agency.

(3) The business must satisfy all federal SBIR/STTR requirements.

(4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.

(5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase II proposal will be conducted in this State and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase II project.

(6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase II proposal.

(c) Grant. — The North Carolina Board of Science and Technology may award grants to match the funds received by a business through a SBIR/STTR Phase I proposal up to a maximum of one hundred thousand dollars ($100,000). Seventy-five percent (75%) of the total grant shall be remitted to the business upon receipt of the SBIR/STTR Phase I award and application for funds under this section. Twenty-five percent (25%) of the total grant shall be remitted to the business upon submission by the business of the Phase II application to the funding agency and acceptance of the Phase I report by the funding agency. A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal proposal submission. Over its lifetime, a business may receive a maximum of five awards under this section.

(d) Application. — A business shall apply, under oath, to the North Carolina Board of Science and Technology for a grant under this section on a form prescribed by the Board that includes at least all of the following:

(1) The name of the business, the form of business organization under which it is operated, and the names and addresses of the principals or management of the business.

(2) An acknowledgement of receipt of the Phase I report and Phase II proposal by the relevant federal agency.

(3) Any other information necessary for the Board to evaluate the application. (2005-276, s. 13.14(b).)

§ 143B-437.82. Program guidelines.

The Department of Commerce shall develop guidelines related to the administration of the One North Carolina Small Business Program. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the Department of Commerce must publish the proposed guidelines on the Department's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this section, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.
(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment. (2005-276, s. 13.14(b).)

§ 143B-437.83. Reports.

The Department of Commerce shall publish a report on the use of funds in the One North Carolina Small Business Account on September 1 of each year until all funds have been expended. The report shall contain information on the disbursement and use of funds allocated under the One North Carolina Small Business Program. The report must be submitted to the following:

(1) The Joint Legislative Commission on Governmental Operations.
(2) The chairs of the House of Representatives and Senate Finance Committees.
(3) The chairs of the House of Representatives and Senate Appropriations Committees.
(4) The Fiscal Research Division of the General Assembly. (2005-276, s. 13.14(b); 2009-451, s. 14.5(c).)

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 14.5(c), effective July 1, 2009, in the introductory language, substituted "on September 1 of each year until all funds have been expended" for "at the end of each fiscal quarter" at the end of the first sentence, and deleted "is due no later than one month after the end of the fiscal quarter and" following "The report" in the third sentence.

§§ 143B-437.84 through 143B-437.89: Reserved for future codification purposes.

Editor's Note. — Session Laws 2009-451, s. 14.3 would have amended Part 2I of Article 10 of Chapter 143B, by amending the part heading, adding Subparts A and B, and adding G.S. 143B-437.89, effective July 1, 2009. Session Laws 2009-575, s. 12(b), effective July 1, 2009, repealed Session Laws 2009-451, s. 14.3, so that the provisions of Session Laws 2009-451 never went into effect.

Part 2J. Wine and Grape Growers Council.

§ 143B-437.90. North Carolina Wine and Grape Growers Council — Creation; powers and duties.

There is created the North Carolina Wine and Grape Growers Council of the Department of Commerce. The North Carolina Wine and Grape Growers Council shall have the following powers and duties:

(1) To identify and implement methods for improving North Carolina's rank as a wine-producing State;

(2) To assure orderly growth and development of North Carolina's grape and wine industry;
(3) To achieve public awareness of the quality of North Carolina grapes and wine;
(4) To coordinate the interaction of North Carolina's grape and wine industry with other segments of the State's economy such as tourism, retail trade, and horticulture;
(5) To conduct methods of quality assurance of North Carolina's grape and wine industry to create a sound foundation for further growth;
(6) To assist in the coordination of the activities of the various State agencies and other organizations contributing to the development of the grape and wine industry;
(7) To receive and disburse funds;
(8) To enter into contracts for the purpose of developing new or improved markets or marketing methods for wine and grape products;
(9) To contract for research services to improve viticultural and enological practices in North Carolina;
(10) To enter into agreements with any local, state, or national organizations or agency engaged in education for the purpose of disseminating information on wine or other viticultural projects;
(11) To enter into contracts with commercial entities for the purpose of developing marketing, advertising, and other promotional programs designed to promote the orderly growth of the North Carolina grape and wine industry;
(12) To acquire any licenses or permits necessary for performance of the duties of the Council; and
(13) To develop a State Viticulture Plan that identifies problems and constraints of the viticultural industry, proposes solutions to those problems and delineates planning mechanisms for the orderly growth of the industry. (1985 (Reg. Sess., 1986), c. 974, s. 1; 1997-261, s. 109; 2005-380, s. 4(a); 2006-264, s. 98.3.)

Editor's Note. — The number of this Part was redesignated by the Revisor of Statutes.

This section is former G.S. 106-750, recodified by Session Laws 2005-380, s. 4(a), as G.S. 143B-437.70. It has been renumbered as G.S. 143B-437.90 at the direction of the Revisor of Statutes. The historical citation from the former section has been added to this section as recodified.

Session Laws 2006-264, s. 98.3, rewrote the Part heading, which formerly read: "Grape Growers Council."

§ 143B-437.91. North Carolina Wine and Grape Growers Council — Composition; terms; reimbursement.

(a) The North Carolina Wine and Grape Growers Council shall consist of 11 members appointed by the Secretary of Commerce in the following manner: seven commercial grape growers; three winery operators; and one retailer of North Carolina grape products. For purposes of this Article, a commercial grape grower is one who has at least three acres of grapes or sells ten thousand dollars ($10,000) worth of grapes annually. The Secretary shall appoint members for staggered four-year terms. Members shall serve until their successors are appointed and qualified. Any member of the Council may be reappointed for additional terms. Any appointment to fill a vacancy on the Council shall be for the balance of the unexpired term. Any member of the Council may be removed by the Secretary for misfeasance, malfeasance, or nonfeasance.

(b) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 from funds appropriated for the operation of the Council.

(c) All clerical and other services required by the Council may be provided by the Department of Commerce.

(d) The Secretary of Commerce shall appoint a chair who shall serve at the pleasure of the Secretary.

(e) The Council may select a secretary who need not be a member of the Council.

(f) The Council shall meet when necessary as determined by the chair or upon written request of a majority of the members.

(g) A majority of the Council shall constitute a quorum for the transaction of business. (1985 (Reg. Sess., 1986), c. 974, s. 1; 1997-261, s. 109; 2005-380, s. 4(a); 2006-264, s. 98.3.)

Editor's Note. — This section is former G.S. 106-751, recodified by Session Laws 2005-380, s. 4(a), as G.S. 143B-437.71. It has been renumbered as 143B-437.91 at the direction of the Revisor of Statutes. The historical citation from the former section has been added to this section as recodified.

Session Laws 2005-380, s. 4(b), provides: "Persons serving on the North Carolina Grape Growers Council as of the effective date of this section shall continue to serve for the remainder of their unexpired terms. The Secretary of Commerce shall appoint members to the North Carolina Grape Growers Council as current terms expire and as vacancies arise."

Session Laws 2005-380, s. 4(d), provides: "The Department of Commerce shall consult and coordinate with the Department of Agriculture and Consumer Services and North Carolina State University to serve the needs of North Carolina grape growers."

§§ 143B-437.92 through 143B-437.99: Reserved for future codification purposes.

Part 2K. North Carolina Certified Retirement Community Program.

(Effective July 1, 2010)

§ 143B-437.100. (Effective July 1, 2010) North Carolina Certified Retirement Community Program — creation; powers and duties.

(a) Program. — There is established the North Carolina Certified Retirement Community Program as part of the 21st Century Communities program of the North Carolina Department of Commerce. The Department shall coordinate the development and planning of the North Carolina Certified Retirement Community Program with other State and local groups interested in participating in and promoting the North Carolina Certified Retirement Community Program. The Department shall adopt administrative rules to implement the provisions of this Part. For purposes of this Part, "Department" means the North Carolina Department of Commerce, and "Program" means the North Carolina Certified Retirement Community Program.

(b) Purpose. — The purpose of the Program is to encourage retirees and those planning to retire to make their homes in North Carolina. In order to further this purpose, the Department shall engage in the following activities:

(1) Promote the State as a retirement destination to retirees and those persons and families who are planning retirement both in and outside of North Carolina.

Part 2K has a delayed effective date.

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(2) Assist North Carolina communities in their efforts to market themselves as retirement locations and to develop communities that retirees would find attractive for a retirement lifestyle.

(3) Assist in the development of retirement communities and continuing care facilities under Article 64 of Chapter 58 of the General Statutes in order to promote economic development and a potential workforce to enrich North Carolina communities.

(4) Encourage mature market travel and tourism to North Carolina to evaluate future retirement desirability and to visit those who have chosen to retire in North Carolina.

(c) Factors. — The Department shall identify factors that are of interest to retirees or potential retirees in order to inform them of the benefits of living in North Carolina. These factors shall be used to develop a scoring system to determine whether an applicant will qualify as a North Carolina certified retirement community and may include the following:

(1) North Carolina's State and local tax structure.
(2) Housing opportunities and cost.
(3) Climate.
(4) Personal safety.
(5) Working opportunities.
(6) Health care and continuing care services.
(7) Transportation.
(8) Continuing education.
(9) Leisure living.
(10) Recreation.
(11) The performing arts.
(12) Festivals and events.
(13) Sports.
(14) Other services and facilities necessary to enable persons to age in the community with a minimum of restrictions.

(d) Certification. — The Department shall establish criteria for qualifying as a North Carolina certified retirement community. To be eligible to obtain certification as a North Carolina certified retirement community, the community shall meet each of the following requirements:

(1) Be located within 30 miles of a hospital and of emergency medical services.

(2) Take steps to gain the support of churches, clubs, businesses, media, and other entities whose participation will increase the Program's success in attracting retirees or potential retirees.

(3) Establish a retiree attraction committee. The retiree attraction committee shall fulfill or create subcommittees to fulfill each of the following:

a. Conduct a retiree desirability assessment analyzing the community with respect to each of the factors identified by the Department and submit a report of the analysis to the Department.

b. Send a representative of the retirement attraction committee to attend State training meetings conducted by the 21st Century Communities program during the certification process.

c. Raise funds necessary to run the Program, organize special events, and promote and coordinate the Program with local entities.

d. Establish a community image, evaluate target markets, and develop a marketing and public relations plan designed to accomplish the purpose of the Program.

e. Develop a system that identifies and makes contact with existing and prospective retirees, that provides tour guides when prospects visit the community, and that responds to inquiries, logs contacts made, invites prospects to special community events, and maintains continual contact with prospects until the prospect makes a retirement location decision.

(4) Remit an application fee to the 21st Century Communities program equal to the greater of ten thousand dollars ($10,000) or the product of fifty cents (50ó) multiplied by the population of the community, as determined by the most recent census.

(5) Submit the completed marketing and public relations plan designed to accomplish the purpose of the Program to the Department.

(6) Submit a long-term plan outlining the steps the community will undertake to maintain or improve its desirability as a destination for retirees, including corrections to any services or facilities identified in the retiree desirability assessment. (2008-188, s. 1.)

Editor's Note. — Session Laws 2008-188, s. 3, makes this Part effective July 1, 2010.

"Session Laws 2008-188, s. 2, provides: "Pilot program — The Department of Commerce, in conjunction with the Second Career Center of Robeson Community College, shall lead the implementation of the North Carolina Certified Retirement Community Program through a pilot project. During this pilot implementation, the community selection criteria and scoring methodology will be defined, applications will be developed, educational sessions will be conducted, and marketing strategies will be developed. The City of Lumberton will serve as the pilot community for this program. In recognition of the assistance, the City of Lumberton shall provide in this pilot implementation, application fee charged for the City's initial application shall be twenty-five dollars ($25.00). The Department of Commerce, the Second Career Center, and the City of Lumberton shall jointly work to organize the community and prepare its application. The Department of Commerce shall report on the implementation of this section by April 1, 2009, to the Joint Legislative Commission on Governmental Operations and to the House and Senate Appropriations Subcommittees on Natural and Economic Resources."

§ 143B-437.101. (Effective July 1, 2010) North Carolina Certified Retirement Community Program — administration.

(a) Administration and Support. — Upon being certified as a North Carolina certified retirement community, the 21st Century Communities program shall provide the following assistance to the community:

(1) Assistance in the training of local Program staff and volunteers.

(2) Ongoing oversight and guidance in marketing and updating on national retirement trends.

(3) Inclusion in the State's national advertising and public relations campaigns and travel show promotions, including a prominent feature on the Department's Web site.

(4) Eligibility for State financial assistance for brochures, support material, and advertising.

(5) An annual evaluation and progress assessment on maintaining and improving the community's desirability as a home for retirees.

(b) Expiration. — A community's certification under this section expires on the fifth anniversary of the date the initial certification is issued. To be considered for recertification by the 21st Century Communities program, an applicant community shall submit the following:

(1) A completed new application in accordance with the requirements of this Part.

(2) Data demonstrating the success or failure of the community's efforts to market and promote itself as a desirable location for retirees and potential retirees.
(3) The fee required by G.S. 143B-437.100(d)(4). (2008-188, s. 1.)

Part 3. Labor Force Development.

§ 143B-438: Repealed by Session Laws 1981, c. 380, s. 1.

Part 3A. Employment and Training Act of 1985.

§§ 143B-438.1 through 143B-438.6: Repealed by Session Laws 1999-237, s. 16.15(a), effective July 1, 1999.

Editor's Note. — This Part was former Part 27 of Article 7 of Chapter 143B (G.S. 143B-344.11 through 143B-344.15), as rewritten and recodified by Session Laws 1989, c. 727, s. 202.

§§ 143B-438.7 through 143B-438.9: Reserved for future codification purposes.

Part 3B. Workforce Development.

§ 143B-438.10. Commission on Workforce Development.

(a) Creation and Duties. — There is created within the Department of Commerce the North Carolina Commission on Workforce Development. The Commission shall have the following powers and duties:
(1) To develop strategies to produce a skilled, competitive workforce that meets the needs of the State's changing economy.
(2) To advise the Governor, the General Assembly, State and local agencies, and the business sector regarding policies and programs to enhance the State's workforce.
(3) To coordinate and develop strategies for cooperation between the academic, governmental, and business sectors.
(4) To establish, develop, and provide ongoing oversight of the "One-Stop Delivery System" for employment and training services in the State.
(5) To develop a unified State plan for workforce training and development.
(6) To review the plans and programs of agencies, boards, and organizations operating federally funded or State-funded workforce development programs for effectiveness, duplication, fiscal accountability, and coordination.
(7) To develop and continuously improve performance measures to assess the effectiveness of workforce training and employment in the State.
(8) To submit to the Governor and to the General Assembly by April 1, 2000, and biennially thereafter, a comprehensive Workforce Development Plan that shall include at least the following:
  a. Goals and objectives for the biennium.
  b. An assessment of current workforce programs and policies.
  c. An assessment of the delivery of employment and training services to special populations, such as youth and dislocated workers.

d. Recommendations for policy, program, or funding changes.

(9) To serve as the State's Workforce Investment Board for purposes of the federal Workforce Investment Act of 1998.

(b) Membership; Terms. — The Commission on Workforce Development shall consist of 38 members appointed as follows:

(1) By virtue of their offices, the following department and agency heads or their respective designees shall serve on the Commission: the Secretary of the Department of Health and Human Services, the Chair of the Employment Security Commission, the Superintendent of Public Instruction, the President of the Community Colleges System Office, the Commissioner of the Department of Labor, and the Secretary of the Department of Commerce.

(2) The Governor shall appoint 32 members as follows:

a. Six members representing public, postsecondary, and vocational education.

b. Two members representing community-based organizations.

c. Six members representing labor.

d. Eighteen members representing business and industry.

(3) The terms of the members appointed by the Governor shall be for four years.

(c) Appointment of Chair; Meetings. — The Governor shall appoint the Chair of the Commission from among the business and industry members, and that person shall serve at the pleasure of the Governor. The Commission shall meet at least quarterly upon the call of the Chair.

(d) Staff; Funding. — The clerical and professional staff to the Commission shall be provided by the Department of Commerce. Funding for the Commission shall derive from State and federal resources as allowable and from the partner agencies to the Commission. Members of the Commission shall receive necessary travel and subsistence in accordance with State law. (1999-237, s. 16.15(b).)

§ 143B-438.11. Local Workforce Development Boards.

(a) Duties. — Local Workforce Development Boards shall have the following powers and duties:

(1) To develop policy and act as the governing body for local workforce development.

(2) To provide planning, oversight, and evaluation of local workforce development programs, including the local One-Stop Delivery System.

(3) To provide advice regarding workforce policy and programs to local elected officials, employers, education and employment training agencies, and citizens.

(4) To develop a local plan in coordination with the appropriate community partners to address the workforce development needs of the service area.

(5) To develop linkages with economic development efforts and activities in the service area and promote cooperation and coordination among public organizations, education agencies, and private businesses.

(6) To review local agency plans and grant applications for workforce development programs for coordination and achievement of local goals and needs.

(7) To serve as the Workforce Investment Board for the designated substate area for the purpose of the federal Workforce Investment Act of 1998.

(b) Members. — Members of local Workforce Development Boards shall be appointed by local elected officials in accordance with criteria established by the Governor and with provisions of the federal Workforce Investment Act. The local Workforce Development Boards shall have a majority of business members and shall also include representation of workforce and education providers, labor organizations, community-based organizations, and economic development boards as determined by local elected officials. The Chairs of the local Workforce Development Boards shall be selected from among the business members. (1999-237, s. 16.15(b).)

§ 143B-438.12. Federal Program Administration.

(a) Federal Workforce Investment Act. — In accordance with the federal Workforce Investment Act, the Commission on Workforce Development shall develop a Five-Year Strategic Plan to be submitted to the U.S. Secretary of Labor. The Strategic Plan shall describe the workforce development activities to be undertaken in the State to implement the federal Workforce Investment Act and how special populations shall be served.

(b) Other Workforce Grant Applications. — The Commission on Workforce Development may submit grant applications for workforce development initiatives and may manage the initiatives and demonstration projects. (1999-237, s. 16.15(b).)

§ 143B-438.13. Employment and Training Grant Program.

(a) Employment and Training Grant Program. — There is established in the Department of Commerce, Division of Employment and Training, an Employment and Training Grant Program. Grant funds shall be allocated to local Workforce Development Boards for the purposes of enabling recipient agencies to implement local employment and training programs in accordance with existing resources, local needs, local goals, and selected training occupations. The State program of workforce performance standards shall be used to measure grant program outcomes.

(b) Use of Grant Funds. — Local agencies may use funds received under this section for the purpose of providing services, such as training, education, placement, and supportive services. Local agencies may use grant funds to provide services only to individuals who are (i) 18 years of age or older and meet the federal Workforce Investment Act, title I adult eligibility definitions, or meet the federal Workforce Investment Act, title I dislocated worker eligibility definitions, or (ii) incumbent workers with annual family incomes at or below two hundred percent (200%) of poverty guidelines established by the federal Department of Health and Human Services.

(c) Allocation of Grants. — The Department of Commerce may reserve and allocate up to ten percent (10%) of the funds available to the Employment and Training Grant Program for State and local administrative costs to implement the Program. The Division of Employment and Training shall allocate employment and training grant funds to local Workforce Development Boards serving federal Workforce Investment Act local workforce investment areas based on the following formula:

(1) One-half of the funds shall be allocated on the basis of the relative share of the local workforce investment area's share of federal Workforce Investment Act, title I adult funds as compared to the total of all local areas adult shares under the federal Workforce Investment Act, title I.

(2) One-half of the funds shall be allocated on the basis of the relative share of the local workforce investment area's share of federal Workforce Investment Act, title I dislocated worker funds as compared to the total of all local areas dislocated worker shares under the federal Workforce Investment Act, title I.

(3) Local workforce investment area adult and dislocated shares shall be calculated using the current year's allocations to local areas under the federal Workforce Investment Act, title I.

(d) Repealed by Session Laws 2009-451, s. 14.5(d), effective July 1, 2009.

(e) Nonreverting Funds. — Funds appropriated to the Department of Commerce for the Employment and Training Grant Program that are not expended at the end of the fiscal year shall not revert to the General Fund, but shall remain available to the Department for the purposes established in this section. (1999-237, s. 16.15(b); 2009-451, s. 14.5(d).)

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 14.5(d), effective July 1, 2009, deleted subsection (d), regarding reports and coordination.

§ 143B-438.14: Reserved for future codification purposes.

Part 3C. Trade Jobs for Success.

§ 143B-438.15. Legislative findings and purpose.

(a) The General Assembly finds that State, national, and global economic conditions and the passage of international trade agreements have impacted the State workforce adversely and resulted in significant losses in the availability of jobs in manufacturing and the State's other traditional industries. Further, the General Assembly finds that business and plant closings, the weakened State economy, and lengthening periods of unemployment have taken a toll on communities across the State. It is prudent to address the loss of jobs by establishing a statewide initiative to create more jobs for our citizens.

(b) It is the policy of this State to stimulate job growth and hiring by investing in the effective retraining of trade-affected displaced workers while partnering with private business to help those citizens learn new skills for new jobs through on-the-job training and educational assistance.

(c) The purpose of this Part is to establish the Trade Jobs for Success initiative to stimulate job growth and hiring in the State and to assist displaced workers affected by trade-impact business closings. The aim of the Trade Jobs for Success initiative shall be to partner with private business to move displaced workers into new jobs while allowing for a dignified transition from unemployment back to employment. (2004-124, s. 13.7A(d).)

Editor's Note. — Session Laws 2004-124, s. 13.7A(a) through (c), provides: "The Employment Security Commission shall take all actions practicable to obtain from the U.S. Department of Labor as quickly as possible a waiver under the Trade Adjustment Act to allow the Trade Jobs for Success initiative to (i) serve persons regardless of their age, (ii) use unemployment funds to provide direct monetary incentives to participating employers and direct income to eligible workers in the retraining program, and (iii) use funds for in-State relocation assistance. Waivers shall be sought for other program components, as appropriate.

"(b) The Department of Commerce, in cooperation with the Employment Security Commission and the North Carolina Community College System shall begin implementation of the Trade Jobs for Success initiative in the counties hardest hit by trade impacted job losses and the resulting decline of traditional North Carolina industries including the textile, clothing, and furniture industries and other manufacturing operations. Counties having an unemployment rate of eight percent (8%) or more shall receive priority consideration.

"(c) The Department of Commerce shall seek, and may receive, private grants and federal funds for the Trade Jobs for Success initiative."

Session Laws 2004-124, s. 1.2, provides:

"This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

§ 143B-438.16. Trade Jobs for Success initiative established; funds; program components and guidelines.

(a) There is established within the Department of Commerce the Trade Jobs for Success (TJS) initiative. The Department of Commerce shall lead the TJS initiative in cooperation with the Employment Security Commission and the Community Colleges System Office.

(b) There is created in the Department of Commerce a special, nonreverting fund called the Trade Jobs for Success Fund (Fund). The Fund shall be used to implement the TJS initiative. The Department of Commerce shall develop guidelines for administration of the TJS initiative and the Fund. An advisory council shall assist the Secretary of Commerce in the administration of the Fund. The members of the advisory council shall include:

(1) The Chairman of the Employment Security Commission or that officer's designee.
(2) The President of the Community Colleges System or that officer's designee.
(3) The State Auditor or that officer's designee.
(4) A representative of a statewide association to further the interests of business and industry in North Carolina designated by the Secretary of Commerce.

(c) At a minimum, the Trade Jobs for Success initiative shall include the following programmatic components:

(1) Displaced workers participating in the TJS initiative shall receive (i) on-the-job training to learn new job skills and (ii) educational assistance or remedial education specifically designed to help displaced workers qualify for new jobs.
(2) Displaced workers participating in the TJS initiative shall not lose their eligibility for unemployment insurance benefits while they are in the program and may receive wage supplements, as appropriate.
(3) In-State relocation assistance, in appropriate instances, where participating individuals must relocate to work for participating employers.
(4) Mentoring, both on and off the job, shall be provided to participants in a dignified manner through telephone assistance and other appropriate means.
(5) Financial assistance and other incentives may be provided to participating employers who provide jobs to participating displaced workers to help defray the costs of providing the on-the-job training opportunities.
(6) Work provided by participating employers as part of the TJS initiative must be full-time employment. Wages paid shall not be less than the hourly entry-level wage normally paid by the employer.
(7) Staff of the Employment Security Commission, in conjunction with staff of the Department of Commerce, shall match participating displaced workers to the most suitable employer.
(8) Local Employment Security Commission offices and community colleges shall enter into partnership agreements with local chambers of commerce, and other appropriate organizations, that would encourage employer participation in the TJS initiative.
(9) Tracking of participating individuals and businesses by the Department of Commerce and the Employment Security Commission to

assure program integrity and effectiveness and the compilation of data to generate the reports necessary to evaluate the success of the TJS initiative.

(10) Coordination and integration of existing programs in the Department of Commerce, the Employment Security Commission, and the North Carolina Community College System in a manner that maximizes the flexibility of these agencies to effectively assist participating individuals and businesses. (2004-124, s. 13.7A(d).)

§ 143B-438.17. Reporting.

(a), (b) Repealed by Session Laws 2009-451, s. 14.5(e), effective July 1, 2009.

(c) Beginning January 1, 2006, the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a comprehensive annual written report on the Trade Jobs for Success initiative. The annual report shall include a detailed explanation of outcomes and future planning for the TJS initiative and legislative proposals and recommendations regarding statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the annual report shall be provided to the Governor, to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly. (2004-124, s. 13.7A(d); 2005-276, s. 13.4A(b); 2009-451, s. 14.5(e).)

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 14.5(e), effective July 1, 2009, deleted subsections (a) and (b), and added "and legislative proposals and recommendations regarding statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative" at the end of the second sentence of subsection (c).

Part 4. Credit Union Commission.

§ 143B-439. Credit Union Commission.

(a) There shall be created in the Department of Commerce a Credit Union Commission which shall consist of seven members. The members of the Credit Union Commission shall elect one of its members to serve as chairman of the Commission to serve for a term to be specified by the Commission. On the initial Commission three members shall be appointed by the Governor for terms of two years and three members shall be appointed by the Governor for terms of four years. Thereafter all members of the Commission shall be appointed by the Governor for terms of four years. The Governor shall appoint the seventh member for the same term and in the same manner as the other six members are appointed. In the event of a vacancy on the Commission the Governor shall appoint a successor to serve for the remainder of the term. Three members of the Commission shall be persons who have had three years' or more experience as a credit union director or in management of state-chartered credit unions. At least four members shall be appointed as representatives of the borrowing public and may be members of a credit union but shall not be employees of, or directors of any financial institution or have any interest in any financial institution other than as a result of being a depositor or borrower. No two persons on the Commission shall be residents of the same senatorial district. No person on the Commission shall be on a board of directors or employed by another type of financial institution. The Commission shall meet at least every six months, or more often upon the call of the chairman of the Credit Union Commission or any three members of the Commission. A majority of the members of the Commission shall constitute a quorum. The members of the Commission shall be reimbursed for expenses incurred in the performance of their duties under this Chapter as prescribed in G.S. 138-5. In the event that the composition of the Commission on April 30, 1979, does not conform to that prescribed in the preceding sentences, such composition shall be corrected thereafter by appropriate appointments as terms expire and as vacancies occur in the Commission; provided that no person shall serve on the Commission for more than two complete consecutive terms.

(b) The relationship between the Secretary of Commerce and the Credit Union Commission shall be as defined for a Type II transfer under this Chapter.

(c) The Credit Union Commission is hereby vested with full power and authority to review, approve, or modify any action taken by the Administrator of Credit Unions in the exercise of all powers, duties, and functions vested by law in or exercised by the Administrator of Credit Unions under the credit union laws of this State.

An appeal may be taken to the Commission from any finding, ruling, order, decision or the final action of the Administrator by any credit union which feels aggrieved thereby. Notice of such appeal shall be filed with the chairman of the Commission within 30 days after such finding, ruling, order, decision or other action, and a copy served upon the Administrator. Such notice shall contain a brief statement of the pertinent facts upon which such appeal is grounded. The Commission shall fix a date, time and place for hearing said appeal, and shall notify the credit union or its attorney of record thereof at least 30 days prior to the date of said hearing. (1971, c. 864, s. 17; 1973, cc. 97, 1254; 1975, c. 709, ss. 4-6; 1977, c. 198, s. 26; 1979, c. 478, s. 3; 1989, c. 751, ss. 7(36), 8(22); 1991 (Reg. Sess., 1992), c. 959, s. 63.)

Editor's Note. — This section was formerly G.S. 143A-181. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

Part 5. North Carolina Board of Science and Technology.

§§ 143B-440, 143B-441: Recodified as G.S. 143B-426.30, 143B-426.31 by Session Laws 1985, c. 757, s. 179(c).

Part 6. North Carolina Science and Technology Research Center.

§ 143B-442. Creation of Center.

There is hereby created the "North Carolina Science and Technology Research Center" at the Research Triangle. (1963, c. 846, s. 1; 1967, c. 69; 1977, c. 198, s. 26.)

Editor's Note. — This section was formerly G.S. 143-374. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

§ 143B-443. Administration by Department of Commerce.

The activities of the North Carolina Science and Technology Research Center will be administered by the Department of Commerce. (1963, c. 846, s. 2; 1967, c. 69; 1977, c. 198, ss. 3, 4, 26; 1979, c. 668, s. 3; 1989, c. 751, s. 7(37); 1991 (Reg. Sess., 1992), c. 959, s. 64.)

Editor's Note. — This section was formerly G.S. 143-375. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

§ 143B-444. Acceptance of funds.

The North Carolina Science and Technology Research Center is authorized and empowered to accept funds from private sources and from governmental and institutional agencies to be used for construction, operation and maintenance of the Center. (1963, c. 846, s. 4; 1967, c. 69; 1977, c. 198, s. 26.)

Editor's Note. — This section was formerly G.S. 143-376. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

§ 143B-445. Applicability of Executive Budget Act.

The North Carolina Science and Technology Research Center is subject to the provisions of Article 1, Chapter 143, of the General Statutes of North Carolina. (1963, c. 846, s. 5; 1967, c. 69; 1977, c. 198, s. 26.)

Editor's Note. — This section was formerly G.S. 143-377. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

Part 7. North Carolina National Park, Parkway and Forests Development Council.

§§ 143B-446 through 143B-447.1: Recodified as G.S. 143B-324.1 through 143B-324.3 by Session Laws 1997-443, s. 15.36(b).

Editor's Note. — Session Laws 1997-443, s. 15.36(a), provides: "All functions, powers, duties, and obligations heretofore vested in the North Carolina National Park, Parkway and Forests Development Council of the Department of Commerce are hereby transferred to and vested in the Department of Environment, Health, and Natural Resources [now the Department of Environment and Natural Resources] by a Type II transfer, as defined in G.S. 143A-6."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Part 8. Energy Division.

§§ 143B-448 through 143B-450.1: Repealed by Session Laws 2000-140, s. 76, effective September 30, 2000.

Cross References. — As to reporting and data collection regarding stocks of coal and petroleum fuels, see G.S. 143-345.13 et seq.

Part 9. Navigation and Pilotage Commissions.

§ 143B-451. Navigation and pilotage commissions.

The Board of Commissioners of Navigation and Pilotage for the Cape Fear River as provided for by G.S. 76-1, and the Board of Commissioners of Navigation and Pilotage for Old Topsail Inlet and Beaufort Bar as provided for by G.S. 76-59 are hereby transferred to the Department of Commerce. All powers, duties and authority of the Board of Commissioners of Navigation and Pilotage for the Cape Fear River and Bar and the Board of Commissioners of Navigation and Pilotage for Old Topsail Inlet and Beaufort Bar, as provided for in Chapter 76 of the General Statutes, shall continue to vest in the boards, as now provided by statute, independently of the direction, supervision, and control of the Secretary of Commerce. The commissions shall report their activity to the Governor through the Secretary of Commerce. The appointment to the boards shall continue to be made in the manner as provided by Chapter 76 of the General Statutes. (1975, c. 716, s. 1; 1977, c. 65, s. 4; c. 198, s. 26; 1989, c. 751, s. 8(24); 1991 (Reg. Sess., 1992), c. 959, s. 69.)

Editor's Note. — The above section was formerly G.S. 143B-354. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

Session Laws 1977, c. 198, which amended this section, in s. 6, as amended by Session Laws 1977, c. 802, s. 50.46, provided that the navigation and pilotage commissions be transferred by a type I transfer, as defined by G.S. 143A-6.

G.S. 76-1, referred to in this section, was repealed by Session Laws 1981, c. 910, s. 2. See now Chapter 76A.

G.S. 76-59, referred to in this section, was repealed by Session Laws 1981 (Reg. Sess., 1982), c. 1176, s. 2. See now Chapter 76A.

Part 10. North Carolina State Ports Authority.

§ 143B-452. Creation of Authority — membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.

(a) The North Carolina State Ports Authority is hereby created. It shall be governed by a board composed of nine members and hereby designated as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11 members and hereby designated as the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. The Governor shall appoint seven members to the Authority, and the General Assembly shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall consist of seven persons appointed by the Governor, and four persons appointed by the General Assembly. Effective July 1, 1989, the Governor shall appoint six members to the Authority, in addition to the Secretary of Commerce, who shall serve as a voting member of the Authority by virtue of his office. The Secretary of Commerce shall fill the first vacancy occurring after July 1, 1989, in a position on the Authority over which the Governor has appointive power.

(b) The initial appointments by the Governor shall be made on or after March 8, 1977, two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of six years.

(c) To stagger further the terms of members:

(1) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1991, one member shall be appointed to a term of five years, to expire on June 30, 1996; the other member shall be appointed for a term of six years, to expire on June 30, 1997;

(2) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1993, one member shall be appointed to a term of five years, to expire on June 30, 1998; the other member shall be appointed to a term of six years, to expire on June 30, 1999;

(3) Of those members appointed by the Governor to replace the members whose terms expire on July 1, 1995, one member shall be appointed to a term of five years, to expire on June 30, 2000; the other member shall be appointed to a term of six years, to expire on June 30, 2001.

Thereafter, at the expiration of each stipulated term of office all appointments made by the governor shall be for a term of six years.

(d) The members of the Authority appointed by the Governor shall be selected from the State-at-large and insofar as practicable shall represent each section of the State in all of the business, agriculture, and industrial interests of the State. At least one member appointed by the Governor shall be affiliated with a major exporter or importer currently using the State Ports. Any vacancy occurring in the membership of the Authority appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor may remove a member appointed by the Governor only for reasons provided by G.S. 143B-13.

(e) The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. To stagger further the terms of members:

(1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;

(2) Of the members appointed upon the recommendation of the President of the Senate to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993. Successors to these persons for terms beginning on or after January 1, 1997, shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of two years.

(f) Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members appointed by the General Assembly may be removed only for reasons provided by G.S. 143B-13.

(g) The Governor shall appoint from the members of the Authority the chairman and vice-chairman of the Authority. The members of the Authority shall appoint a treasurer and secretary of the Authority.

(h) The Authority shall meet once in each 60 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5. No member of the Authority may participate in any discussion or vote on any matter before the Authority on which the member has a conflict of interest. (1945, c. 1097, s. 1; 1949, c. 892, s. 1; 1953, c. 191, s. 1; 1959, c. 523, s. 1; 1961, c. 242; 1975, c. 716, s. 2; 1977, c. 65, s. 1; c. 198, s. 9; 1981 (Reg. Sess., 1982), c. 1191, ss. 69-71; 1983, c. 717, s. 2.1; 1989, c. 273, s. 2; c. 751, s. 8(25); 1989 (Reg. Sess., 1990), c. 1072; 1991 (Reg. Sess., 1992), c. 959, s. 70; 1995, c. 490, s. 54; 1997-235, s. 1; 1997-456, s. 27.)

Editor's Note. — This section was formerly G.S. 143-216. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

The subsection designations in this section were added pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

For act transferring to the State Ports Authority all property and functions of the Morehead City Port Commission and providing for cancellation of outstanding bonds of said Commission, see Session Laws 1951, c. 776, as amended by Session Laws 1975, c. 638.

Session Laws 1983, c. 577, the Separation of Powers Bond Act of 1983, provided in s. 19: "Validation. All actions, appropriations, regulations or bonds taken, made or issued under the provisions of Chapter 909, Session Laws of 1971, Chapter 677, Session Laws of 1977, Part 4 of Article 1 of Chapter 116 of the General Statutes, Articles 19 or 21 of Chapter 116 of the General Statutes, Article 23C of Chapter 113 of the General Statutes or Part 10 of Article 10 of Chapter 143B of the General Statutes are valid notwithstanding the fact that certain powers were granted to and exercised by the Advisory Budget Commission."

State Government Reorganization. — The State Ports Authority was transferred to the Department of Transportation and Highway Safety (now Department of Transportation) by former G.S. 143A-107, enacted by Session Laws 1971, c. 864, and repealed by Session Laws 1975, c. 716, s. 5. For present provisions as to the Department of Transportation, see G.S. 143B-345 et seq.

CASE NOTES

The State Ports Authority is an agency of the State, and, as such, is entitled to claim the defense of sovereign immunity. Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 299 S.E.2d 618 (1983).

The State Ports Authority is a carrier under the Federal Railway Labor Act. International Longshoremen's Ass'n v. North Carolina Ports Auth., 463 F.2d 1 (4th Cir. 1972), cert. denied, 409 U.S. 982, 93 S. Ct. 318, 34 L. Ed. 245 (1972).

Applied in Wood-Hopkins Contracting Co. v. North Carolina State Ports Auth., 284 N.C. 732, 202 S.E.2d 473 (1974).

Cited in Guthrie v. North Carolina State Ports Auth., 56 N.C. App. 68, 286 S.E.2d 823 (1982).

§ 143B-453. Purposes of Authority.

Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation at such seaports or harbors of watercraft and highways and bridges thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.

(2) To acquire, construct, equip, maintain, develop and improve the port facilities at said ports and to improve such portions of the waterways thereat as are within the jurisdiction of the federal government.

(3) To foster and stimulate the shipment of freight and commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same.

(4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said harbors and seaports in connection with and in furtherance of the war operations and needs of the United States.

(5) To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority.

(6) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority.

(7) And in general to do and perform any act or function which may tend or be useful toward the development and improvement of harbors, seaports and inland ports of the State of North Carolina, and to increase the movement of waterborne commerce, foreign and domestic, to, through, and from such harbors and ports.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the port possibilities of the State of North Carolina. (1945, c. 1097, s. 2; 1953, c. 191, ss. 3, 4; 1977, c. 198, s. 9; 1979, c. 159, s. 2.)

Editor's Note. — This section was formerly G.S. 143-217. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

CASE NOTES

The Authority was created and empowered to act to accomplish a public purpose. North Carolina State Ports Auth. v. First-Citizens Bank & Trust Co., 242 N.C. 416, 88 S.E.2d 109 (1955).

And Is An Instrumentality and Agency of the State. — The State Ports Authority is an instrumentality and agency of the State, created and empowered to accomplish a public purpose. Nat Harrison Assocs. v. North Carolina State Ports Auth., 280 N.C. 251, 185 S.E.2d 793 (1972); Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 299 S.E.2d 618 (1983).

Which Is Entitled to Defense of Sovereign Immunity. — The State Ports Authority is an agency of the State, and, as such, is entitled to claim the defense of sovereign immunity. Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 299 S.E.2d 618 (1983).

Cited in Guthrie v. North Carolina State Ports Auth., 56 N.C. App. 68, 286 S.E.2d 823 (1982).

§ 143B-454. Powers of Authority.

(a) In order to enable it to carry out the purposes of this Part, the said Authority shall:

(1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina State Ports Authority;

(3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Part, all or any of them;

(4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of beltline roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, and to acquire, construct, and maintain, but not operate, such rail facilities as may be necessary or useful in connection with the operation of the State Ports, provided that nothing in this subdivision shall be construed as requiring or allowing the North Carolina State Ports Authority to become a carrier by rail subject to the federal laws regulating those carriers;

(5) The Authority shall appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its pleasure. The Executive Director or his designee shall appoint, employ, dismiss and, within the limits of available funding, fix the compensation of such other employees as he deems necessary to carry out the purposes of this Part. There shall be an executive committee consisting of the chairman of the Authority and two other members elected annually by the Authority. The executive committee shall be vested with authority to do all acts which are authorized by the bylaws of the Authority. Members of the executive committee shall serve until their successors are elected;

(6) Establish an office for the transaction of its business at such place or places as, in the opinion of the Authority, shall be advisable or necessary in carrying out the purposes of this Part;

(7) Be authorized and empowered to create and operate such agencies and departments as said board may deem necessary or useful for the furtherance of any of the purposes of this Part;

(8) Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of said Authority, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(9) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or

any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof;

(10) Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;

(11) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business. The Authority may establish fees for its services. In establishing these fees, the Authority shall consider the cost of providing service, revenue requirements, the cost of similar services at other seaports in the South Atlantic region, and any other factors it considers relevant. The Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations no later than 30 business days after it establishes or increases the fee.

(12) Be authorized and empowered to do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section mentioned; and

(13) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Part: Provided, that said Authority shall not engage in shipbuilding.

The property of the Authority shall not be subject to any taxes or assessments thereon.

(b) In order to execute the powers enumerated in subsection (a), the Authority shall determine the policies of the North Carolina State Ports Authority by majority vote of all members of the Authority present and voting. Once a policy is determined, the Authority shall communicate it to the Executive Director, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Authority shall have responsibility or authority to give operational directives to any employee of the North Carolina State Ports Authority other than the Executive Director. (1945, c. 1097, s. 3; 1949, c. 892, s. 2; 1953, c. 191, s. 5; 1959, c. 523, ss. 3-5; 1975, c. 716, s. 2; 1977, c. 65, s. 2; c. 198, ss. 7, 9; c. 802, s. 50.45; 1979, c. 159, s. 3; 1981 (Reg. Sess., 1982), c. 1181, s. 2; 1983, c. 717, s. 84; 1985, c. 479, s. 219; 1985 (Reg. Sess., 1986), c. 955, ss. 102, 103; 1987, c. 275, ss. 1, 2; 1989, c. 273, s. 1; 2002-99, s. 7(a); 2002-126, s. 6.6(c); 2006-203, s. 109.)

Editor's Note. — This section was formerly G.S. 143-218. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 6.6(d) repealed Part 11 of Article 10 of this chapter and G.S. 120-123(25), amended subdivision (a)(4) of this section, and required a list of assets and liabilities transferred to the North Carolina State Ports Authority.

Session Laws 2002-126, s. 6.6(e), provides: "As part of a plan to reorganize and consolidate rail operations at the State Ports, the North Carolina State Ports Authority may sell or transfer the Beaufort and Morehead Railway, Inc., or any part thereof or interest therein, to a terminal switching or short line railroad company, or to the North Carolina Railroad Company, on such terms and conditions as the parties may agree to."

Session Laws 2002-126, s. 6.6(f), provides: "The Attorney General within 45 days of this section becoming law [approved September 30, 2002] shall render an opinion as to whether or not subsections (a) through (e) of this section will subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act. Subsections (a) through (e) of this section become effective only if an opinion is issued that it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case subsections (a) through (e) of this section become effective upon the issuance of the opinion. In lieu of subsections (a) through (e) of this section, if the North Carolina State Ports Authority finds that the transfer of any stock owned by the North Carolina Ports Railway Commission to the North Carolina State Ports Authority will accomplish the same end as the transfer of assets of the North Carolina Ports Railway Commission, it may order such transfer if the Attorney General issues an opinion it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case the transfer becomes effective 60 days after it is ordered."

On November 12, 2002, the Office of the Attorney General issued an Advisory Opinion, as required by Session Laws 2002-126, s. 6.6(f), stating that the North Carolina State Ports Authority is not a common carrier subject to the Railway Labor Act by virtue of Session Laws 2002-126, s. 6.6(a)-(e). The opinion should be available on the official website of the Office of the Attorney General by the end of 2002 (website at http://www.jus.state.nc.us/lrframe.htm).

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6, is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 109, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the last paragraph in subsection (a), which read: "Prior to taking any action under this subsection, the Authority may consult with the Advisory Budget Commission."

CASE NOTES

The State Ports Authority is an agency of the State, and, as such, is entitled to claim the defense of sovereign immunity. Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 299 S.E.2d 618 (1983).

Empowered to Accomplish a Public Purpose. — The State Ports Authority is an instrumentality and agency of the State, created and empowered to accomplish a public purpose. Nat Harrison Assocs. v. North Carolina State Ports Auth., 280 N.C. 251, 185 S.E.2d 793 (1972); Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 299 S.E.2d 618 (1983).

The legislature did not waive the sovereign immunity of the State by enacting subdivision (1) permitting the Ports Authority to "sue or be sued" and has consented that tort claims against the Authority may be prosecuted in the civil courts. Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 299 S.E.2d 618 (1983).

Tort Claims to Be Pursued Under Tort Claims Act. — The language of the State Tort Claims Act (see G.S. 143-291) and subdivision (1) of this section, vesting the Ports Authority with authority to sue or be sued, when read together, evidence a legislative intent that the Authority be authorized to sue as plaintiff in its own name in the courts of the State, but contemplates that all tort claims against the Authority for money damages will be pursued under the State Tort Claims Act. Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 299 S.E.2d 618 (1983).

Lease of Facility to Private Corporation. — A lease by the Ports Authority of a grain handling facility to a private corporation, under the terms of which the corporation would pay during a five-year term all costs of operation of the facility and rentals sufficient to pay in full revenue bonds issued by the Authority, was within the power of the Authority, and did not constitute a loan of the credit of the State or the agency. North Carolina State Ports Auth. v. First-Citizens Bank & Trust Co., 242 N.C. 416, 88 S.E.2d 109 (1955).

Cited in Guthrie v. North Carolina State Ports Auth., 56 N.C. App. 68, 286 S.E.2d 823 (1982).

OPINIONS OF ATTORNEY GENERAL

Ports Authority Has Power to Lease Property to a Private Investor. — See opinion of Attorney General to Mr. Woodrow Price, Chairman, State Ports Authority, 41 N.C.A.G. 78 (1970).

As to the transfer of management functions to the Secretary of Transportation by the Executive Organization Act of 1971, see opinion of Attorney General to Mr. H.Y. Kinard, Department of Transportation, 44 N.C.A.G. 166 (1974).

§ 143B-454.1. Container shipping.

The State Ports Authority shall provide at the ports of Morehead City and Wilmington adequate equipment and facilities including container cranes at each port as needed, in order to maintain existing and future levels of containerized cargo shipping at both ports and provide and encourage growth in handling of containerized cargoes at both ports. (1979, c. 934.)

§ 143B-455. Approval of acquisition and disposition of real property.

Any transactions relating to the acquisition or disposition of real property or any estate or interest in real property, by the North Carolina State Ports Authority, shall be subject to prior review by the Governor and Council of State, and shall become effective only after the same has been approved by the Governor and Council of State. Upon the acquisition of real property or other estate therein, by the North Carolina State Ports Authority, the fee title or other estate shall vest in and the instrument of conveyance shall name the "North Carolina State Ports Authority" as grantee, lessee, or transferee. Upon the disposition of real property or any interest or estate therein, the instrument of conveyance or transfer shall be executed by the North Carolina State Ports Authority. The approval of any transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement, or right-of-way transactions as he deems advisable, and he may likewise delegate the review and approval of the severance of buildings and timber from the land. (1959, c. 523, s. 6; 1977, c. 198, s. 9.)

Editor's Note. — This section was formerly G.S. 143-218.1. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

CASE NOTES

The Authority is not freed from the provisions of this section merely because the Authority has the right under G.S. 143-220 (now G.S. 143B-457) to select the particular procedure it will follow in exercising its power of eminent domain. North Carolina State Ports

Auth. v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

Cited in State Hwy. Comm'n v. Matthis, 2 N.C. App. 233, 163 S.E.2d 35 (1968); Guthrie v. North Carolina State Ports Auth., 56 N.C. App. 68, 286 S.E.2d 823 (1982).

§ 143B-456. Issuance of bonds and notes.

(a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance or operation of any facility, building, structure or any other matter or thing which the Authority is authorized to acquire, construct, equip, maintain, or operate, all or any of them, including authorized special user projects, the Authority is hereby authorized, at one time or from time to time, to borrow money and in evidence thereof to issue bonds, notes and other obligations of the Authority as provided in this Part. Bonds, notes and other obligations may also be issued to (i) establish such reserves as the Authority may determine to be desirable including, without limitation, a debt service reserve fund, and (ii) provide for interest during the estimated period of construction and for a reasonable period thereafter and to provide for working capital.

The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues, income or assets of the Authority. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Authority at such price or prices and under such terms and conditions as may be determined by the Authority. Any such bonds or notes shall bear interest at such rate or rates, including variable rates, as may be determined by the Authority. Such bonds or notes shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Authority.

(b) Prior to the sale and delivery of any bonds or notes by the Authority, the Governor shall approve the general purposes of and the general security provisions for any such bonds or notes. Such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Authority shall determine. Bonds or notes may be issued under the provisions of this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Part and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same.

(c) In the discretion of the Authority any obligations issued under the provisions of this Part may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State and, in the case of an authorized special user project, a deed of trust of which the trustee may be an individual who is a resident of the State. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of obligations, revenues or other money under this Part to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. The pledge of any assets, income or revenues of the Authority to the payment of the principal of or the interest on any obligations of the Authority shall be valid and binding from the time when the pledge is made and any such assets, income or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof.

(d) The resolution authorizing any obligations or the trust agreement securing the same may provide that any moneys held pursuant thereto may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Part and such resolution or trust agreement may provide. Any such moneys or any other moneys of the Authority may be invested as provided in G.S. 159-30 or any successor provision thereof.

(e) Obligations issued under the provisions of this Part are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law.

(f) The Authority is hereby authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under the provisions of this Part, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the Authority, for any corporate purpose of the Authority. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same shall be governed by the provisions of this Part which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

Refunding obligations may be sold or exchanged for outstanding obligations issued under this Part and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations.

(g) Any obligations issued by the Authority under the provisions of this Part shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income.

(h) Obligations issued under the provisions of this Part shall not be deemed to constitute a debt, liability or obligation of the State or of any other public body in the State secured by a pledge of the faith and credit of the State or of any other public body in the State, respectively, but shall be payable solely from the revenues, income or assets of the Authority pledged thereto. Each obligation issued under this Part shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same or the interest thereon except from the revenues, income or assets pledged therefor and that neither the faith and credit nor the taxing power of the State or of any other public body in the State is pledged to the payment of the principal of or the interest on such obligation. (1945, c. 1097, s. 4; 1975, c. 716, s. 2; 1977, c. 198, s. 9; 1979, c. 159, s. 4; 1981, c. 856, s. 1; 1981 (Reg. Sess., 1982), c. 1181, s. 1; 1985 (Reg. Sess., 1986), c. 955, ss. 104, 105; 1987, c. 275, s. 3; 1995, c. 46, s. 16; 2006-203, s. 110.)

Editor's Note. — This section was formerly G.S. 143-219. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Section Laws 1981, c. 856, which amended this section, provided in ss. 4 through 6:

"Sec. 4. The foregoing provisions of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 5. This act, being necessary for the prosperity of the State and its inhabitants, shall be liberally construed to effect the purposes thereof.

"Sec. 6. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws or parts thereof, the provisions of this act shall be controlling."

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 110, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the last sentence in subsection (b), which read: "Prior to taking any action under this subsection, the Governor may consult with the Advisory Budget Commission."

CASE NOTES

Cited in North Carolina State Ports Auth. v. First-Citizens Bank & Trust Co., 242 N.C. 416, 88 S.E.2d 109 (1955); Guthrie v. North Carolina State Ports Auth., 56 N.C. App. 68, 286 S.E.2d 823 (1982).

§ 143B-456.1. Bonds and notes for special user projects.

(a) The Authority is also hereby authorized, subject to the provisions of this section, to issue, at one time or from time to time, bonds and notes to finance special user projects. The term "special user project" shall mean any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with any commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine or environmental facility or improvement primarily for the use of one or more private parties. Any such special user project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, restaurant and lodging facilities, warehouses, distribution centers, pollution control facilities, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, waterways, docks, wharves and other improvements necessary or convenient for ships, tugboats, barges or other vessels or for the construction, maintenance and operation of any building or structure, or addition thereto.

(b) Bonds and notes may be sold to finance special user projects irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor provisions.

(c) The bonds or notes of each issue of the Authority under this section shall be special, limited obligations of the Authority payable solely from such other revenues, income or assets of the Authority as the Authority shall specifically assign or pledge and such funds, collateral and undertakings as any private parties may assign or pledge therefor.

The financing agreement may provide the Authority with rights and remedies in the event of a default by the obligor thereunder including, without limitation, reentry and repossession or leasing or sale or foreclosure of the special user project to others.

The Authority's interest in a special user project may be that of owner, lessor, operator, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the Authority need not have any ownership or possessory interest in the project, and if that of lessor, the lessee may have an option or an obligation to purchase the special user project upon the expiration or termination of the lease.

(d) Bonds and notes issued under the provisions of this section may be secured by one or more agreements, including foreclosable deeds of trust and other trust instruments, which may pledge and assign to the trustee or the holders of its obligations the assets, revenues, and income provided for the security of the bonds or notes, including proceeds from the sale of any special user project, or part thereof, insurance proceeds and condemnation awards, and third-party agreements, and may convey or mortgage the project and other property and collateral to secure a bond issue.

The Authority may subordinate the bonds or notes or its rights, assets, revenues and income derived from any special user project to any prior, contemporaneous or future securities or obligations or lien, mortgage or other security interest.

(e) Notwithstanding any other provision of law, the Authority may agree that all contracts relating to the acquisition, construction, installation and equipping of the special user project shall be solicited, negotiated, awarded and executed by the private party or parties for which the Authority is financing the special user project or their agents subject only to such approvals by the Authority as the Authority may require. The Authority may, out of the proceeds of bonds or notes, make advances to or reimburse such private parties or such agents for all or a portion of the costs incurred in connection with such contracts. The provisions of G.S. 143B-463 of this Part shall have no application to funds and moneys derived pursuant to this section.

(f) Repealed by Session Laws 2001-218, s. 5, effective July 1, 2001. (1981, c. 856, s. 2; 2000-169, s. 41; 2001-218, s. 5; 2001-487, s. 33.)

Editor's Note. — Session Laws 1981, c. 856, s. 7, as amended by Session Laws 1981, c. 988, s. 1, provided: "Sec. 7. The provisions of this act shall become effective upon ratification, except for the provisions of Section 2 of this act [which added G.S. 143B-456.1], which shall become effective upon there becoming effective an amendment to the North Carolina Constitution authorizing the General Assembly to enact laws dealing with the subject matter of said Section 2." Such an amendment was proposed by Session Laws 1981, c. 808, as amended by Session Laws 1981, c. 987, and submitted to the People at an election held June 29, 1982, and was defeated. Such an amendment was again proposed by Session Laws 1985 (Reg. Sess., 1986), c. 933, and was adopted by the People at an election held on November 4, 1986. (See Article V, § 13, N.C. Const.). This amendment was certified to the Secretary of State on November 25, 1986. Therefore, G.S. 143B-456.1 became effective on November 25, 1986.

§ 143B-457. Power of eminent domain.

For the acquiring of rights-of-way and property necessary for the construction of structures, including railroad crossings, airports, seaplane bases, naval bases, wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto and transportation facilities needful for the convenient use of same, and belt line roads and highways and causeways and bridges and other bridges and causeways, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided by the general laws of the State of North Carolina for the procedure by any county, municipality or authority organized under the laws of this State, or by the Board of Transportation, or in any other manner provided by law, as the Authority may, in its discretion, elect. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use. (1945, c. 1097, s. 5; 1973, c. 507, s. 5; 1977, c. 198, s. 9; 1979, c. 159, s. 5.)

Editor's Note. — This section was formerly G.S. 143-220. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

CASE NOTES

Strict Construction. — The exercise of the power of eminent domain is in derogation of common right, and all laws conferring such power must be strictly construed. North Carolina State Ports Auth. v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

Statutes Not to Be Construed to Hamper Authority in Accomplishment of Its Purpose. — Recognizing the dominant intent of the General Assembly to provide maximum development and use of our seaports, no construction should be placed on statutes relating to the Authority, unless plainly required by the express terms thereof, that would tend to hamper the Authority in its efforts to accomplish the very purposes of its existence. North Carolina State Ports Auth. v. First-Citizens Bank & Trust Co., 242 N.C. 416, 88 S.E.2d 109 (1955).

The right to authorize the power of eminent domain and the mode of exercise thereof is wholly legislative, limited only by constitutional provisions which require reasonable notice and opportunity to be heard and payment of just compensation for the taking of private property for public uses. North Carolina State Ports Auth. v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

Authority is not freed from the provisions of G.S. 143-218.1 (now G.S. 143B-455) merely because it has the right under this section to select the particular procedure it will follow in exercising power of eminent domain. North Carolina State Ports Auth. v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

§ 143B-458. Exchange of property; removal of buildings, etc.

The Authority may exchange any property or properties acquired under the authority of this Chapter for other property, or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for port development, under the authorization of this Article. (1945, c. 1097, s. 6; 1977, c. 198, s. 9; 1979, c. 159, s. 6.)

Editor's Note. — This section was formerly G.S. 143-221. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

§ 143B-459: Repealed by Session Laws 1987, c. 275, s. 4.

§ 143B-460: Repealed by Session Laws 1979, c. 159, s. 8.

§ 143B-461. Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police.

(a) The jurisdiction of the Authority in any of said harbors or seaports within the State shall extend to all properties owned by or under control of the Authority and shall also extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar at such harbors or seaports.

(b) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the properties owned by or under the control of the North Carolina State Ports Authority. Any person violating any of the provisions of said Chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the properties of said Authority as is now vested by law in the said Authority.

(c) The North Carolina State Ports Authority is hereby authorized to make such reasonable rules, regulations, and adopt such additional ordinances with respect to the use of the streets, alleys, driveways and to the establishment of parking areas on the properties of the Authority and relating to the safety and welfare of persons using the property of the Authority. All rules, regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the Authority and printed and copy of such rules, regulations and ordinances shall be filed in the office of the Attorney General of North Carolina and the Authority shall cause to be posted, at appropriate places on the properties of the Authority, notice to the public of applicable rules, regulations and ordinances as may be adopted under the authority of this subsection. Any person violating any such rules, regulations or ordinances shall, upon conviction thereof, be guilty of a Class 3 misdemeanor.

(d) The Executive Director of the Authority is authorized to appoint such number of employees of the Authority as he may think proper as special policemen, who, when so appointed, shall have all the powers of policemen of incorporated towns. Such policemen shall have the power of arrest of persons committing violations of State law or any reasonable rules, regulations and ordinances lawfully adopted by the Authority as herein authorized. Employees appointed as such special policemen shall take the general oath of office prescribed by G.S. 11-11. (1945, c. 1097, s. 9; 1959, c. 523, s. 7; 1965, c. 1074; 1975, 2nd Sess., c. 983, s. 83; 1977, c. 198, ss. 8, 9; 1987, c. 275, s. 5; 1993, c. 539, s. 1041; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — This section was formerly G.S. 143-224. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

§ 143B-462. Treasurer of the Authority.

The Authority shall select its own treasurer. The Authority shall require a surety bond of such appointee in such amount as the Authority may fix, and the premium or premiums thereon shall be paid by said Authority as a necessary expense of said Authority. (1945, c. 1097, s. 10; 1959, c. 523, s. 8; 1977, c. 198, s. 9.)

Editor's Note. — This section was formerly G.S. 143-225. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

§ 143B-463. Deposit and disbursement of funds.

All Authority funds shall be deposited in a bank or banks to be designated by the Authority. Funds of the Authority shall be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the chairman, the acting chairman or the executive director. No warrants shall be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this Article and only when the account or expenditure for which the same is to be given in payment has been audited and approved by the Authority or its executive director. (1945, c. 1097, s. 11; 1951, c. 1088, s. 1; 1977, c. 198, s. 9; 1981, c. 856, s. 3.)

Editor's Note. — This section was formerly G.S. 143-226. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1981, ch. 856, which amended this section, provided in ss. 4 through 6:

"Sec. 4. The foregoing provisions of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 5. This act, being necessary for the prosperity of the State and its inhabitants, shall be liberally construed to effect the purposes thereof.

"Sec. 6. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws or parts thereof, the provisions of this act shall be controlling."

§ 143B-464. Audit.

The operations of the State Ports Authority shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1945, c. 1097, s. 12; 1951, c. 1088, s. 2; 1957, c. 269, s. 1; 1977, c. 198, s. 9; 1983, c. 913, s. 43.)

Editor's Note. — This section was formerly G.S. 143-227. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

§ 143B-465. Purchase of supplies, material and equipment and building contracts.

(a) All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority.

(b) All of the provisions of Chapter 143 of the General Statutes relating to public building contracts are hereby made applicable to the North Carolina State Ports Authority for those construction projects which may be funded, in whole or in part, by appropriations from the General Assembly.

(c) Notwithstanding subsections (a) and (b) of this section, if the North Carolina State Ports Authority finds that the delivery of a particular port facility must be expedited for good cause, the Authority shall be exempt from the following statutes, and rules implementing those statutes, to the extent necessary to expedite delivery: G.S. 133-1.1(g), G.S. 143-128(a) through (e), G.S. 143-132, and G.S. 143-135.26. Prior to exercising an exemption authorized under this subsection, the North Carolina State Ports Authority, through its Executive Director, shall give notice in writing of the Authority's intent to exercise the exemption to the Secretary of Administration. The notice shall contain, at a minimum, the following information: (i) the specific statutory requirement or requirements from which the Authority intends to exercise an exemption; (ii) the reason the exemption is necessary to expedite delivery of a port facility; and (iii) the way the Authority anticipates the exemption will expedite the delivery of a port facility. The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any building contracts exceeding two hundred fifty thousand dollars ($250,000) to which an exemption authorized by this subsection is applied. (1953, c. 191, s. 6; 1977, c. 198, s. 9; 1987, c. 275, s. 6; 1997-331, s. 1; 1999-368, s. 2.)

Editor's Note. — This section was formerly G.S. 143-227.1. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

§ 143B-466. Liberal construction of Article.

It is intended that the provisions of this Article shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen. (1945, c. 1097, s. 13; 1977, c. 198, s. 9.)

Editor's Note. — This section was formerly G.S. 143-228. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

§ 143B-467. Warehouses, wharves, etc., on property abutting navigable waters.

The powers, authority and jurisdiction granted to the North Carolina State Ports Authority under this Article and Chapter shall not be construed so as to prevent other persons, firms and corporations, including municipalities, from owning, constructing, leasing, managing and operating warehouses, structures and other improvements on property owned, leased or under the control of such other persons, firms and corporations abutting upon and adjacent to navigable waters and streams in this State, nor to prevent such other persons, firms and corporations from constructing, owning, leasing and operating in connection therewith wharves, docks and piers, nor to prevent such other persons, firms and corporations from encumbering, leasing, selling, conveying or otherwise dealing with and disposing of such properties, facilities, lands and improvements after such construction. (1955, c. 727; 1977, c. 198, s. 9.)

Editor's Note. — This section was formerly G.S. 143-228.1. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

§ 143B-468: Reserved for future codification purposes.

Part 11. North Carolina Ports Railway Commission.

§§ 143B-469 through 143B-469.3: Repealed.

OPINIONS OF ATTORNEY GENERAL

Effect of Repeal. — If Session Laws 2002-126 (S.B.1115), ss. 6.6(a) through (e) become law, they will not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act. See opinion of Attorney General to Marc Basnight, President Pro Tempore of the Senate, and James Black, Speaker of the House of Representatives, 2002 N.C.A.G. 29 (11/12/02).

Part 11A. North Carolina Hazardous Waste Treatment Commission.

§§ 143B-470 through 143B-470.6: Repealed by Session Laws 1989, c. 168, s. 2(a).

Editor's Note. — For reorganization of the North Carolina Hazardous Waste Treatment Commission as the North Carolina Hazardous Waste Management Commission [now abrogated] and transfer of records, personnel, property, etc., and rights and obligations of contracts, see Session Laws 1989, c. 168, s. 2(b).

Part 12. North Carolina Technological Development Authority.

§§ 143B-471 through 143B-471.5: Repealed by Session Laws 1991, c. 689, s. 154.1(f).

Editor's Note. — Session Laws 1991, c. 689, which repealed this Part, in s. 154.1(e) provides: "Effective September 1, 1991, the statutory unexpended balances of appropriations, allocations, or other funds and all assets of the Technological Development Authority created in G.S. 143B-471 shall be transferred to the North Carolina Technological Development Authority, Inc., a private, nonprofit corporation. The North Carolina Technological Development Authority, Inc., shall use the funds and other assets transferred to it pursuant to this act for (i) an incubator facilities program, (ii) an innovation research fund, and (iii) the First Flight System, a network of incubators across the State to transfer technologies into commercial applications. The incubator facilities program shall be administered in accordance with the provisions of former G.S. 143B-471.4, repealed by this section. The innovation research fund shall be administered in accordance with the provisions of former G.S. 143B-471.5, repealed by this section."

Session Laws 1991, c. 689, s. 154.1(g), as amended by Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 158, provides that effective September 1, 1991, certain land and improvements formerly known as the "Science and Technology Research Center" together with property installed in the building and other movable equipment and supplies shall be transferred by the State of North Carolina to The North Carolina Technological Development Authority, Inc., that this transaction shall be evidenced by a deed which shall provide that the property transferred shall automatically revert to the State of North Carolina if the property is used for any purposes other than that the North Carolina Technological Development Authority, Inc., shall use the property solely as a business incubator serving technology research-base entrepreneurial companies in Research Triangle Park. Use of the property pursuant to any prior instrument of occupancy in which the State of North Carolina is grantor of the property right and that is in force immediately prior to September 1, 1991, shall be deemed use of the property to the extent of use during the original term of the prior instrument of occupancy or any renewal or extension thereof.

Part 13. Mutual Burial Associations.

§§ 143B-472, 143B-472.1: Repealed by Session Laws 1997-313, s. 2, effective January 1, 1998.

Editor's Note. — Session Laws 1997-313, s. 1, provides that effective January 1, 1998, the authority, powers, duties, and functions vested in the North Carolina Mutual Burial Association Commission and in the Burial Association Administrator, along with all records, property, and unexpended balances of funds, are transferred to the North Carolina Board of Mortuary

Science, and the North Carolina Mutual Burial Association Commission is abolished. On and after January 1, 1998, the Board of Mortuary Science shall be responsible for the administration of Part 13 of Article 10 of Chapter 143B of the General Statutes.

Session Laws 1997-313, s. 7, provides that "(a) Effective January 1, 1998, references in the Session Laws to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator shall be deemed to refer to the Board of Mortuary Science. Every Session Law that refers to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator and that relates to any power, duty, function, or obligation of the Commission or the Administrator that continues in effect after the provisions of this act become effective shall be construed in a manner consistent with this act.

"(b) The Revisor of Statutes may on and after the effective date of this act, correct any reference or citation in the General Statutes that is amended by this act by deleting incorrect references and substituting correct references.

"(c) The Revisor of Statutes may, on and after the first day of January 1998, delete any reference to the North Carolina Mutual Burial Association Commission or to the Burial Association Administrator in any portion of the General Statutes to which conforming amendments are not made by this act and substitute, as appropriate and consistent with this act, any of the following terms: North Carolina Board of Mortuary Science, Board of Mortuary Science, or Board."

Session Laws 1997-313, s. 8, provides that every act of the North Carolina Mutual Burial Association Commission and the Burial Association Administrator that occurred prior to the date that act became law or to the date that provisions of that act became effective, and which was otherwise valid, continues to be valid and effective, notwithstanding any change in name or transfer of authority, powers, duties, and functions by that act.

§§ 143B-472.2 through 143B-472.29: Recodified as present G.S. 90-210.80 through 90-210.107 in Article 13E of Chapter 90, by Session Laws 2003-420, s. 17(b), effective October 1, 2003.

Part 14. Business Energy Improvement Program.

§§ 143B-472.30 through 143B-472.34: Repealed by Session Laws 2000-140, s. 76, effective September 30, 2000.

Cross References. — As to the Energy Improvement Loan Program, see now G.S. 143-345.16 et seq.

Editor's Note. — G.S. 143B-473.33 and 143B-473.34 were formerly reserved for future codification purposes.

Part 15. Main Street Solutions.

§ 143B-472.35. Establishment of fund; use of funds; application for grants; disbursal; repayment; inspections; rules; reports.

(a) A fund to be known as the Main Street Solutions Fund is established in the Department of Commerce. This Fund shall be administered by the Department of Commerce. The Department of Commerce shall be responsible for receipt and disbursement of all funds as provided in this section. Interest earnings shall be credited to the Main Street Solutions Fund.

(b) Funds in the Main Street Solutions Fund shall be available to micropolitan cities in development tier two and three counties in the State. For purposes of this section, a "micropolitan city" is a city located within the State with a population, according to the most recent U.S. census, of between 10,000 and 50,000 people. Funds in the Main Street Solutions Fund shall be used for any of the following eligible activities:

(1) The acquisition or rehabilitation of properties in connection with private investment in a designated downtown area.

(2) The establishment of revolving loan programs for private investment in a designated downtown area.

(3) The subsidization of interest rates for these revolving loan programs.

(4) The establishment of facade incentive grants in connection with private investment in a designated downtown area.

(5) Market studies, design studies, design assistance, or strategic planning efforts, provided the activity can be shown to lead directly to private investment in a designated downtown area.

(6) Any approved project that provides construction or rehabilitation in a designated downtown area and can be shown to lead directly to private investment in the designated downtown area.

(7) Public improvements and public infrastructure within a designated downtown area, provided these improvements are necessary to create or stimulate private investment in the designated downtown area.

(c) Any micropolitan city located within a development tier two or three county may apply for assistance from the Main Street Solutions Fund by submitting an application to the Main Street Center in the Division of Community Assistance, Department of Commerce. Any city affiliated with the North Carolina Main Street Center Program may apply for a grant for a proposed project.

(c1) The application shall include each of the following:

(1) A copy of the consensus local economic development plan developed by the micropolitan city in conjunction with the Department's Main Street Program and the city's regional economic development commission or its local council of government or both.

(1a) The proposed activities for which the funds are to be used and the projected cost of the project.

(2) The amount of grant funds requested for these activities.

(3) Projections of the dollar amount of private investment that is expected to occur in the designated downtown area as a direct result of the city's proposed activities.

(4) Whether local public dollars are required to match any grant funds according to the provisions of subdivision (g)(2) of this section, and if so, the amount of local public funds required.

(5) An explanation of the nature of the private investment in the designated downtown area that will result from the city's proposed activities.

(6) Projections of the time needed to complete the city's proposed activities.

(7) Projections of the time needed to realize the private investment that is expected to result from the city's proposed activities.

(8) Identification of the proposed source of funds to be used for repayment of any loan obligations.

(9) Any additional or supplemental information requested by the Division.

(d) A committee, comprised of representatives of: the Division of Community Assistance of the Department of Commerce, the North Carolina Main Street Program, the Local Government Commission, and the League of Municipalities shall do each of the following:

(1) Review a city's application.

(2) Determine whether the activities listed in the application are activities that are eligible for a grant.

(3) Determine which applicants are selected to receive funds from the Main Street Solutions Fund.

A city whose application is denied may file a new or amended application.

(e) A Main Street City that is selected may not receive a grant pursuant to this section totaling less than twenty thousand dollars ($20,000) or more than three hundred thousand dollars ($300,000).

(f) Repealed by Session Laws 2009-451, s. 14.10, effective July 1, 2009.

(g)(1) A city that has been selected to receive a grant shall use the full amount of the grant for the activities that were approved pursuant to subsection (d) of this section. Funds are deemed used if the city is legally committed to spend the funds on the approved activities.

(2) If a city has received approval to use the grant for public improvements or public infrastructure, that city shall be required to raise, before funds for these public improvements may be drawn from the city's account, local public funds to match the amount of the grant from the Main Street Solutions Fund on the basis of at least one local public dollar ($1.00) for every one dollar ($1.00) from the Main Street Solutions Fund. This match requirement applies only to those funds received for public improvements or public infrastructure and is in addition to the requirement set forth in subdivision (1) of this subsection.

(3) A city that fails to satisfy the condition set forth in subdivision (1) of this subsection shall lose any funds that have not been used within three years of being selected. These unused funds shall be credited to the Main Street Solutions Fund. A city that fails to satisfy the conditions set forth in subdivisions (1) and (2) of this subsection may file a new application.

(4) Any funds repaid or credited to the Main Street Solutions Fund pursuant to subdivision (3) of this subsection shall be available to other applicants as long as the Main Street Solutions Fund is in effect.

(h) Repealed by Session Laws 2009-451, s. 14.10, effective July 1, 2009.

(i) After a project financed in whole or in part pursuant to this section has been completed, the city shall report the actual cost of the project to the Department of Commerce. If the actual cost of the project exceeds the projected cost upon which the grant was based, the city may submit an application to the Department of Commerce for a grant for the difference. If the actual cost of the project is less than the projected cost, the city shall arrange to pay the difference to the Main Street Solutions Fund according to terms set by the Department.

(j) Inspection of a project for which a grant has been awarded may be performed by personnel of the Department of Commerce. No person may be approved to perform inspections who is an officer or employee of the unit of local government to which the grant was made or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of any project for which the grant was made.

(k) The Department of Commerce may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of this section and regulations interpreting and applying the provisions of this section, as provided in the Administrative Procedure Act.

(*l*) The Department of Commerce and cities that have been selected to receive a grant from the Main Street Solutions Fund shall prepare and file on or before September 1 of each year with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning the allocation of grants authorized by this section.

The portion of the annual report prepared by the Department of Commerce shall set forth for the preceding fiscal year itemized and total allocations from the Main Street Solutions Fund for grants. The Department of Commerce shall also prepare a summary report of all allocations made from the fund for each fiscal year; the total funds received and allocations made and the total unallocated funds in the Fund.

The portion of the report prepared by the city shall include each of the following:

(1) The total amount of private funds that was committed and the amount that was invested in the designated downtown area during the preceding fiscal year.
(2) The total amount of local public matching funds that was raised, if required by subdivision (g)(2) of this section.
(3) The total amount of grants received from the Main Street Solutions Fund during the preceding fiscal year.
(4) Repealed by Session Laws 2009-451, s. 14.10, effective July 1, 2009.
(5) A description of how the grant funds and funds from private investors were used during the preceding fiscal year.
(6) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities.

(m) The Department of Commerce may use up to fifty thousand dollars ($50,000) of the funds in the Main Street Solutions Fund for expenses related to the administration of the Fund. (1989, c. 751, s. 9(c); c. 754, ss. 40(b)-(m); 1991, c. 689, s. 140(a); 1991 (Reg. Sess., 1992), c. 959, s. 72; 1993, c. 553, ss. 50, 51; 1997-456, s. 27; 2009-451, s. 14.10.)

Editor's Note. — The subsection (c1) designation was added pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Session Laws 2009-451, s. 14.10, substituted "Solutions" for "Financial Incentive Fund" in the Part heading.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 14.10, effective July 1, 2009, substituted "Solutions" for "Financial Incentive Fund" in the section heading, substituted "funds" for "moneys" and substituted "application for grants" for "application for grants and loans"; and rewrote this section.

§§ 143B-472.36 through 143B-472.39: Reserved for future codification purposes.

Part 16. Information Technology Related State Government Functions.

§§ 143B-472.40 through 143B-472.67: Repealed by Session Laws 2000-174, s. 1, effective September 1, 2000.

Cross References. — For the Office of Information Technology Services, see now G.S. 147-33.75 et seq.

Editor's Note. — Repealed G.S. 143B-472.41, 143B-472.52 and 143B-472.64 were amended effective July 21, 2000, by Session Laws 2000-140, ss. 93.1(a), (c), (h), and (*l*), which updated references therein to refer to the Office of State Budget, Planning and Management.

Repealed G.S. 143B-472.51, 143B-472.54, 143B-472.58, and 143B-472.63 were amended effective July 14, 2000, by Session Laws 2000-130, ss. 1 to 4.

§§ 143B-472.68, 143B-472.69: Reserved for future codification purposes.

Part 17. Electronic Procurement in Government.

§ 143B-472.70: Recodified as G.S. 143-48.3 by Session Laws 2000-140, s. 5.95(a), effective July 1, 2000.

Editor's Note. — Session Laws 2000-67, s. 7.8, effective July 1, 2001, added new Part 17, with new G.S. 143B-472.70, relating to electronic procurement. Subsequently, G.S. 143B-472.70 was recodified as G.S. 143-48.3, by Session Laws 2000-140, s. 95(a), effective July 21, 2000. Session Laws 2000-140, s. 95(b), effective July 21, 2000, repealed Part 17.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as the 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§§ 143B-472.71 through 143B-472.79: Reserved for future codification purposes.

Part 18. North Carolina Board of Science and Technology.

§ 143B-472.80. North Carolina Board of Science and Technology; creation; powers and duties.

The North Carolina Board of Science and Technology of the Department of Commerce is created. The Board has the following powers and duties:

(1) To identify, and to support and foster the identification of, important research needs of both public and private agencies, institutions and organizations in North Carolina that relate to the State's economic growth and development;

(2) To make recommendations concerning policies, procedures, organizational structures and financial requirements that will promote effective use of scientific and technological resources in fulfilling the research needs identified and that will promote the economic growth and development of North Carolina;

(3) To allocate funds available to the Board to support research projects, to purchase research equipment and supplies, to construct or modify research facilities, to employ consultants, and for other purposes necessary or appropriate in discharging the duties of the Board;

(4) To advise and make recommendations to the Governor, the General Assembly, the Secretary of Commerce, and the Economic Development Board on the role of science and technology in the economic growth and development of North Carolina.

(5) Repealed by Session Laws 2009-451, s. 14.5(g), effective July 1, 2009. (1973, c. 1262, s. 77; 1977, c. 198, ss. 2, 26; 1979, c. 668, s. 1; 1985, c. 757, s. 179(a), (c); 2001-424, s. 7.6; 2001-486, s. 2.21; 2003-210, s. 1; 2005-276, s. 13.15; 2005-345, s. 25; 2009-451, s. 14.5(g).)

Editor's Note. — This Part is derived from Part 27 of Article 9 of Chapter 143B, G.S. 143B-426.30, 143B-426.31, as recodified by Session Laws 2001-424, s. 7.6, effective July 1, 2001. Formerly this Part was Part 5 of Article 10 of Chapter 143B, G.S. 143B-440 and 143B-441, as recodified by Session Laws 1985, c. 757, s. 179(c), effective July 15, 1985.

Session Laws 1987, c. 830, s. 75, provided: "The Pollution Prevention Pays Program is transferred from the Board of Science and Technology to the Department of Natural Resources and Community Development. The transfer has all the elements of a Type I transfer as defined in G.S. 143A-6(a)."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 7.6, effective September 26, 2001, provides: "The statutory authority, power, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Science and Technology, as established in G.S. 143B-426.30, are transferred to the Department of Commerce. Part 27 of Article 9 of Chapter 143B of the General Statutes is recodified as Part 18 of Article 10 of Chapter 143B of the General Statutes and the Revisor of Statutes shall substitute the term 'Commerce' for the term 'Administration' everywhere that term appears in Part 18 of Article 10 of Chapter 143B of the General Statues."

Session Laws 2001-424, s. 36.5, is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 14.5(g), effective July 1, 2009, deleted subdivision (5), regarding reports.

§ 143B-472.81. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.

(a) The North Carolina Board of Science and Technology consists of the Governor, the Secretary of Commerce, and 17 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member from the Research Triangle Institute, nominated by the executive committee of the board of that institute; one member from the Microelectronics Center of North Carolina, nominated by the executive committee of the board of that center; one member from the North Carolina Biotechnology Center, nominated by the executive committee of the board of that center; four members from private industry in North Carolina, at least one of whom shall be a professional engineer registered pursuant to Chapter 89C of the General Statutes or a person who holds at least a bachelors degree in engineering from an accredited college or university; and two members from public agencies in North Carolina. Two members shall be appointed by the General Assembly, one shall be appointed upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

(b) Members appointed to the Board by the General Assembly shall serve for two-year terms beginning 1 July of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. The two members from public agencies shall serve for terms expiring at the end of the term of the Governor appointing them. The other 13 members appointed to the Board by the Governor shall serve for four-year terms, and until their successors are appointed and qualified. Of those 13 members, six shall serve for terms that expire on 30 June of years that follow by one year those years that are evenly divisible by four, and seven shall serve for terms that expire on 30 June of years that follow by three years those years that are evenly divisible by four. Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) The Governor or the Governor's designee shall serve as chair of the Board. The vice-chair and the secretary of the Board shall be designated by the Governor or the Governor's designee from among the members of the Board.

(d) The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

(e) Members of the Board who are employees of State agencies or institutions shall receive subsistence and travel allowances authorized by G.S. 138-6. Legislative members of the Board shall receive subsistence and travel allowances authorized by G.S. 120-3.1.

(f) A majority of the Board constitutes a quorum for the transaction of business.

(g) The Secretary of Commerce shall provide all clerical and other services required by the Board. (1979, c. 668, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 44-46; 1985, c. 757, s. 179(b), (c); 1989, c. 751, s. 8(17); 1991, c. 573, s. 1; 1995, c. 490, s. 46; 2001-424, s. 7.6; 2001-486, s. 2.21.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section by adding "Pro Tempore" in the next to last sentence of subsection (a), in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Session Laws 1995, c. 490, which amended this section by adding "Pro Tempore" in the next to last sentence of subsection (a), in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

§§ 143B-472.82 through 143B-472.84: Reserved for future codification purposes.

Part 19. Small Business Contractor Act. (Expired).

§§ 143B-472.85 through 143B-472.97: Expired.

Editor's Note. — This Part expired June 30, 2006, pursuant to the terms of Session Laws 2002-181, s. 2(b), which provided: "This act expires June 30, 2006. The expiration of this act does not affect prosecutions for offenses committed before that date, and the statutes that would be applicable but for this act remain applicable to those prosecutions. The expiration of this act does not affect any guarantees or bonds executed prior to the expiration."

§§ 143B-472.98, 143B-472.99: Reserved for future codification purposes.

Part 20. Small Business Contractor Act.

§ 143B-472.100. Purpose and intent.

The purpose and intent of this Part is to foster economic development and the creation of jobs by providing financial assistance to financially responsible small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. (2007-441, s. 1.)

Editor's Note. — Session Laws 2007-441, s. 2, made this Part effective January 1, 2008, and applicable to offenses committed or causes of action arising on or after that date.

§ 143B-472.101. Definitions.

The following definitions apply in this Part:

(1) Authority. — The North Carolina Small Business Contractor Authority created in this Part.

(2) Internal Revenue Code. — The Code as defined in G.S. 105-228.90.

(3) Contract term. — The term of a contract, including the maintenance or warranty period required by the contract and the period during which the surety may be liable for latent defects.

(4) Government agency. — The federal government, the State, an agency, or a political subdivision of the federal government or the State, or a utility regulated by the North Carolina Utilities Commission.

(5) Related party. — A party related to the applicant in a manner that would require an attribution of stock to or from the party under section 318 of the Internal Revenue Code.

(6) Secretary. — The Secretary of Commerce. (2007-441, s. 1.)

§ 143B-472.102. Authority creation; powers.

(a) Creation. — The North Carolina Small Business Contractor Authority is created within the Department of Commerce.

(b) Membership. — The Authority consists of 11 members appointed as follows:

(1) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom has experience in underwriting surety bonds.

(2) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom is a present or former governmental employee with experience in administering public contracts.

(3) Three members appointed by the Governor, one of whom is a licensed general contractor and one of whom is experienced in working for private, nonprofit, small, or underutilized businesses.

(c) Terms. — Members serve four-year terms, except initial appointments. There is no prohibition against reappointment for subsequent terms. Initial appointments shall begin on January 1, 2008. Each appointing authority shall designate two of its initial appointments to serve four-year terms and the remainder of its initial appointments to serve three-year terms.

(d) Chair. — The chair shall be elected annually by the members of the Authority from the membership of the Authority and shall be a voting member.

(e) Compensation. — The Authority members shall receive no salary as a result of serving on the Authority but are entitled to per diem and allowances in accordance with G.S. 138-5.

(f) Meetings. — The Secretary shall convene the first meeting of the Authority within 60 days after January 1, 2008. Meetings shall be held as necessary as determined by the Authority.

(g) Quorum. — A majority of the members of the Authority constitutes a quorum for the transaction of business. A vacancy in the membership of the Authority does not impair the right of the quorum to exercise all rights and to perform all duties of the Authority.

(h) Vacancies. — A vacancy on the Authority resulting from the resignation of a member or otherwise is filled in the same manner in which the original appointment was made, for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(i) Removal. — Members may be removed in accordance with G.S. 143B-13. A member who misses three consecutive meetings of the Authority may be removed for nonfeasance.

(j) Powers and Duties. — The Authority has the following powers and duties:

(1) To accept grants, loans, contributions, and services.

(2) To employ staff, procure supplies, services, and property, and enter into contracts, leases, or other legal agreements, including the procurement of reinsurance, to carry out the purposes of the Authority.

(3) To acquire, manage, operate, dispose of, or otherwise deal with property, take assignments of rentals and leases, and enter into contracts, leases, agreements, and arrangements that are necessary or incidental to the performance of the duties of the Authority, upon terms and conditions that it considers appropriate.

(4) To specify the form and content of applications, guaranty agreements, or agreements necessary to fulfill the purposes of this Part.

(5) To acquire or take assignments of documents executed, obtained, or delivered in connection with assistance provided by the Authority under this Part.

(6) To fix, determine, charge, and collect any premiums, fees, charges, costs, and expenses in connection with any assistance provided by the Authority under this Part.

(7) To adopt rules, in accordance with Chapter 150B of the General Statutes, to implement this Part.

(8) To take any other action necessary to carry out its purposes.

(9) To report quarterly to the Joint Legislative Commission on Governmental Operations on the activities of the Authority, including the amount of rates, sureties, and bonds.

(k) Limitations. — Notwithstanding any other provision of this Part, the Authority may not provide financial assistance that constitutes raising money on the credit of the State or pledging the faith and credit or the taxing power of the State directly or indirectly for the payment of any debt. Before providing financial assistance to an applicant under this Part, the Authority must obtain the written certification of the Attorney General that the proposed financial assistance does not constitute raising money on the credit of the State or pledging the faith of the State directly or indirectly for the payment of any debt as provided in Section 3(2) of Article V of the North Carolina Constitution. (2007-441, s. 1.)

§ 143B-472.103. Eligibility.

To qualify for assistance under this Part, an applicant must meet all of the following requirements:

(1) The applicant must be a small business concern that meets the applicable size standards established by the United States Small Business Administration for business loans based on the industry in which the concern, including its affiliates, is primarily engaged and based on the industry in which the concern, not including its affiliates, is primarily engaged. In addition, in the case of an application for bonding assistance, the applicant, including its affiliates, may not have receipts for construction and service contracts in excess of the maximum amount established by the United States Small Business Administration for surety bond guarantee assistance.

(2) The applicant must be an individual, or be controlled by one or more individuals, with a reputation for financial responsibility, as determined from creditors, employers, and other individuals with personal knowledge. If the applicant is other than a sole proprietorship, at least seventy percent (70%) of the business must be owned by individuals with a reputation for financial responsibility.

(3) The applicant must be a resident of this State or be incorporated in this State and must have its principal place of business in this State.

(4) The applicant must demonstrate to the satisfaction of the Authority that it has been unable to obtain adequate financing or bonding on reasonable terms through an authorized company. If the applicant is applying for a guarantee of a loan, the applicant must have applied for and been denied a loan by a financial institution. (2007-441, s. 1.)

§ 143B-472.104. Small Business Contract Financing Fund.

(a) Creation and Use. — The Small Business Contract Financing Fund is created as a special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to the Fund. The Authority shall use the Fund to make direct loans and guaranty payments required by defaults and to pay the portion of the administrative expenses of the Authority related to making these loans and payments.

(b) Content. — The Small Business Contract Financing Fund consists of all of the following revenue:

(1) Funds appropriated to the Fund by the State.

(2) Repayments of principal of and interest on direct loans.

(3) Premiums, fees, and any other amounts received by the Authority with respect to financial assistance provided by the Authority.

(4) Proceeds designated by the Authority from the sale, lease, or other disposition of property or contracts held or acquired by the Authority.

(5) Investment income of the Fund.

(6) Any other moneys made available to the Fund. (2007-441, s. 1.)

§ 143B-472.105. Contract performance assistance authorized.

(a) Type. — The Authority is authorized to provide the following contract performance assistance:

(1) A guarantee of a loan made to the applicant.

(2) If the applicant demonstrates to the satisfaction of the Authority that it is unable to obtain money from any other source, a loan to the applicant.

(b) Qualification. — The Authority shall not lend money to an applicant or guarantee a loan unless all of the following requirements are met:

(1) The applicant meets the requirements of G.S. 143B-472.78.

(2) The loan is to be used to perform an identified contract, of which the majority of funding is provided by a government agency or a combination of government agencies.

(3) The loan is to be used for working capital or equipment needed to perform the contract, the cost of which can be repaid from contract proceeds, if the Authority has entered into an agreement with the applicant necessary to secure the loan or guaranty.

(c) Terms and Conditions. — The Authority shall set the terms and conditions for loans and for the guarantee of loans. When the Authority lends money from the Small Business Contract Financing Fund, it shall prepare loan documents that include all of the following:

(1) The rate of interest on the loan, which shall not exceed any applicable statutory limit for a loan of the same type.

(2) A payment schedule that provides money to the applicant in the amounts and at the times that the applicant needs the money to perform the contract for which the loan is made.

(3) A requirement that, before each advance of money is released to the applicant, the applicant and the Authority must cosign the request for the money.
(4) Provisions for repayment of the loan.
(5) Any other provision the Authority considers necessary to secure the loan, including an assignment of, or a lien on, payment under the contract, if allowable.

(d) Maturity. — A loan made by the Authority shall mature not later than the date the applicant is to receive full payment under the identified contract, unless the Authority determines that a later maturity date is required to fulfill the purposes of this Part.

(e) Diversity. — In selecting applicants for assistance, the Authority must consider the need to serve all geographic and political areas and subdivisions of the State.

(f) Limitation. — The total amount of loan guarantees and loans issued to each recipient during a fiscal year shall not exceed fifteen percent (15%) of the amount of money in the Fund as of the beginning of that fiscal year. (2007-441, s. 1.)

§ 143B-472.106. Small Business Surety Bond Fund.

(a) Creation and Use. — The Small Business Surety Bond Fund is created as a special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to the Fund. The Authority shall use the Fund for the purposes of and to pay the expenses of the Authority related to providing bonding assistance.

(b) Content. — The Small Business Surety Bond Fund consists of all of the following revenue:
(1) Funds appropriated to the Fund by the State.
(2) Premiums, fees, and any other amounts received by the Authority with respect to bonding assistance provided by the Authority.
(3) Proceeds designated by the Authority from the sale, lease, or other disposition of property or contracts held or acquired by the Authority.
(4) Investment income of the Fund.
(5) Any other moneys made available to the Fund. (2007-441, s. 1.)

§ 143B-472.107. Bonding assistance authorized.

(a) Guaranty. — Subject to the restrictions of this Part, the Authority, on application, may guarantee a surety for losses incurred under a bid bond, payment bond, or performance bond on an applicant's contract, of which the majority of the funding is provided by a government agency or a combination of government agencies, up to ninety percent (90%) of the surety's losses, or nine hundred thousand dollars ($900,000), whichever is less. The term of a guaranty under this section shall not exceed the contract term. The Authority may vary the terms and conditions of the guaranty from surety to surety, based on the Authority's history of experience with the surety and other factors that the Authority considers relevant.

(b) Notice. — When the Authority provides a guaranty under this section with respect to a contract, it must give the government agencies that are parties to the contract written notice of the guaranty.

(c) Bonds. — The Authority may execute and perform bid bonds, performance bonds, and payment bonds as a surety for the benefit of an applicant in connection with a contract, of which the majority of the funding is provided by a government agency or a combination of government agencies.

(d) Obligation of State. — The total amount of guarantees issued and bonds executed shall not exceed ninety percent (90%) of the amount of money in the

Small Business Surety Bond Fund. The Authority shall not pledge any money other than money in the Fund for payment of a loss or bond. No action by the Authority constitutes the creation of a debt secured by a pledge of the taxing power or the faith and credit of the State or any of its political subdivisions. The face of each guarantee issued or bond executed shall contain a statement that the Authority is obligated to pay the guarantee or bond only from the revenue in the Small Business Surety Bond Fund and that neither the taxing power nor the faith and credit of the State or any of its political subdivisions is pledged in payment of the guarantee or bond. Nothing in this subsection limits the ability of the Authority to obtain reinsurance.

(e) Limitation. — The total amount of bonding assistance provided to each recipient during a fiscal year shall not exceed fifteen percent (15%) of the amount of money in the Fund as of the beginning of that fiscal year.

(f) Payment. — If the Authority considers it prudent, it may require that payment be made either to the contractor and lending institution or to the bonding authority. (2007-441, s. 1.)

§ 143B-472.108. Bonding assistance conditions.

(a) Requirements. — To obtain bonding assistance under this Part, an applicant must meet the eligibility requirements of G.S. 143B-472.78 and must demonstrate to the satisfaction of the Authority that all of the following apply:

(1) A bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor.
(2) A bond is not obtainable on reasonable terms and conditions without assistance under this Part.
(3) The applicant will not subcontract more than seventy-five percent (75%) of the face value of the contract.

(b) Default. — If an applicant or a person that is a related party with respect to the applicant has ever defaulted on a bond or guaranty provided by the Authority, the Authority may approve a guaranty or bond under this Part only if one of the following applies:

(1) Five years have elapsed since the time of the default.
(2) Every default by the applicant or related party in any program administered by the Authority has been cured.

(c) Economic Effect. — Before issuing a guaranty or bond, the Authority must determine that the contract for which a bond is sought to be guaranteed or issued has a substantial economic effect. To determine the economic effect of a contract, the Authority must consider all of the following:

(1) The amount of the guaranty obligation.
(2) The terms of the bond to be guaranteed.
(3) The number of new jobs that will be created by the contract to be bonded.
(4) Any other factor that the Authority considers relevant. (2007-441, s. 1.)

§ 143B-472.109. Surety bonding line.

The Authority may, on application, establish a surety bonding line in order to issue or guarantee multiple bonds to an applicant within preapproved terms, conditions, and limitations. (2007-441, s. 1.)

§ 143B-472.110. Application.

To apply for assistance from the Authority under this Part, an applicant and, where applicable, a surety must submit to the Authority an application on a form prescribed by the Authority. The application must include any information and documentation the Authority considers necessary to enable the Authority to evaluate the application in accordance with this Part. The Authority may require an applicant to provide an audited balance sheet unless the Authority determines that such a requirement is not necessary or appropriate to fulfill the purposes of this Part. (2007-441, s. 1.)

§ 143B-472.111. Premiums and fees.

(a) Amount. — The Authority shall by rule set the premiums and fees to be paid for providing assistance under this Part. The premiums and fees set by the Authority shall be payable in the amounts, at the time, and in the manner that the Authority requires. The premiums and fees may vary in amount among transactions and at different stages during the terms of transactions.

(b) Rate Standards. — The rate standards in G.S. 58-40-20 apply to premiums set by the Authority under this section. The Authority may also use the forms and rates of rating or advisory organizations licensed under G.S. 58-40-50 or G.S. 58-40-55. The Authority may vary from these rates in order to broaden participation by small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The premiums set and forms developed by the Authority under this section must be approved by the Commissioner of Insurance before they may be used.

(c) Forms. — The Authority shall develop forms to be used for financing and bonding assistance. (2007-441, s. 1.)

§ 143B-472.112. False statements; penalty.

(a) Documents. — It is unlawful to knowingly make or cause any false statement or report to be made in any application or in any document submitted to the Authority.

(b) Statements. — It is unlawful to make or cause any false statement or report to be made to the Authority for the purpose of influencing the action of the Authority on an application for assistance or affecting assistance, whether or not assistance has been previously extended.

(c) Penalty. — A violation of this section is a Class 2 misdemeanor. (2007-441, s. 1.)

§§ 143B-472.113 through 143B-472.120: Reserved for future codification purposes.

Part 21. North Carolina Energy Assistance Act for Low-Income Persons.

§ 143B-472.121. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) Maintaining the general health, welfare, and prosperity of the people of this State requires that all citizens receive essential levels of heat and electric service regardless of their economic circumstances.

(2) Serving the State's most vulnerable citizens, its low-income elderly, persons with disabilities, families with children, high residential energy users, and households with a high-energy burden, is a priority.

(3) Conserving energy benefits all citizens and the environment.

(4) Ensuring proper payment to public utilities and other entities providing energy services actually rendered is a responsibility of this State.

(5) Declining federal low-income energy assistance funding necessitates a State response to ensure the continuity and further development of energy assistance and related policies and programs in this State.
(6) Current energy assistance policies and programs have benefited North Carolina citizens and should be continued with the modifications provided in this Part.

(b) The General Assembly declares that it is the policy of this State that weatherization, replacement of heating and cooling systems, and other energy-related assistance programs be utilized to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety. The State shall utilize all appropriate and available means to fund the Weatherization Assistance Program for Low-Income Families and the Heating/Air Repair and Replacement Program under G.S. 108A-70.30, and any other energy-related assistance program for low-income persons while, to the extent possible, identifying and utilizing sources of funding to achieve the objectives of this Part. (2006-206, s. 2; 2009-446, s. 2(a).)

Editor's Note. — Session Laws 2006-206, s. 5, made this Part effective August 8, 2006.

Session Laws 2009-446, s. 2(a), effective August 7, 2009, recodified Part 34A of Article 3 of Chapter 143B as Part 21 of Article 10 of Chapter 143B, and G.S. 143B-216.72A through 143B-216.72C were recodified as G.S. 143B-472.121 through 143B-472.123, respectively.

This section was formerly codified as G.S. 143B-216.72A. It was recodified as G.S. 143B-472.121 by Session Laws 2009-446, s. 2(a), effective August 7, 2009.

§ 143B-472.122. Definitions.

The following definitions apply to this Part:

(1) Applicant. — A member of the family residing in the dwelling unit, the owner, or designated agent of the owner of a dwelling unit applying for program services.
(2) Department. — The Department of Commerce.
(3) Secretary. — The Secretary of Commerce.
(4) Subgrantee. — An entity managing a weatherization project that receives a federal grant of funds awarded pursuant to 10 C.F.R. § 440 (1 January 2006 edition) from this State or other entity named in the Notification of Grant Award and otherwise referred to as the grantee.
(5) Weatherization. — The modification of homes and home heating and cooling systems to improve heating and cooling efficiency by caulking and weather stripping, as well as insulating ceilings, attics, walls, and floors. (2006-206, s. 2; 2009-446, s. 2(a), (b).)

Editor's Note. — This section was formerly codified as G.S. 143B-216.72B. It was recodified as G.S. 143B-472.122 by Session Laws 2009-446, s. 2(a), effective August 7, 2009.

Effect of Amendments. — Session Laws 2009-446, s. 2(b), effective August 7, 2009, substituted "Commerce" for "Health and Human Services" in subdivisions (2) and (3).

§ 143B-472.123. The Office of Economic Opportunity designated agency; powers and duties.

(a) The Office of Economic Opportunity of the Department shall administer the Weatherization Assistance Program for Low-Income Families established by 42 U.S.C. § 6861, et seq., and 42 U.S.C. § 7101, et seq.; the Heating/Air Repair and Replacement Program established by the Secretary under G.S. 108A-70.30; and any other energy-related assistance program for the benefit of low-income persons in existing housing. The Office of Economic Opportunity shall exercise the following powers and duties:

(1) Establish standards and criteria to carry out the provisions and purposes of this Part.
(2) Develop policy, criteria, and standards for receiving and processing applications for weatherization assistance.
(3) Make decisions and pursue appeals from decisions to accept or deny applications for weatherization, replacement of heating and cooling systems, and other energy-related assistance programs or otherwise participate in the State plan as a subgrantee or contractor.
(4) Adopt rules, consistent with the laws of this State, that may be required by the federal government for grants-in-aid for the Weatherization Assistance Program for Low-Income Families, the Heating/Air Repair and Replacement Program, or other energy-related assistance programs for the benefit of low-income residents in existing housing. This section shall be liberally construed in order that this State and its citizens may benefit from such grants-in-aid.
(5) Establish procedures for the submission of periodic reports by any community action agency or other agency or entity authorized to manage a weatherization project, replacement of heating and cooling systems, or other energy-related assistance project.
(6) Implement criteria for periodic review of weatherization, replacement of heating and cooling systems, or other energy-related programs in existing housing for low-income households.
(7) Solicit, accept, hold, and administer on behalf of this State any grants or bequests of money, securities, or property for the benefit of low-income residents in existing housing for use by the Department or other agencies in the administration of this Part.
(8) Create a Policy Advisory Council within the Office of Economic Opportunity that shall advise the Office of Economic Opportunity with respect to the development and implementation of a Weatherization Program for Low-Income Families, the Heating/Air Repair and Replacement Program, and any other energy-related assistance program for the benefit of low-income persons in existing housing.

(b) The Secretary shall have final decision-making authority with regard to all functions described in this Part. (2006-206, s. 2; 2009-446, s. 2(a).)

Editor's Note. — This section was formerly codified as G.S. 143B-216.72C. It was recodified as G.S. 143B-472.123 by Session Laws 2009-446, s. 2(a), effective August 7, 2009.

Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

§ 143B-473. Department of Crime Control and Public Safety — creation.

There is hereby created and constituted a department to be known as the "Department of Crime Control and Public Safety," with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article. (1977, c. 70, s. 1.)

Annual Evaluation of Tarheel Challenge Program. — Session Laws 2001-424, s. 26.2, provides: "The Department of Crime Control and Public Safety shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the

House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1 of each year on the operations and effectiveness of the National Guard Tarheel Challenge Program. The report should evaluate the program's effectiveness as an intervention method for preventing juveniles from becoming undisciplined or delinquent. The report shall also evaluate the Program's role in improving individual skills and employment potential for participants and shall include:

"(1) The source of referrals for individuals participating in the Program;

"(2) The summary of types of actions or offenses committed by the participants of the Program;

"(3) An analysis outlining the cost of providing services for each participant, including a breakdown of all expenditures related to the administration and operation of the Program and the education and treatment of the Program participants;

"(4) The number of individuals who successfully complete the Program; and

"(5) The number of participants who commit offenses after completing the Program."

Session Laws 2005-276, s. 18.1, provides: "The Department of Crime Control and Public Safety shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1 of each year of the biennium on the operations and effectiveness of the National Guard Tarheel Challenge Program. The report should evaluate the program's effectiveness as an intervention method for preventing juveniles from becoming undisciplined or delinquent. The report shall also evaluate the Program's role in improving individual skills and employment potential for participants and shall include:

"(1) The source of referrals for individuals participating in the Program;

"(2) The summary of types of actions or offenses committed by the participants of the Program;

"(3) An analysis outlining the cost of providing services for each participant, including a breakdown of all expenditures related to the administration and operation of the Program and the education and treatment of the Program participants;

"(4) The number of individuals who successfully complete the Program; and

"(5) The number of participants who commit offenses after completing the Program."

Session Laws 2007-323, s. 16.1, provides: "The Department of Crime Control and Public Safety shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year of the biennium on the operations and effectiveness of the National Guard Tarheel Challenge Program. In particular, the Department shall evaluate and report on the Program's effectiveness as an intervention method for preventing juveniles from becoming undisciplined or delinquent and on the Program's role in improving individual skills and employment potential for participants. The report shall also include all of the following:

"(1) The source of referrals for individuals participating in the Program.

"(2) The summary of types of actions or offenses committed by the participants of the Program.

"(3) An analysis outlining the cost of providing services for each participant, including a breakdown of all expenditures related to the administration and operation of the Program and the education and treatment of the Program participants.

"(4) The number of individuals who successfully complete the Program.

"(5) The number of participants who commit offenses after completing the Program."

Editor's Note. — Session Laws 2000-67, s. 19.7, transfers the Guard Response Alternative Sentencing Program and all its functions, powers, duties, and obligations from the Department of Crime Control and Public Safety for the Guard Response Alternative Sentencing Program to the Office of Juvenile Justice (now the Department of Juvenile Justice and Delinquency Prevention). The Program is to continue to function as an additional probation option for certain first-time juveniles who have been adjudicated delinquent and who are subject to Level 2 disposition.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5, is a severability clause.

Session Laws 2002-190, s. 1, as amended by Session Laws 2002-159, s. 31.5(b), provides: "All statutory authority, powers, duties, and functions, including rulemaking, budgeting, purchasing, records, personnel, personnel positions, salaries, property, and unexpended balances of appropriations, allocations, reserves, support costs, and other funds allocated to the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing are transferred to and vested in the Department of Crime Control and Public Safety. This transfer has all the elements of a Type I transfer as defined in G.S. 143A-6.

"The Department of Crime Control and Public Safety shall be considered a continuation of the transferred portion of the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the purpose of succession to all rights, powers, duties, and obligations of the Enforcement Section and of those rights, powers, duties, and obligations exercised by the Department of Transportation, Division of Motor Vehicles on behalf of the Enforcement Section. Where the Department of Transportation, the Division of Motor Vehicles, or the Enforcement Section, or any combination thereof are referred to by law, contract, or other document, that reference shall apply to the Department of Crime Control and Public Safety.

"All equipment, supplies, personnel, or other properties rented or controlled by the Department of Transportation, Division of Motor Vehicles Enforcement Section for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing shall be administered by the Department of Crime Control and Public Safety."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 143B-474. Department of Crime Control and Public Safety — duties.

It shall be the duty of the Department of Crime Control and Public Safety to provide assigned law-enforcement and emergency services to protect the public against crime and against natural and man-made disasters; to plan and direct a coordinated effort by the law-enforcement agencies of State government and to insure maximum cooperation between State and local law-enforcement agencies in the fight against crime; to prepare annually a State plan for the State's criminal justice system; to serve as the State's chief coordinating agency to control crime, to insure the safety of the public and to insure an effective and efficient State criminal justice system; to have charge of investigations of criminal matters particularly set forth in this Article and of such other crimes and areas of concern in the criminal justice system as the Governor may direct; to regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State; to provide National Guard troops trained by the State to federal standards; to insure the preparation, coordination, and currency of military and civil preparedness plans and the effective conduct of emergency operations by all participating agencies to sustain life, and prevent, minimize, or remedy injury to persons and damage to property resulting from disasters caused by enemy attack or other hostile actions or from disasters due to natural or man-made causes; and to develop a plan for a coordinated and integrated electronic communications system for State government and cooperating local agencies, including coordination and integration of existing electronic communications systems. (1977, c. 70, s. 1; 2009-281, s. 1.)

Cross References. — As to reports on vacant positions in the Judicial Department and three other departments, see G.S. 120-12.1.

Annual Evaluation of the Tarheel Challenge Program. — Session Laws 2003-284, s. 17.3, provides: "The Department of Crime Control and Public Safety shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1 of each year on the operations and effectiveness of the National Guard Tarheel Challenge Program. The report should evaluate the program's effectiveness as an intervention method for preventing juveniles from becoming undisciplined or delinquent. The report shall also evaluate the Program's role in improving individual skills and employment potential for participants and shall include:

"(1) The source of referrals for individuals participating in the Program;

"(2) The summary of types of actions or offenses committed by the participants of the Program;

"(3) An analysis outlining the cost of providing services for each participant, including a breakdown of all expenditures related to the administration and operation of the Program and the education and treatment of the Program participants;

"(4) The number of individuals who successfully complete the Program; and

"(5) The number of participants who commit offenses after completing the Program."

Session Laws 2005-276, s. 18.1, provides: "The Department of Crime Control and Public Safety shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1 of each year of the biennium on the operations and effectiveness of the National Guard Tarheel Challenge Program. The report should evaluate the program's effectiveness as an intervention method for preventing juveniles from becoming undisciplined or delinquent. The report shall also evaluate the Program's role in improving individual skills and employment potential for participants and shall include:

"(1) The source of referrals for individuals participating in the Program;

"(2) The summary of types of actions or offenses committed by the participants of the Program;

"(3) An analysis outlining the cost of providing services for each participant, including a breakdown of all expenditures related to the administration and operation of the Program and the education and treatment of the Program participants;

"(4) The number of individuals who successfully complete the Program; and

"(5) The number of participants who commit offenses after completing the Program."

Session Laws 2007-323, s. 16.1, provides: "The Department of Crime Control and Public Safety shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year of the biennium on the operations and effectiveness of the National Guard Tarheel Challenge Program. In particular, the Department shall evaluate and report on the Program's effectiveness as an intervention method for preventing juveniles from becoming undisciplined or delinquent and on the Program's role in improving individual skills and employment potential for participants. The report shall also include all of the following:

"(1) The source of referrals for individuals participating in the Program.

"(2) The summary of types of actions or offenses committed by the participants of the Program.

"(3) An analysis outlining the cost of providing services for each participant, including a breakdown of all expenditures related to the administration and operation of the Program and the education and treatment of the Program participants.

"(4) The number of individuals who successfully complete the Program.

"(5) The number of participants who commit offenses after completing the Program."

Editor's Note. — Session Laws 2003-284, s. 16.1, provides: "The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" near the middle of this section.

§ 143B-475. Department of Crime Control and Public Safety — functions.

(a) All functions, powers, duties and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Department of Crime Control and Public Safety:

(1) The National Guard, Department of Military and Veterans Affairs.
(2) Civil Preparedness, Department of Military and Veterans Affairs.
(3) State Civil Air Patrol, Department of Military and Veterans Affairs.
(4) State Highway Patrol, Department of Transportation.
(5) State Board of Alcoholic Control Enforcement Division, Department of Commerce.
(6) Governor's Crime Commission, Department of Natural and Economic Resources.
(7) Crime Control Division, Department of Natural and Economic Resources.
(8) Criminal Justice Information System Board, Department of Natural and Economic Resources.
(9) Criminal Justice Information System Security and Privacy Board, Department of Natural and Economic Resources.
(10) The Commercial Vehicle, Oversize/Overweight, Motor Carrier Safety Regulation and Mobile Home and Manufactured Housing regulatory and enforcement functions of the Department of Transportation, Division of Motor Vehicles Enforcement Section.
(11) Emergency Management Division, Department of Crime Control and Public Safety. The purpose of this subdivision is to statutorily vest in the Department the powers previously conferred on the Division by executive order or otherwise.
(12) State Capitol Police, Department of Administration.

(b) The Department shall perform such other functions as may be assigned by the Governor.

(c) All such functions, powers, duties and obligations heretofore vested in any existing agency in Article 5 of Chapter 143B of the General Statutes are hereby transferred to and vested in the Department of Crime Control and Public Safety, except as otherwise provided by the Executive Organization Act of 1973, as amended.

(d) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1034, s. 103.

(e) The Crime Victims Compensation Commission established by Chapter 15B is vested in the Department of Crime Control and Public Safety. The Commission shall be administered as provided in Chapter 15B. (1977, c. 70, s. 1; 1981, c. 929; 1983, c. 832, s. 3; 1983 (Reg. Sess., 1984), c. 1034, s. 103; 1989, c. 751, s. 7(42); 1991, c. 301, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 73; 2002-159, s. 31.5(b); 2002-190, s. 14; 2009-397, s. 1; 2009-451, s. 17.3(d).)

Cross References. — As to transfer of the Governor's Crime Commission to the Department of Crime Control and Public Safety, see G.S. 143A-244. As to transfer of the Crime Control Division from the Department of Natural and Economic Resources to the Department of Crime Control and Public Safety, see G.S. 143A-245. For section providing for a deferred prosecution, community service restitution, and volunteer program, see now G.S. 143B-262.4. As to the transfer of certain powers and duties from the Department of Transportation Division of Motor Vehicles Enforcement Section to the Department of Crime Control and Public Safety, see the editors note at G.S. 143B-473.

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1977, c. 771, s. 4, which substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1981, c. 491, s. 2, provided for transfer of the Butner Public Safety Department to the Department of Crime Control and Public Safety. See now G.S. 122C-408 and note thereto.

Session Laws 1983, c. 832, which added subsection (e) of this section, as amended by Session Laws 1991, c. 301, s. 1, provided in s. 6: "This act shall become effective when funds are appropriated by the General Assembly to the Department of Crime Control and Public Safety to implement the provisions of this act. No claims may be filed under this act for any criminally injurious conduct occurring before the effective date of this act." The Revisor of Statutes is informed that funds were appropriated by Session Laws 1987, c. 738, s. 118.

Session Laws 1999-237, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 1999'."

Session Laws 1999-237, s. 11.18, provides that the Bingo Program in the Department of Health and Human Services, Division of Facility Services, and all functions, powers, duties, and obligations vested in the Department of Health and Human Services for the Bingo Program, are transferred to and vested in the Department of Crime Control and Public Safety by a Type I transfer, as defined in G.S. 143A-6.

Session Laws 1999-237, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium."

Session Laws 1999-237, s. 30.4, contains a severability clause.

Sections 143B-246 to 143B-251, which comprise Part 1 of Article 5 of Chapter 143B, referred to in subsection (c) of this section, were repealed by Session Laws 1977, c. 70, s. 33. Sections 143B-252 and 143B-253, which comprise Part 2 of that Article, were transferred to G.S. 143B-399 and 143B-400 by Session Laws 1977, c. 70, ss. 24 and 25. The same 1977 act enacted this Article.

Session Laws 2002-190, s. 17, as amended by Session Laws 2002-159, s. 31.5(b), provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

Session Laws 2008-142, s. 2 provides: "The Department of Crime Control and Public Safety shall study whether the Secretary should be authorized to reimburse the family for funeral expenses of a State law enforcement officer who is killed in the line of duty. The study shall include a determination on the maximum amount to be paid, and whether additional funds beyond those available to the Department should be appropriated for the expenses. The Department shall report the results of its study, with any recommendations for legislation, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by January 1, 2009."

Session Laws 2009-451, s. 17.3(a), provides: "The State Capitol Police is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, from the Department of Administration to the Department of Crime Control and Public Safety."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-397, s. 1, effective July 31, 2009, added subdivision (a)(11).

Session Laws 2009-451, s. 17.3(d), effective July 1, 2009, in subsection (a), made minor punctuation changes throughout, and added subdivision (a)(12).

§ 143B-475.1: Recodified as § 143B-262.4 by Session Laws 2001-487, s. 91(a), effective December 16, 2001.

§ 143B-475.2. Fees for services.

A fee in the amount set by the Department is imposed on the entities listed in this section. The fees are departmental receipts and are applied to the Department's costs in providing services to these entities. The fees apply to the following:

(1) A local law enforcement agency that employs more than 25 officers and that receives equipment from the Department, whether by transfer, loan, or procurement under an agreement with the United States Department of Defense.

(2) A person for whom the Department stores evidence. (2009-451, s. 17.5.)

Editor's Note. — Session Laws 2009-451, s. 17.5, made this section effective September 1, 2009.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143B-476. Department of Crime Control and Public Safety — head; powers and duties as to emergencies and disasters; other powers and duties.

(a) The head of the Department of Crime Control and Public Safety is the Secretary of Crime Control and Public Safety, who shall be known as the Secretary. The Secretary shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. These powers and duties include:

(1) Accepting gifts, bequests, devises, grants, matching funds and other considerations from private or governmental sources for use in promoting the work of the Governor's Crime Commission.

(2) Making grants for use in pursuing the objectives of the Governor's Crime Commission.

(3) Adopting rules as may be required by the federal government for federal grants-in-aid for criminal justice purposes and to implement and carry out the regulatory and enforcement duties assigned to the Department of Crime Control and Public Safety as provided by the various commercial vehicle, oversize/overweight, motor carrier safety, motor fuel, and mobile and manufactured home statutes.

(4) Ascertaining the State's duties concerning grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice, and developing and administering a plan to ensure that the State fulfills its duties.

(5) Administering the Assistance Program for Victims of Rape and Sex Offenses.

(6) Appointing, with the Governor's approval, a special police officer to serve as Director of the State Capitol Police Division.

(b) The Secretary, through appropriate subunits of the department, shall, at the request of the Governor, provide assistance to State and local law-enforcement agencies, district attorneys, judges, and the Department of Correction, when called upon by them and so directed.

(c) In the event that the Governor, in the exercise of his constitutional and statutory responsibilities, shall deem it necessary to utilize the services of more than one subunit of State government to provide protection to the people from natural or man-made disasters or emergencies, including but not limited to wars, insurrections, riots, civil disturbances, or accidents, the Secretary, under the direction of the Governor, shall serve as the chief coordinating officer for the State between the respective subunits so utilized.

(d) Whenever the Secretary exercises the authority provided in subsection (c) of this section, he shall be authorized to utilize and allocate all available State resources as are reasonably necessary to cope with the emergency or disaster, including directing of personnel and functions of State agencies or units thereof for the purpose of performing or facilitating the initial response to the disaster or emergency. Following the initial response, the Secretary, in consultation with the heads of the State agencies which have or appear to have the responsibility for dealing with the emergency or disaster, shall designate one or more lead agencies to be responsible for subsequent phases of the response to the emergency or disaster. Pending an opportunity to consult with the heads of such agencies, the Secretary may make interim lead agencies designations.

(e) Every department of State government is required to report to the Secretary, by the fastest means practicable, all natural or man-made disasters or emergencies, including but not limited to wars, insurrections, riots, civil disturbances, or accidents which appear likely to require the utilization of the services of more than one subunit of State government.

(f) The Secretary is authorized to adopt rules and procedures for the implementation of this section.

(g) Nothing contained in this section shall be construed to supersede or modify those powers granted to the Governor or the Council of State to declare and react to a state of disaster as provided in Chapter 166A of the General Statutes, the Constitution or elsewhere.

(h) Prior to any notification of proposed grant awards to State agencies for use in pursuing the objectives of the Governor's Crime Commission pursuant to subsection (a) of this section, the Secretary shall report to the Senate and House Appropriations Committees for review of the proposed grant awards.

(i) Expired pursuant to Session Laws 2008-142, s. 1, effective June 1, 2009. (1977, c. 70, s. 1; 1979, 2nd Sess., c. 1310, s. 1; 1981 (Reg. Sess., 1982), c. 1191, s. 17; 1985, c. 757, s. 164(c); 1985 (Reg. Sess., 1986), c. 1018, s. 13; 1998-212, s. 19.5(a); 2002-159, s. 31.5(b); 2002-190, s. 15; 2008-142, s. 1; 2009-451, s. 17.3(e).)

Cross References. — As to the transfer of certain powers and duties from the Department of Transportation Division of Motor Vehicles Enforcement Section to the Department of Crime Control and Public Safety, see the editors note at G.S. 143B-473.

Federal Grant Reporting. — Session Laws 2009-451, s. 19.2, provides: "The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant."

For prior similar provisions, see Session Laws 2003-284, s. 16.1, Session Laws 2005-276, s. 17.1, and Session Laws 2007-323, s. 17.5.

Editor's Note. — Session Laws 2002-190, s. 17, as amended by Session Laws 2002-159, s. 31.5(b), provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

Session Laws 2007-485, s. 6, provides: "The Division of Emergency Management of the Department of Crime Control and Public Safety shall study ways to facilitate the construction and repair of water dependent structures such as fish processing and packing facilities and boat repair and building facilities located in regulated flood zones. The Division shall report the results of its study, including any recommendations, to the Joint Legislative Commission on Seafood and Aquaculture by March 1, 2008."

Session Laws 2008-142, s. 2 provides: "The Department of Crime Control and Public Safety shall study whether the Secretary should be authorized to reimburse the family for funeral expenses of a State law enforcement officer who is killed in the line of duty. The study shall include a determination on the maximum amount to be paid, and whether additional funds beyond those available to the Department should be appropriated for the expenses. The Department shall report the results of its study, with any recommendations for legislation, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by January 1, 2009."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-142, s. 1, effective June 1, 2008, and expiring June 1, 2009, added subsection (i).

Session Laws 2009-451, s. 17.3(e), effective July 1, 2009, in subsection (a), made minor punctuation changes throughout, deleted "and" at the end of subdivision (a)(4), and added subdivision (a)(6).

Part 2. Crime Control Division.

§ 143B-477. Crime Control Division of the Department of Crime Control and Public Safety.

(a) There is hereby established, within the Department of Crime Control and Public Safety, the Crime Control Division, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) The Crime Control Division shall provide clerical and professional services required by the Governor's Crime Commission and shall administer the State Law Enforcement Assistance Program and such additional related programs as may be established by or assigned to the Commission. It shall serve as the single State planning agency for purposes of the Crime Control Act of 1976 (Public Laws 94-503). Administrative responsibilities shall include, but are not limited to, the following:

(1) Compiling data, establishing needs and setting priorities for funding and policy recommendations for the Commission;

(2) Preparing and revising statewide plans for adoption by the Commission which are designed to improve the administration of criminal justice and to reduce crime in North Carolina;
(3) Advising State and local interests of opportunities for securing federal assistance for crime reduction and for improving criminal justice administration and planning within the State of North Carolina;
(4) Stimulating and seeking financial support from federal, State, and local government and private sources for programs and projects which implement adopted criminal justice administration improvement and crime reduction plans;
(5) Assisting State agencies and units of general local government and combinations thereof in the preparation and processing of applications for financial aid to support improved criminal justice administration, planning and crime reduction;
(6) Encouraging and assisting coordination at the federal, State, and local government levels in the preparation and implementation of criminal justice administration improvements and crime reduction plans;
(7) Applying for, receiving, disbursing, and auditing the use of funds received for the program from any public and private agencies and instrumentalities for criminal justice administration, planning, and crime reduction purposes;
(8) Entering into, monitoring, and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;
(9) Providing technical assistance to State and local law-enforcement agencies in developing programs for improvement of the law-enforcement and criminal justice system; and
(10) Taking such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities.

(c) The Crime Control Division shall also provide professional and clerical staff services to the adjunct committees of the Governor's Crime Commission established in G.S. 143B-480. (1977, c. 11, s. 4.)

Editor's Note. — This section is former G.S. 143B-340 as enacted by Session Laws 1977, c. 11, s. 4. It has been recodified in this Article because of the establishment of the Department of Crime Control and Public Safety.

Part 3. Governor's Crime Commission.

§ 143B-478. Governor's Crime Commission — creation; composition; terms; meetings, etc.

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 38 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:
    a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a "high crime area"), three police executives (one of whom shall be from a "high crime area"), eight citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one advocate for victims of all crimes, one representative from a domestic violence or sexual assault program, one representative of a "private juvenile delinquency program," and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Assistant Secretary of Intervention/Prevention of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Secretary of Youth Development of the Department of Juvenile Justice and Delinquency Prevention, the Director of the Division of Prisons and the Director of the Division of Community Corrections.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Community Corrections, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Secretary of Intervention/Prevention of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Secretary of Youth Development of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: the district attorney, the defense attorney, the three sheriffs, the three police executives, the eight citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by

the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed under subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business. (1965, c. 663; 1977, c. 11, s. 1; 1981, c. 467, ss. 1-5; 1981 (Reg. Sess., 1982), c. 1189, s. 4; 1991, c. 739, s. 32; 1997-443, s. 11A.118(a); 1998-170, s. 3; 1998-202, s. 4(aa); 1999-423, s. 11; 2000-137, s. 4(ee); 2001-95, s. 6; 2001-487, s. 47(g); 2007-454, s. 1.)

Cross References. — As to transfer of the Crime Control Division from the Department of Natural and Economic Resources (now Department of Natural Resources and Community Development) to the Department of Crime Control and Public Safety, see G.S. 143A-245.

Editor's Note. — This section is G.S. 143B-337 as amended by Session Laws 1977, c. 11, s. 1. It has been recodified in this Article because of the transfer of the Governor's Crime Commission (formerly the Governor's Law and Order Commission) to the Department of Crime Control and Public Safety.

Session Laws 2007-454, s. 2, provides: "Notwithstanding the provisions of G.S. 143B-478, as enacted in Section 1 of this act, the members appointed by the Governor, one of whom is an advocate for victims of all crimes and one of whom is a representative from a domestic violence or sexual assault program, shall each serve a three-year term to commence when this act becomes effective. Members described in this section shall serve for the terms for which they were appointed and until their successors are appointed and qualified."

Session Laws 2009-52, s. 1 provides for the establishment of a multidisciplinary Domestic Violence Fatality Prevention and Protection Review Team to identify and review domestic violence-related deaths and facilitate communication which team is modeled upon the North Carolina Child Fatality Prevention Team. The team shall consist of a lead agency, Community Support Services of Charlotte, North Carolina, and representatives of public and nonpublic agencies in the community serving domestic violence victims. The team shall meet at least four times annually and shall: study the incidences and causes of death in domestic violence incidents; develop a system for multidisciplinary review; examine issues on confidentiality; make recommendations for improvements and resources; and perform other functions necessary to carry out the team's mandate. The team is granted access to records and documentation concerning domestic violence cases; however, access shall be limited when investigations are pending and confidentiality shall be maintained. The team shall terminate upon the earlier of its filing its final report, or June 15, 2014. This act shall not be construed to obligate the General Assembly to appropriate funds to implement its provisions.

Legal Periodicals. — For article, "Juvenile Justice in Transition — A New Juvenile Code for North Carolina," see 16 Wake Forest L. Rev. 1 (1980).

§ 143B-479. Governor's Crime Commission — powers and duties.

(a) The Governor's Crime Commission shall have the following powers and duties:

(1) To serve, along with its adjunct committees, as the chief advisory board to the Governor and to the Secretary of the Department of Crime Control and Public Safety on matters pertaining to the criminal justice system.

(2) To recommend a comprehensive statewide plan for the improvement of criminal justice throughout the State which is consistent with and serves to foster the following established goals of the criminal justice system:

a. To reduce crime,
b. To protect individual rights,
c. To achieve justice,
d. To increase efficiency in the criminal justice system,
e. To promote public safety,
f. To provide for the administration of a fair and humane system which offers reasonable opportunities for adjudicated offenders to develop progressively responsible behavior, and
g. To increase professional skills of criminal justice officers.

(3) To advise State and local law-enforcement agencies in improving law enforcement and the administration of criminal justice;

(4) To make studies and recommendations for the improvement of law enforcement and the administration of criminal justice;

(5) To encourage public support and respect for the criminal justice system in North Carolina;

(6) To seek ways to continue to make North Carolina a safe and secure State for its citizens;

(7) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 15.

(8) To recommend objectives and priorities for the improvement of law enforcement and criminal justice throughout the State;

(9) To recommend recipients of grants for use in pursuing its objectives, under such conditions as are deemed to be necessary;

(9a) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 15.

(10) To serve as a coordinating committee and forum for discussion of recommendations from its adjunct committees formed pursuant to G.S. 143B-480; and

(11) To serve as the primary channel through which local law-enforcement departments and citizens can lend their advice, and state their needs, to the Department of Crime Control and Public Safety.

(a1) The Governor's Crime Commission shall review the level of gang activity throughout the State and assess the progress and accomplishments of the State, and of local governments, in preventing the proliferation of gangs and addressing the needs of juveniles who have been identified as being associated with gang activity.

The Governor's Crime Commission shall develop recommendations concerning the establishment of priorities and needed improvements with respect to gang prevention to the General Assembly on or before March 1 of each year.

(b) All directives of the Governor's Crime Commission shall be administered by the Director, Crime Control Division of the Department of Crime Control and Public Safety. (1975, c. 663; 1977, c. 11, s. 2; 1979, c. 107, s. 11; 1981, c. 931, s. 3; 1981 (Reg. Sess., 1982), c. 1191, s. 15; 2008-56, s.7; 2008-187, s. 44.5(b).)

Editor's Note. — This section is G.S. 143B-338 as rewritten by Session Laws 1977, c. 11, s. 2. It has been recodified in this Article because of the transfer of the Governor's Crime Commission (formerly the Governor's Law and Order Commission) to the Department of Crime Control and Public Safety.

Session Laws 1999-237, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 1999'."

Session Laws 1999-237. ss. 20(a) and (b), provide that the Governor's Crime Commission of the Department of Crime Control and Public Safety shall report on the State application for grants under the State and Local Law Enforcement Assistance Act of 1986 (Part M of the Omnibus Crime Control and Safe Streets Act of 1968 as enacted by Subtitle K of P.L. 99-570, the Anti-Drug Abuse Act of 1986) to the Senate and House Appropriations Subcommittees on Justice and Public Safety when the General Assembly is in session. When the General Assembly is not in session, the Governor's Crime Commission shall report on the State application to the Joint Legislative Commission on Governmental Operations, as applications for grants shall be reviewed by the Joint Legislative Commission on Governmental Operations when the General Assembly is not in session unless a State statute provides a different forum for review.

Session Laws 1999-237, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium."

Session Laws 1999-237, s. 30.4, contains a severability clause.

Session Laws 2003-284, ss. 17.4(a) and (b), provide: "(a) Section 1303(4) of the Omnibus Crime Control and Safe Streets Act of 1968 provides that the State application for Drug Law Enforcement Grants is subject to review by the State legislature or its designated body. Therefore, the Governor's Crime Commission of the Department of Crime Control and Public Safety shall report on the State application for grants under the State and Local Law Enforcement Assistance Act of 1986, Part M of the Omnibus Crime Control and Safe Streets Act of 1968 as enacted by Subtitle K of P.L.99-570, the Anti-Drug Abuse Act of 1986, to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety when the General Assembly is in session. When the General Assembly is not in session, the Governor's Crime Commission shall report on the State application to the Joint Legislative Commission on Governmental Operations.

"(b) Unless a State statute provides a different forum for review, when a federal law or regulation provides that an individual State application for a grant shall be reviewed by the State legislature or its designated body and at the time of the review the General Assembly is not in session, that application shall be reviewed by the Joint Legislative Commission on Governmental Operations."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Actof 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5, is a severability clause.

Session Laws 2007-323, s. 16.5(a)-(c), provides: "(a) Of the funds appropriated in this act to the Department of Crime Control and Public Safety, Governor's Crime Commission, the sum of four million seven hundred sixty thousand one hundred ninety-five dollars ($4,760,195) for the 2007-2008 fiscal year shall be used to provide grants for street gang violence prevention, intervention, and suppression programs.

"(b) The Governor's Crime Commission shall develop the criteria for eligibility for these funds. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Funds shall be available to public and private entities or agencies for juvenile or adult programs that meet the criteria established by the Governor's Crime Commission.

"(c) The Governor's Crime Commission shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 15, 2008, on this program. The report shall include all of the following:

"(1) The grant award process.

"(2) A description of each grant awarded.

"(3) The performance criteria for evaluating grant programs.

"(4) A list of State grants awarded in the 2007 grant cycle."

Session Laws 2007-323, s. 16.8(a) and (b), provides: "(a) The Governor's Crime Commission shall study gang activity in North Carolina. In its study, the Governor's Crime Commission shall do all of the following:

"(1) Assess gang activity in communities known to have gangs, including any connections between gang activity and organized crime.

"(2) Consult with the Department of Correction to assess gang activity in the State's prisons.

"(3) Consult with the Department of Public Instruction, Department of Justice, and the Department of Correction on any gang prevention initiatives they have in place or administered in the past.

"(4) Summarize significant gang prevention, intervention, and suppression programs that have been administered by local law enforcement, State agencies, local governments, and community-based organizations and evaluate those programs for effectiveness.

"(5) Review accepted best practices in gang prevention and evaluate whether or not increasing penalties will mitigate gang activity.

"(6) Project the growth of gang activity over the next five years and identify the locations where that growth is expected to occur.

"(7) Provide recommendations on ways of using State and local resources to improve the effectiveness of future gang prevention initiatives.

"(b) The Governor's Crime Commission shall report on the study's findings and recommendations by March 15, 2008, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-187, s. 44.5(b) provides: "The Governor's Crime Commission shall develop the criteria for eligibility for funds appropriated for gang prevention and intervention. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Funds shall be available to public and private entities or agencies for juvenile and adult programs that meet the criteria established by the Governor's Crime Commission. The Commission shall identify the cities and towns that do not have full-time parks and recreation staff, and provide targeted outreach and information to public and private agencies, and non-profit organizations, in those cities, towns, and unincorporated areas about their eligibility for these funds.

The Governor's Crime Commission shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 15, 2009, on this program. The report shall include all of the following:

"(1) The grant award process.

"(2) A description of each grant awarded.

"(3) The performance criteria for evaluating grant programs.

"(4) A list of State grants awarded in the 2008 grant cycle."

The last two paragraphs of Session Laws 2008-56, s. 7, as amended by Session Laws 2008-187, s. 44.5(b), were codified as subsection (a1) of this section at the direction of the Revisor of Statutes.

The remainder of Session Laws 2008-56, s. 7, as amended by Session Laws 2008-187, s. 44.5(b) provides, in part: "The Governor's Crime Commission shall develop the criteria for eligibility for funds appropriated for gang prevention and intervention. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Funds shall be available to public and private entities or agencies for juvenile and adult programs that meet the criteria established by the Governor's Crime Commission. The Commission shall identify the cities and towns that do not have full-time parks and recreation staff, and provide targeted outreach and information to public and private agencies, and non-profit organizations, in those cities, towns, and unincorporated areas about their eligibility for these funds.

"The Governor's Crime Commission shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 15, 2009, on this program. The report shall include all of the following:

"(1) The grant award process.

"(2) A description of each grant awarded.

"(3) The performance criteria for evaluating grant programs.

"(4) A list of State grants awarded in the 2008 grant cycle."

For provisions relating to the Gang Prevention and Intervention Pilot Program, see the Editor's note under G.S. 143B-516.

§ 143B-480. Adjunct committees of the Governor's Crime Commission — creation; purpose; powers and duties.

(a) There are hereby created by way of extension and not limitation, the following adjunct committees of the Governor's Crime Commission: the Judicial Planning Committee, the Juvenile Justice Planning Committee, the Law Enforcement Planning Committee, the Corrections Planning Committee, and the Juvenile Code Revision Committee.

(b) The composition of the adjunct committees shall be as designated by the Governor by executive order, except for the Judicial Planning Committee, the composition of which shall be designated by the Supreme Court. The Governor's appointees shall serve two-year terms beginning March 1, of each odd-numbered year, and members of the Judicial Planning Committee shall serve at the pleasure of the Supreme Court.

(c) The adjunct committees created herein shall report directly to the Governor's Crime Commission and shall have the following powers and duties:

(1) Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 8, effective June 27, 1984.

(2) The Law Enforcement Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to law enforcement, including detention; shall participate in the development of the law-enforcement component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of law-enforcement services; and shall offer technical assistance to State and local agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of law-enforcement services.

The Law Enforcement Planning Committee shall maintain contact with the National Commission on Accreditation for Law Enforcement Agencies, assist the National Commission in the furtherance of its efforts, adapt the work of the National Commission by an analysis of law-enforcement agencies in North Carolina, develop standards for the accreditation of law-enforcement agencies in North Carolina, make these standards available to those law-enforcement agencies which desire to participate voluntarily in the accreditation program, and assist participants to achieve voluntary compliance with the standards.

(3) The Judicial Planning Committee (which shall be appointed by the Supreme Court) shall establish court improvement priorities, define court improvement programs and projects, and develop an annual judicial plan in accordance with the Crime Control Act of 1976 (Public Law 94-503); shall advise the Governor's Crime Commission on all matters which are referred to it relevant to the courts; shall consider and recommend priorities for the improvement of judicial services; and shall offer technical assistance to State agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of judicial services.

(4) The Corrections Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to

corrections; shall participate in the development of the adult corrections component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of correction services; and shall offer technical assistance to State agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of corrections.

(5) The Juvenile Justice Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to juvenile justice; shall participate in the development of the juvenile justice component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of juvenile justice services; and shall offer technical assistance to State and local agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of juvenile justice.

(6) The Juvenile Code Revision Committee shall study problems relating to young people who come within the juvenile jurisdiction of the district court as defined by Article 23 of Chapter 7A of the General Statutes and develop a legislative plan which will best serve the needs of young people and protect the interests of the State; shall study the existing laws, services, agencies and commissions and recommend whether they should be continued, amended, abolished or merged; and shall take steps to insure that all agencies, organizations, and private citizens in the State of North Carolina have an opportunity to lend advice and suggestions to the development of a revised juvenile code. If practical, the Committee shall submit a preliminary report to the General Assembly prior to its adjournment in 1977. It shall make a full and complete report to the General Assembly by March 1, 1979. This adjunct committee shall terminate on February 28, 1979.

(d) The Governor shall have the power to remove any member of any adjunct committee from the Committee for misfeasance, malfeasance or nonfeasance. Each Committee shall meet at the call of the chairman or upon written request of one third of its membership. A majority of a committee shall constitute a quorum for the transaction of business.

(e) The actions and recommendations of each adjunct committee shall be subject to the final approval of the Governor's Crime Commission. (1975, c. 663; 1977, c. 11, s. 3; 1981, c. 605, s. 1; 1983 (Reg. Sess., 1984), c. 995, s. 8.)

Editor's Note. — This section is G.S. 143B-339 as rewritten by Session Laws 1977, c. 11, s. 3. It has been recodified in this Article because of the transfer of the Governor's Crime Commission (formerly the Governor's Law and Order Commission) to the Department of Crime Control and Public Safety.

Article 23 of Chapter 7A, referred to in subdivision (6) of subsection (c), has been repealed. For present provisions concerning the juvenile jurisdiction of the district court, see now G.S. 7B-200 and 7B-201, and G.S. 7B-1600 et seq.

Session Laws 2008-107, s. 18.1, provides: "(a) The Governor's Crime Commission and its adjunct committees shall study the legal, systematic, and organizational impact of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons 16 and 17 years of age who commit crimes or infractions under State law or under an ordinance of local government. In particular, the Commission shall perform the following functions regarding the proposed expansion of the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include 16- and 17-year-olds who commit crimes or infractions under State or local law:

"(1) Identify the costs to the State court system and State and local law enforcement.

"(2) Review the relevant State laws that should be conformed or amended, including, but not limited to, the motor vehicle and criminal laws, the laws regarding expunction of criminal records, and other juvenile laws.

"(3) Review the experience of any other states which have within recent years expanded the juvenile justice jurisdiction to 16- and 17-year-olds.

"(4) Identify the practical issues for the Department of Juvenile Justice and Delinquency Prevention to implement best practices for programs and facilities that would meet the unique needs of the older youth under the proposal without adversely affecting the existing departmental programming.

"(5) Review the relevant State laws on sharing of juvenile information with other State departments and agencies.

"(6) Create a specific plan of the actions that are necessary to implement the expansion of the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention.

"(7) Determine the total cost of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention.

"(8) Conduct a cost benefit analysis of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention with specific information on possible future fiscal savings anywhere within State government as a result of expenditures necessary to implement the expansion.

"(9) Determine whether federal or other funds are available to aid in the transition and expansion, or both, of the age of juvenile jurisdiction to 16- and 17-year-olds.

"(b) The Commission may contract with an independent group or groups for the oversight and management of this study project, a service needs study, and a courts study, and to periodically report those findings to the Commission.

"(c) The Department of Juvenile Justice and Delinquency Prevention and all other departments, agencies, institutions, or officers of the State or any political subdivision of the State, shall cooperate with the Commission in this study, shall provide the Commission with any requested facilities, data, or other assistance, and help the Commission identify any collateral effect which might result from implementation of the proposal on the program and operations of the relevant State department, agency, or the political subdivision.

"(d) The Commission shall submit a report of its findings and legislative, administrative, and funding recommendations by April 1, 2009, to the General Assembly and the Governor.

"In addition to its final report, the Commission shall report in writing on the progress of this study on a quarterly basis beginning on October 1, 2008, and by the first day of every quarter thereafter until the Commission submits its final report to the General Assembly, to the chairs and cochairs, as applicable, of the standing committees or subcommittees of the General Assembly listed in subsections (e) and (f) of this section. A copy of each progress report made to the standing committee and subcommittee chairs shall also be filed in the Legislative Library.

"(e) The Commission shall report to all of the following standing committees or subcommittees in the House of Representatives pursuant to this section:

"(1) Appropriations: Justice and Public Safety.

"(2) Children, Youth, and Families.

"(3) Education: Preschool, Elementary, and Secondary Education.

"(4) Juvenile Justice.

"(5) All of the Judiciary Committees.

"(f) The Commission shall report to all of the following standing committees or subcommittees in the Senate pursuant to this section:

"(1) Appropriations: Justice and Public Safety.

"(2) Education and Higher Education.

"(3) All of the Judiciary Committees.

"(g) Of the funds appropriated by this act to the Department of Crime Control and Public Safety, the Governor's Crime Commission for the 2008-2009 fiscal year, the Commission may use up to two hundred thousand dollars ($200,000) to conduct the study authorized by this section. The Commission may also apply for, receive, or accept grants and contributions from any source of money or any other thing of value to be held and used for the purposes of the study authorized by this section."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2008."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5, is a severability clause.

Legal Periodicals. — For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

CASE NOTES

Cited in Taylor v. Robinson, 131 N.C. App. 337, 508 S.E.2d 289 (1998).

Part 3A. Assistance Program for Victims of Rape and Sex Offenses.

§ 143B-480.1. Assistance Program for Victims of Rape and Sex Offenses.

(a) Establishment of Program. — There is established an Assistance Program for Victims of Rape and Sex Offenses, hereinafter referred to as the "Program." The Secretary shall administer and implement the Program and shall have authority over all assistance awarded through the Program. The Secretary shall promulgate rules and guidelines for the Program.

(b) Victims to Be Provided Free Forensic Medical Examinations. — It is the policy of this State to arrange for victims to obtain forensic medical examinations free of charge. Whenever a forensic medical examination is conducted as a result of a sexual assault or an attempted sexual assault that occurred in this State, the Program shall pay for the cost of the examination. A medical facility or medical professional that performs a forensic medical examination on the victim of a sexual assault or attempted sexual assault shall not seek payment for the examination except from the Program.

(c) No Billing of Victim. — A medical facility or medical professional that performs a forensic medical examination shall accept payment made under this section as payment in full of the amount owed for the cost of the examination and other eligible expenses and shall not bill victims, their personal insurance, Medicaid, Medicare, or any other collateral source for the examination. Furthermore, a medical facility or medical professional shall not seek reimbursement from the Program after one year from the date of the examination.

(d) Eligible Expenses. — Medical facilities and medical professionals who perform forensic medical examinations shall do so using a Sexual Assault Evidence Collection Kit. Payments by the Program for the forensic medical examination shall be limited to the following:

Service	**Maximum Amount Paid by Program**
Physician or SANE Nurse	$350.00
Hospital/Facility Fee	$250.00
Other Expenses Deemed Eligible by the Program	$200.00
Total:	**$800.00**

(e) Payment Directly to Provider. — The Program shall make payment directly to the medical facility or medical professional. Bills submitted to the Program for payment shall specify under which categories of expense set forth in subsection (d) of this section the billed services fall.

(f) Additional Victim Notification Requirements. — A medical facility or medical professional who performs a forensic medical examination shall encourage victims to submit an application for reimbursement of medical expenses beyond the forensic examination to the Crime Victims Compensation Commission for consideration of those expenses. Medical facilities and medical professionals shall not seek reimbursement from the Program after one year from the date of the exam.

(g) Judicial Review. — Upon an adverse determination by the Secretary on a claim for assistance under this Part, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

(h) The Secretary shall adopt rules to encourage, whenever practical, the use of licensed registered nurses trained under G.S. 90-171.38(b) to conduct medical examinations and procedures.

(i) Definitions. — The following definitions apply in this section:

(1) Forensic medical examination. — An examination provided to a sexual assault victim by medical personnel trained to gather evidence of a sexual assault in a manner suitable for use in a court of law. The examination should include at a minimum an examination of physical trauma, a patient interview, a determination of penetration or force, and a collection and evaluation of evidence. This definition shall be interpreted consistently with 28 C.F.R. § 90.2(b) and other relevant federal law.

(2) SANE nurse. — A Sexual Assault Nurse Examiner that is a licensed registered nurse trained pursuant to G.S. 90-171.38(b) who obtains preliminary histories, conducts in-depth interviews, and conducts medical examinations of rape victims or victims of related sexual offenses.

(3) Sexual assault. — Any of the following crimes:
  a. First-degree rape as defined in G.S. 14-27.2.
  b. Second degree rape as defined in G.S. 14-27.3.
  c. First-degree sexual offense as defined in G.S. 14-27.4.
  d. Second degree sexual offense as defined in G.S. 14-27.5.
  e. Statutory rape as defined in G.S. 14-27.7A.

(4) Sexual Assault Evidence Collection Kit. — The kit assembled and paid for by the Program and used to conduct forensic medical examinations in this State. (1981, c. 931, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 16; 2009-354, s. 1(b).)

Cross References. — As to Sexual Assault and Rape Crisis Center Fund, see G.S. 143B-394.21.

Victims Assistance Network Report. — Session Laws 2005-276, s. 18.2, provides: "The Department of Crime Control and Public Safety shall report on the expenditure of funds allocated pursuant to this section for the Victims Assistance Network. The Department shall also report on the Network's efforts to gather data on crime victims and their needs, act as a clearinghouse for crime victims' services, provide an automated crime victims' bulletin board for subscribers, coordinate and support activities of other crime victims' advocacy groups, identify the training needs of crime victims' services providers and criminal justice personnel, and coordinate training for these personnel. The Department shall submit its report to the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the Senate and House of Representatives by December 1 of each year of the biennium."

Editor's Note. — Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-354, s. 1(b), effective July 27, 2009, designated the previously existing provisions as subsection (a), and added the subsection catchline, and added subsections (b) through (i).

§ 143B-480.2: Repealed by Session Laws 2009-354, s. 1(a), effective July 27, 2009.

Editor's Note. — The repealed section, Victim Assistance, was derived from Session Laws 1981, c. 931, s. 2; and amended by 1981 (Reg. Sess., 1982), c. 1191, s. 16; 1983, c. 715, ss. 1, 2; 1997-375, s. 4; 1998-212, s. 19.4(n); 2002-126, s. 18.6(a); 2002-159, ss. 47, 78; 2008-107, s. 18.2(a); 2008-118, s. 2.5.

§ 143B-480.3. Restitution; actions.

(a) Repealed by Session Laws 2009-354, s. 2, effective July 27, 2009.

(b) The Program shall be an eligible recipient for restitution or reparation under G.S. 15A-1021, 15A-1343, 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

(c) When any victim who:

(1) Has received assistance under this Part;

(2) Brings an action for damages arising out of the rape, attempted rape, sexual offense, or attempted sexual offense for which she received that assistance; and

(3) Recovers damages including the expenses for which she was awarded assistance,

the court shall make as part of its judgment an order for reimbursement to the Program of the amount of any assistance awarded less reasonable expenses allocated by the court to that recovery.

(d) Funds appropriated to the Department of Crime Control and Public Safety for this program may be used to purchase and distribute rape evidence collection kits approved by the State Bureau of Investigation. (1981, c. 931, s. 2; 1983, c. 715, s. 3; 2008-107, s. 18.2(b); 2009-354, s. 2.)

Editor's Note. — Session Laws 1981, c. 931, which enacted this section, in s. 1, provided that the act shall be known and may be cited as the "Assistance Act for Victims of Rape and Sex Offenses."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 18.2(b), effective July 1, 2008, added "except that the Program shall pay any co-payment that the victim is required to pay in connection with the forensic medical examination up to the maximum amount that the Program will pay for a forensic medical exam under G.S. 143B-480.2(c)" in subsection (a).

Session Laws 2009-354, s. 2, effective July 27, 2009, in the section catchline, deleted "Reduction of benefits" from the beginning, and deleted subsection (a), which read: "Assistance shall be reduced or denied to the extent the medical expenses are recouped through a public or private insurance plan or other victim benefit source, except that the Program shall pay any co-payment that the victim is required to pay in connection with the forensic medical examination up to the maximum amount that the Program will pay for a forensic medical exam under G.S. 143B-480.2(c)."

Part 4. State Fire Commission.

§§ 143B-481 through 143B-485: Recodified as G.S. 58-27.30 through 58-27.34 by Session Laws 1985, c. 757, s. 167(b).

§§ 143B-486 through 143B-489: Reserved for future codification purposes.

Part 5. Civil Air Patrol.

§ 143B-490. Civil Air Patrol Division — powers and duties.

(a) There is hereby established, within the Department of Crime Control and Public Safety, the Civil Air Patrol Division, which shall be organized and staffed in accordance with this Part and within the limits of authorized appropriations.

(b) The Civil Air Patrol Division shall:

(1) Receive and supervise the expenditure of State funds provided by the General Assembly or otherwise secured by the State of North Carolina for the use and benefit of the North Carolina Wing-Civil Air Patrol;

(2) Supervise the maintenance and use of State provided facilities and equipment by the North Carolina Wing-Civil Air Patrol;

(3) Receive, from State and local governments, their agencies, and private citizens, requests for State approval for assistance by the North Carolina Wing-Civil Air Patrol in natural or man-made disasters or other emergency situations. Such State requested and approved missions shall be approved or denied by the Secretary of Crime Control and Public Safety or his designee under such rules, terms and conditions as are adopted by the Department. (1979, c. 516, s. 1.)

§ 143B-491. Personnel and benefits.

(a) The Wing Commander of the North Carolina Wing-Civil Air Patrol shall certify to the Secretary or his designee those members who are in good standing as members eligible for benefits. The Wing Commander shall provide the Secretary with two copies of the certification. The Secretary shall acknowledge receipt of, sign, and date both copies and return one to the Wing Commander. The Wing Commander shall, in the form and manner provided above, notify the Secretary of any changes in personnel within 30 days thereof. Upon the Secretary's signature, those members listed on the certification shall be eligible for the benefits listed below.

(b) Those members of the North Carolina Wing-Civil Air Patrol certified under subsection (a) of this section shall be deemed and considered employees of the Department of Crime Control and Public Safety for workers' compensation purposes, and for no other purposes, while performing duties incident to a State approved mission. Such period of employment shall not extend to said members while performing duties incident to a United States Air Force authorized mission or any other Wing activities. (1979, c. 516, s. 1; c. 714, s. 2; 1993, c. 389, s. 2.)

§ 143B-492. State liability.

Unless otherwise specifically provided, the members of the North Carolina Wing-Civil Air Patrol shall serve without compensation and shall not be entitled to the benefits of the retirement system for teachers and State employees as set forth in Chapter 135 of the General Statutes. The provisions of Article 31 of Chapter 143 of the General Statutes, with respect to tort claims against State departments and agencies, shall not be applicable to the activities of the North Carolina Wing-Civil Air Patrol, unless those activities are State-approved missions which are not covered by the Federal Tort Claims Act. The State shall not in any manner be liable for any of the contracts, debts, or obligations of the said organization. (1979, c. 516, s. 1; 1993, c. 389, s. 1.)

§§ 143B-493, 143B-494: Reserved for future codification purposes.

Part 5A. North Carolina Center for Missing Persons.

§ 143B-495. North Carolina Center for Missing Persons established.

There is established within the Department of Crime Control and Public Safety the North Carolina Center for Missing Persons, which shall be organized and staffed in accordance with applicable laws. The purpose of the Center is to serve as a central repository for information regarding missing persons and missing children, with special emphasis on missing children. The

Center may utilize the Federal Bureau of Investigation/National Crime Information Center's missing person computerized file (hereinafter referred to as FBI/NCIC) through the use of the Police Information Network in the North Carolina Department of Justice. (1985, c. 765, s. 1; 1985 (Reg. Sess., 1986), c. 1000, s. 1.)

§ 143B-496. Definitions.

For the purpose of this Part:

(1) "Missing child" means a juvenile as defined in G.S. 7B-101 whose location has not been determined, who has been reported as missing to a law-enforcement agency, and whose parent's, spouse's, guardian's or legal custodian's temporary or permanent residence is in North Carolina or is believed to be in North Carolina.

(2) "Missing person" means any individual who is 18 years of age or older, whose temporary or permanent residence is in North Carolina, or is believed to be in North Carolina, whose location has not been determined, and who has been reported as missing to a law-enforcement agency.

(3) "Missing person report" is a report prepared on a prescribed form for transmitting information about a missing person or a missing child to an appropriate law-enforcement agency. (1985 (Reg. Sess., 1986), c. 1000, s. 1; 1998-202, s. 13(mm).)

§ 143B-497. Control of the Center.

The Center is under the direction of the Secretary of the Department of Crime Control and Public Safety and may be organized and structured in a manner as the Secretary deems appropriate to ensure that the objectives of the Center are achieved. The Secretary may employ those Center personnel as the General Assembly may authorize and provide funding for. (1985 (Reg. Sess., 1986), c. 1000, s. 1.)

§ 143B-498. Secretary to adopt rules.

The Secretary shall adopt rules prescribing:

(1) procedures for accepting and disseminating information maintained at the Center;

(2) the confidentiality of the data and information, including the missing person report, maintained by the Center;

(3) the proper disposition of all obsolete data, including the missing person report; provided, data for an individual who has reached the age of 18 and remains missing must be preserved;

(4) procedures allowing a communication link with the Police Information Network and the FBI/NCIC's missing person file to ensure compliance with FBI/NCIC policies; and

(5) forms, including but not limited to a missing person report, considered necessary for the efficient and proper operation of the Center. (1985 (Reg. Sess., 1986), c. 1000, s. 1.)

§ 143B-499. Submission of missing person reports to the Center.

Any parent, spouse, guardian, legal custodian, or person responsible for the supervision of the missing individual may submit a missing person report to the Center of any missing child or missing person, regardless of the circumstances, after having first submitted a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing, regardless of the circumstances. (1985 (Reg. Sess., 1986), c. 1000, s. 1; 2007-469, s. 1.)

§ 143B-499.1. Dissemination of missing persons data by law-enforcement agencies.

A law-enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, legal custodian, or person responsible for the supervision of the missing individual shall immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to all appropriate law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center. No law enforcement agency shall establish or maintain any policy which requires the observance of any waiting period before accepting a missing person report.

If the report involves a missing child and the report meets the criteria established in G.S. 143B-499.7(b), as soon as practicable after receipt of the report, the law enforcement agency shall notify the Center and the National Center for Missing and Exploited Children of the relevant data about the missing child. (1985 (Reg. Sess., 1986), c. 1000, s. 1; 2002-126, s. 18.7(a); 2003-191, s. 1; 2007-469, s. 2.)

§ 143B-499.2. Responsibilities of Center.

The Center shall:

(1) Assist local law-enforcement agencies with entering data about missing persons or missing children into the national missing persons file, ensure that proper entry criteria have been met as set forth by the FBI/NCIC, and confirm entry of the data about the missing persons or missing children;

(2) Gather and distribute information and data on missing children and missing persons;

(3) Encourage research and study of missing children and missing persons, including the prevention of child abduction and the prevention of the exploitation of missing children;

(4) Serve as a statewide resource center to assist local communities in programs and initiatives to prevent child abduction and the exploitation of missing children;

(5) Continue increasing public awareness of the reasons why children are missing and vulnerability of missing children;

(6) Achieve maximum cooperation with other agencies of the State, with agencies of other states and the federal government and with the National Center for Missing and Exploited Children in rendering assistance to missing children and missing persons and their parents, guardians, spouses, or legal custodians; and cooperate with interstate and federal efforts to identify deceased individuals;

(6a) Develop and maintain the AMBER Alert System as created by G.S. 143B-499.7;

(7) Forward the appropriate information to the Police Information Network to assist it in maintaining and publishing a bulletin of currently missing children and missing persons;

(8) Maintain a directory of existing public and private agencies, groups, and individuals that provide effective assistance to families in the

areas of prevention of child abduction, location of missing children and missing persons, and follow-up services to the child or person and family, as determined by the Secretary of Crime Control and Public Safety;

(9) Annually compile and publish reports on the actual number of children and persons missing each year, listing the categories and causes, when known, for the disappearances;

(10) Provide follow-up referrals for services to missing children or persons and their families;

(11) Maintain a toll-free 1-800 telephone service that will be in service at all times; and

(12) Perform such other activities that the Secretary of Crime Control and Public Safety considers necessary to carry out the intent of its mandate. (1985 (Reg. Sess., 1986), c. 1000, s. 1; 2002-126, s. 18.7(b); 2003-191, s. 2.)

§ 143B-499.3. Duty of individuals to notify Center and law-enforcement agency when missing person has been located.

Any parent, spouse, guardian, legal custodian, or person responsible for the supervision of the missing individual who submits a missing person report to a law-enforcement agency or to the Center, shall immediately notify the law-enforcement agency and the Center of any individual whose location has been determined. The Center shall confirm the deletion of the individual's records from the FBI/NCIC's missing person file, as long as there are no grounds for criminal prosecution, and follow up with the local law-enforcement agency having jurisdiction of the records. (1985 (Reg. Sess., 1986), c. 1000, s. 1; 2007-469, s. 3.)

§ 143B-499.4. Release of information by Center.

The following may make inquiries of, and receive data or information from, the Center:

(1) Any police, law-enforcement, or criminal justice agency investigating a report of a missing or unidentified person or child, whether living or deceased.

(2) A court, upon a finding by the court that access to the data, information, or records of the Center may be necessary for the determination of an issue before the court.

(3) Any district attorney of a prosecutorial district as defined in G.S. 7A-60 in this State or the district attorney's designee or representative.

(4) Any person engaged in bona fide research when approved by the Secretary; provided, no names or addresses may be supplied to this person.

(5) Any other person authorized by the Secretary of the Department of Crime Control and Public Safety pursuant to G.S. 143B-498(1). (1985 (Reg. Sess., 1986), c. 1000, s. 1; 1987, c. 282, s. 28; 1987 (Reg. Sess., 1988), c. 1037, s. 119.)

§ 143B-499.5. Provision of toll-free service; instructions to callers; communication with law-enforcement agencies.

The Center shall provide a toll-free telephone line for anyone to report the disappearance of any individual or the sighting of any missing child or missing person. The Center personnel shall instruct the caller, in the case of a report concerning the disappearance of an individual, of the requirements contained in G.S. 143B-499 of first having to submit a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing. Any law-enforcement agency may retrieve information imparted to the Center by means of this phone line. The Center shall directly communicate any report of a sighting of a missing person or a missing child to the law-enforcement agency having jurisdiction in the area of disappearance or sighting. (1985 (Reg. Sess., 1986), c. 1000, s. 1; 2007-469, s. 4.)

§ 143B-499.6. Improper release of information; penalty.

Any person working under the supervision of the Director of Victims and Justice Services who knowingly and willfully releases, or authorizes the release of, any data, information, or records maintained or possessed by the Center to any agency, entity, or person other than as specifically permitted by Part 5A or in violation of any rule adopted by the Secretary is guilty of a Class 2 misdemeanor. (1985 (Reg. Sess., 1986), c. 1000, s. 1; 1993, c. 539, s. 1050; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 143B-499.7. North Carolina AMBER Alert System established.

(a) There is established within the North Carolina Center for Missing Persons the AMBER Alert System. The purpose of AMBER Alert is to provide a statewide system for the rapid dissemination of information regarding abducted children.

(b) The AMBER Alert System shall make every effort to disseminate information on missing children as quickly as possible when the following criteria are met:

(1) The child is 17 years of age or younger;
(2) Repealed by Session Laws 2003-191, s. 3, effective June 12, 2003.
(3) Repealed by Session Laws 2003-191, s. 3, effective June 12, 2003.
(4) The abduction is not known or suspected to be by a parent of the child, unless the child's life is suspected to be in danger of injury or death;
(4a) The child is believed:
  a. To have been abducted, or
  b. To be in danger of injury or death;
(5) The child is not a runaway or voluntarily missing; and
(6) The abduction has been reported to and investigated by a law enforcement agency.

If the abduction of the child is known or suspected to be by a parent of the child, the Center, in its discretion, may disseminate information through the AMBER Alert System if the child is believed to be in danger of injury or death.

(c) The Center shall adopt guidelines and develop procedures for the statewide implementation of the AMBER Alert System and shall provide education and training to encourage radio and television broadcasters to participate in the System. The Center shall work with the Department of Justice in developing training material regarding the AMBER Alert System for law enforcement, broadcasters, and community interest groups.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the abduction of a child meeting the criteria established in subsection (b) of this section, when information is available that would enable motorists to assist law enforcement in the recovery of the missing child. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign.

(e) The Center shall consult with the Division of Emergency Management, in the Department of Crime Control and Public Safety, to develop a procedure for the use of the Emergency Alert System to provide information on the abduction of a child meeting the criteria established in subsection (b) of this section.

(f) The Department of Crime Control and Public Safety, on behalf of the Center, may accept grants, contributions, devises, bequests, and gifts, which shall be kept in a separate fund, which shall be nonreverting, and shall be used to fund the operations of the Center and the AMBER Alert System. (2002-126, s. 18.7(c); 2003-191, s. 3.)

§ 143B-499.8. North Carolina Silver Alert System established.

(a) There is established within the North Carolina Center for Missing Persons the Silver Alert System. The purpose of the Silver Alert System is to provide a statewide system for the rapid dissemination of information regarding a missing person who is believed to be suffering from dementia or other cognitive impairment.

(b) If the Center receives a report that involves a missing person who is believed to be suffering from dementia or other cognitive impairment, for the protection of the missing person from potential abuse or other physical harm, neglect, or exploitation, the Center shall issue an alert providing for rapid dissemination of information statewide regarding the missing person. The Center shall make every effort to disseminate the information as quickly as possible when the person's status as missing has been reported to a law enforcement agency.

(c) The Center shall adopt guidelines and develop procedures for issuing an alert for missing persons believed to be suffering from dementia or other cognitive impairment and shall provide education and training to encourage radio and television broadcasters to participate in the alert. The guidelines and procedures shall ensure that specific health information about the missing person is not made public through the alert or otherwise.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the missing person meeting the criteria of this section when information is available that would enable motorists to assist in the recovery of the missing person. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign. (2007-469, s. 5; 2008-83, s. 1; 2009-143, s. 1.)

Editor's Note. — Session Laws 2007-469, s. 7, made this section effective August 29, 2007.

Effect of Amendments. — Session Laws 2008-83, s. 1, effective July 11, 2008, deleted "the missing person is 18 years of age or older, and" preceding "the person's status" in the last sentence of subsection (b).

Session Laws 2009-143, s. 1, effective June 19, 2009, substituted "missing person" for "missing adult" in the first occurrence in the first sentence of subsection (d).

Part 6. Community Penalties Program.

§§ 143B-500 through 143B-507: Recodified as Article 61 of Subchapter XIII of Chapter 7A, G.S. 7A-770 through 7A-777, by Session Laws 1991, c. 566, s. 2.

Part 7. Law Enforcement Support Services Division.

§ 143B-508. Law Enforcement Support Services Division established.

The Law Enforcement Support Services Division is established within the Department of Crime Control and Public Safety. The Division is authorized to perform the following functions:

(1) Manage State, local, and federal programs that facilitate or enable the transfer of technology, goods, and services through programs for excess property, property acquisition, and equipment loans.

(2) Provide central storage and management of evidence according to the provisions of Article 13 of Chapter 15A of the General Statutes and creation and maintenance of a data bank of statewide storage location of postconviction evidence or other similar programs.

(3) Provide central storage and management of rape kits according to the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 with specific protections against release of names of victims providing anonymous or "Jane Doe" rape kits without victim consent.

(4) Acquire, maintain, and control equipment to be loaned to law enforcement agencies for use in undercover investigations and to other agencies for other purposes.

(5) Develop, test, and promulgate innovative and technological solutions for the first responder community.

(6) Provide other assistance as may be necessary or appropriate to carry out assigned duties and responsibilities. (2009-81, s. 3.)

Editor's Note. — Session Laws 2009-81, s. 4, made this Part effective June 11, 2009.

Part 8. Emergency Management Division.

§ 143B-509. Division of Emergency Management of the Department of Crime Control and Public Safety.

(a) There is established, within the Department of Crime Control and Public Safety, the Division of Emergency Management, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) The Division of Emergency Management shall have the following powers and duties:

(1) To exercise the powers and duties exercised prior to the enactment of this section, in accordance with G.S. 143B-475(a)(11).

(2) To exercise the powers and duties conferred on it by Chapter 166A of the General Statutes.

(3) To exercise any other powers vested by law. (2009-397, s. 3.)

Editor's Note. — Session Laws 2009-397, s. 4, made this Part effective July 31, 2009.

Part 9. State Capitol Police Division.

§ 143B-509.1. State Capitol Police Division — powers and duties.

(a) Division Established. — There is hereby established, within the Department of Crime Control and Public Safety, the State Capitol Police Division, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) Purpose. — The State Capitol Police Division shall serve as a special police agency of the Department of Crime Control and Public Safety. The Director of the State Capitol Police, appointed by the Secretary pursuant to G.S. 143B-476(6), with the approval of the Governor, may appoint as special police officers such reliable persons as he may deem necessary.

(c) Appointment of Officers. — Special police officers appointed pursuant to this section may not exercise the power of arrest until they shall take an oath, to be administered by any person authorized to administer oaths, as required by law.

(d) Jurisdiction of Officers. — Each special police officer of the State Capitol Police shall have the same power of arrest as the police officers of the City of Raleigh. Such authority may be exercised within the same territorial jurisdiction as exercised by the police officers of the City of Raleigh, and in addition thereto the authority of a deputy sheriff may be exercised on property owned, leased, or maintained by the State located in the County of Wake.

(e) Reserved for future codification purposes.

(f) Public Safety. — The Director of the State Capitol Police, or the Director's designee, shall exercise at all times those means that, in the opinion of the Director or the designee, may be effective in protecting all State buildings and grounds, except for the State legislative buildings and grounds as defined in G.S. 120-32.1(d), and the persons within those buildings and grounds from fire, bombs, bomb threats, or any other emergency or potentially hazardous conditions, including both the ordering and control of the evacuation of those buildings and grounds. The Director, or the Director's designee, may employ the assistance of other available law enforcement agencies and emergency agencies to aid and assist in evacuations of those buildings and grounds. (2009-451, s. 17.3(f).)

Editor's Note. — Session Laws 2009-451, s. 28.6, made this Part effective July 1, 2009.

Session Laws 2009-451, s. 17.3(a), provides: "The State Capitol Police is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, from the Department of Administration to the Department of Crime Control and Public Safety."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143B-510: Reserved for future codification purposes.

ARTICLE 12.

Department of Juvenile Justice and Delinquency Prevention.

Part 1. Creation of Department.

§ 143B-511. Creation of the Department of Juvenile Justice and Delinquency Prevention.

There is hereby created and constituted a department to be known as the "Department of Juvenile Justice and Delinquency Prevention", with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article. (1998-202, s. 1(b); 2000-137, s. 1(b).)

Cross References. — As to the Child Residential Treatment Services Program, see Editor's note at G.S. 143B-137.1. As to services to children at risk for institutionalization or other out-of-home placement, see Editor's note at G.S. 143B-137.1.

Editor's Note. — Session Laws 2000-137, s. 1(a) repealed former Article 3C of Chapter 147. Session Laws 2000-137, s. 1(b) enacted a new Article 12 of Chapter 143B. Historical citations to the sections in former Article 3C of Chapter 147 have been added to the corresponding sections in new Article 12 of Chapter 143B as recodified.

The sections in Article 12 have been numbered at the direction of the Revisor of Statutes, the section numbers in Session Laws 2000-137, s. 1(b) having been G.S. 143B-511 to 143B-537.

Session Laws 2000-137, s. 5, made this Article effective July 20, 2000.

Session Laws 2000-67, s. 19, transfers the Center for Prevention of School Violence and all functions, powers, duties, and obligations from the University of North Carolina to the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention). The Center is to continue to consult with the University and the Department of Public Instruction to enhance research opportunities and specialized study areas such as teacher preparation, school resource officer development, suicide prevention, and best practices.

Session Laws 2000-67, s. 19.7, transfers the Guard Response Alternative Sentencing Program and all functions, powers, duties, and obligations vested in the Department of Crime Control and Public Safety for the Guard Response Alternative Sentencing Program to the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention). The Program is to continue to function as an additional probation option for certain first-time juveniles who have been adjudicated delinquent and who are subject to Level 2 disposition.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

§ 143B-512. Transfer of Office of Juvenile Justice authority to the Department of Juvenile Justice and Delinquency Prevention.

(a) All (i) statutory authority, powers, duties, and functions, including directives of S.L. 1998-202, rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Office of Juvenile Justice under the Office of the Governor are transferred to and vested in the Department of Juvenile Justice and Delinquency Prevention. This transfer has all of the elements of a Type I transfer as defined in G.S. 143A-6.

(b) The Department shall be considered a continuation of the Office of Juvenile Justice for the purpose of succession to all rights, powers, duties, and obligations of the Office and of those rights, powers, duties, and obligations exercised by the Office of the Governor on behalf of the Office of Juvenile Justice. Where the Office of Juvenile Justice is referred to by law, contract, or other document, that reference shall apply to the Department. Where the Office of the Governor is referred to by contract or other document, where the Office of the Governor is acting on behalf of the Office of Juvenile Justice, that reference shall apply to the Department.

(c) All institutions previously operated by the Office of Juvenile Justice and the present central office of the Office of Juvenile Justice, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled by the Office or by the Office of the Governor for the Office of Juvenile Justice, shall be administered by the Department of Juvenile Justice and Delinquency Prevention. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§§ 143B-513, 143B-514: Reserved for future codification purposes.

Part 2. General Provisions.

§ 143B-515. Definitions.

In this Article, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. — The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Juvenile Justice and Delinquency Prevention.

(2) Community-based program. — A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(3) County Councils. — Juvenile Crime Prevention Councils created under G.S. 143B-544.

(4) Court. — The district court division of the General Court of Justice.

(5) Repealed by Session Laws 2001-490, s. 2.39, effective June 30, 2001.

(6) Custodian. — The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. — Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(8) Department. — The Department of Juvenile Justice and Delinquency Prevention.

(9) Detention. — The secure confinement of a juvenile under a court order.

(10) Detention facility. — A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(11) District. — Any district court district as established by G.S. 7A-133.

(12) Judge. — Any district court judge.

(13) Judicial district. — Any district court district as established by G.S. 7A-133.

(14) Juvenile. — Except as provided in subdivisions (7) and (22) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term "juvenile" is used with

reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(15) Juvenile court. — Any district court exercising jurisdiction under this Chapter.

(15a) Juvenile court counselor. — A person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

(16) Post-release supervision. — The supervision of a juvenile who has been returned to the community after having been committed to the Department for placement in a training school.

(17) Probation. — The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a juvenile court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(18) Protective supervision. — The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a juvenile court counselor.

(19) Secretary. — The Secretary of Juvenile Justice and Delinquency Prevention.

(20) Repealed by Session Laws 2008-118, s. 3.12(b), effective July 1, 2008.

(21) Repealed by Session Laws 2001-95, s. 3, effective May 18, 2001.

(22) Undisciplined juvenile. —

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

(23) Youth development center. — A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department. (1998-202, ss. 1(b), 2(a); 2000-137, s. 1(b); 2001-95, ss. 3, 4; 2001-490, s. 2.39; 2008-118, s. 3.12(b).)

Youth Development Center Staffing. — Session Laws 2004-124, s. 16.4.(a) to (c) provide: "With the approval of the Office of State Personnel and the Office of State Budget and Management, the Department of Juvenile Justice and Delinquency Prevention may:

"(1) Reclassify existing departmental vacant positions to establish up to 18 new positions in new job classes listed in this subsection. The Department may use departmental salary reserves and salaries from vacant positions to establish these positions. These newly established positions shall be assigned to Stonewall Jackson and Samarkand Youth Development Centers. The positions shall be reclassified as 14 youth development center youth counselors, two youth counselor supervisors, and two licensed mental health clinicians.

"(2) Use up to one hundred eighty-three thousand nine hundred ninety-two dollars ($183,992) of salary reserves to reclassify up to 68 existing positions to 58 youth counselors and 10 youth counselor supervisors.

"These new positions will provide the starting point for the potential implementation of a statewide therapeutic staffing model.

"(b) Prior to establishing new positions or reclassifying positions listed in subsection (a) of this section, the Department of Juvenile Justice and Delinquency Prevention shall prepare a long-range plan for establishing a therapeutic staffing model to be used in all youth development centers. The plan shall include:

"(1) A report on the proposed implementation of 18 new positions and reclassifications identified in subsection (a) of this section. The report shall provide information on (i) the vacant positions to be reallocated to establish new positions, (ii) the amount and source of funds used for these positions and reclassifications, (iii) how the 18 positions will be allocated between Stonewall Jackson and Samarkand and their specific duties, and (iv) how the 68 reclassified positions will be allocated among the existing youth development centers.

"(2) An outline of the cost and benefits of the proposed model for juveniles in the custody of the Department and a summary of available research regarding the use of therapeutic staffing models in juvenile facilities.

"(3) An action plan and time line for reclassifying current counselor technicians, behavioral specialists, cottage parents, or other current positions to youth counselor or youth counselor supervisor positions or to other job classes that are progressive steps towards youth counselor positions. The Department shall also estimate the number of current statewide positions likely to be reclassified to youth counselor positions, youth counselor supervisors, or other job classes based on the qualifications of the current staff.

"(4) Job specifications, salary grades, and operating costs for each new job class.

"(5) The recommended staffing for and qualifications of teachers and teacher assistants and the standards for evaluating teacher quality in youth development centers.

"(c) The Department of Juvenile Justice and Delinquency Prevention shall report by December 1, 2004, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the long-range plan required by this section and the budgetary costs for statewide implementation of the therapeutic staffing model."

Implementation of Treatment Staffing Model at Youth Development Centers — Session Laws 2005-276, s. 16.6(a) through (c), as amended by Session Laws 2006-66, s. 15.6(a), provides: "(a) The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the treatment staffing model being piloted at Samarkand and Stonewall Jackson Youth Development Centers. The report shall include a list of total positions at each facility by job class, whether the position is vacant or filled, whether positions were filled from internal employees or new employees, and the training and certification status of each position. The report shall also describe the nature of the treatment program, the criteria for evaluating the program, and how the program is performing in comparison to these criteria. The report shall also describe the training approach to be used to train staff in using treatment methods in youth development centers and provide information on current staff training and staff training planned for the next quarter. The Department shall also develop indicators for evaluating staff performance once the model has been implemented.

"(b) The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the implementation of the treatment staffing model at Dobbs, Dillon, and Juvenile Evaluation Center Youth Development Centers. The Department shall identify the number of positions reallocated to the new treatment job classes and the source of funding for those positions.

"(c) The Department of Juvenile Justice and Delinquency Prevention shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee by November 10, 2006, on the final recommended staffing plan for youth development centers for the 2007-2008 fiscal year. The report shall include:

"(1) The latest results of the evaluation of the pilot treatment staffing models at the Samarkand and Stonewall Jackson Youth Development Centers and the progress in implementing the model at other youth development centers.

"(2) The total recommended staffing by position classification for each youth development center. Staffing by shift shall be provided for each housing unit as well as justification for the level and type of staff on each shift.

"(3) The total cost and cost per bed for each youth development center to implement the staffing model.

"(4) The primary basis for the number of staff at each youth development center by classification.

"(5) An identification of other states that have implemented a treatment based staffing model, how the staffing patterns compare to the Department of Juvenile Justice and Delinquency Prevention proposal, and any research on the benefits and outcomes of using the treatment based approach in these states."

Reporting on Treatment Staffing Model at Youth Development Centers. — Session Laws 2007-323, s. 18.6(a)-(c), provides: "(a) The Department of Juvenile Justice and Delinquency Prevention shall continue quarterly reporting during the 2007-2008 fiscal year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the implementation of the treatment staffing model at Samarkand and Stonewall Jackson Youth Development Centers, including the latest results of the evaluation of the pilot treatment staffing models at the Centers and the progress in implementing the model at other youth development centers.

"(b) The Department shall implement the staffing treatment model presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee as part of the Department's November 14, 2006, report regarding the joint use with the Department of Correction of the Swannanoa Youth Development Center campus.

"The staffing levels of the new youth development centers shall be capped at 66 staff for a 32-bed facility and 198 staff for the 96-bed facility for the 2007-2009 fiscal biennium. Staffing ratios shall be no more than 2.1 staff per every juvenile committed at every other existing youth development center.

"(c) In the April 1, 2008, report, the Department shall include a recommendation on whether the staffing and budget for youth development centers should be modified to reflect the results of the pilot treatment programs."

Treatment Staffing Model at Youth Development Centers. — Session Laws 2009-451, s. 18.4, provides: "The Department shall implement the staffing treatment model presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee as part of the Department's November 14, 2006, report regarding the joint use with the Department of Correction of the Swannanoa Youth Development Center campus.

"The staffing levels of the new youth development centers shall be capped at 66 staff for a 32-bed facility and 198 staff for the 96-bed facility for the 2009-2011 fiscal biennium. Staffing ratios shall be no more than 2.1 staff per every juvenile committed at every other existing youth development center."

Editor's Note. — Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-118, s. 3.12(b), effective July 1, 2008, deleted subdivision (20) regarding the definition of State Council.

§ 143B-516. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.

(a) The head of the Department is the Secretary. The Secretary shall have the powers and duties conferred by this Chapter, delegated by the Governor, and conferred by the Constitution and laws of this State. The Secretary shall be responsible for effectively and efficiently organizing the Department to promote the policy of the State as set forth in this Article and to promote public safety and to prevent the commission of delinquent acts by juveniles.

(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy that requires that youth development centers be phased out as populations diminish.

(2) Close a State youth development center when its operation is no longer justified and transfer State funds appropriated for the operation of that youth development center to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing youth development centers, after consultation with the Joint Legislative Commission on Governmental Operations.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules to implement this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision services in all district court districts of the State. The system shall provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards, approve yearly program evaluations, and make recommendations based on the evaluations to the General Assembly concerning continuation funding.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding, on a matching basis, juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Develop and administer a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles. The plan shall include attendance at appropriate professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(17a) Set, in consultation with the Office of State Personnel, the salary supplement paid to teachers, instructional support personnel, and school-based administrators who are employed at juvenile facilities and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the local school administrative unit where the job site is located. These salary supplements shall not be paid to central office staff. Nothing in this subdivision shall be construed to include "merit pay" under the term "salary supplement".

(18) Designate persons, as necessary, as State juvenile justice officers, to provide for the care and supervision of juveniles placed in the physical custody of the Department.

(c) Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the Secretary shall prescribe the functions, powers, duties, and obligations of every agency or division in the Department.

(d) Where Department statistics indicate the presence of minority youth in juvenile facilities disproportionate to their presence in the general population, the Department shall develop and recommend appropriate strategies designed to ensure fair and equal treatment in the juvenile justice system.

(e) The Department may provide consulting services and technical assistance to courts, law enforcement agencies, and other agencies, local governments, and public and private organizations. The Department may develop or assist Juvenile Crime Prevention Councils in developing community needs, assessments, and programs relating to the prevention and treatment of delinquent and undisciplined behavior.

(f) The Department shall develop a cost-benefit model for each State-funded program. Program commitment and recidivism rates shall be components of the model. (1998-202, ss. 1(b), 2(b), 2(f); 1998-217, ss. 57(2), 57(3); 2000-137, s. 1(b); 2001-95, s. 5; 2001-490, s. 2.40; 2003-284, s. 17.2(a); 2005-276, s. 29.19(b); 2006-203, s. 111; 2008-118, s. 3.12(c).)

Cross References. — As to legislation regarding a study of programs for screening for and identification of delinquency risk factors, see the editor's note under G.S. 7B-1500. As to minority sensitivity training for law enforcement personnel, see G.S. 114-21.

Pilot Program for Multifunctional Juvenile Facility. — Session Laws 1999-237, ss. 21.13(a) through (k), as amended by Session Laws 2000-67, ss. 19.5(a) and (b), provides for the establishment in Eastern North Carolina of a pilot program for a multifunctional juvenile facility to provide juveniles involved in the juvenile justice system with custodial, rehabilitation, treatment, and program services, including substance abuse and sex offender services. In establishing the pilot, the Office of Juvenile Justice (now the Department of Juvenile Justice and Delinquency Prevention) shall contract with a private for-profit or nonprofit firm for the construction and operation of such a multifunctional facility totaling up to 100 beds. Any contract entered under the authority of this section shall be for a period not to exceed 10 years. The Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention) is to house only juveniles who are in the North Carolina juvenile justice system in the facility. Juvenile offenders housed in private facilities shall be governed by the State laws applicable to juvenile offenders housed in State facilities. The Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention) shall make a written report no later than March 1, 2001, on the status of the pilot program and shall evaluate the program annually and report on the findings of the evaluations by May 1, 2001, and May 1, 2003.

JCPC Grant Reporting. — Session Laws 2009-451, s. 18.7, provides: "On or before October 1 of each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council grants, including:

"(1) The amount of the grant awarded.

"(2) The membership of the local committee or council administering the award funds on the local level.

"(3) The type of program funded.

"(4) A short description of the local services, programs, or projects that will receive funds.

"(5) Identification of any programs that received grant funds at one time but for which funding has been eliminated by the Department.

"(6) The number of at-risk, diverted, and adjudicated juveniles served by each county.

"(7) The Department's actions to ensure that county JCPCs prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

"(8) The total cost for each funded program, including the cost per juvenile and the essential elements of the program.

"A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly."

For prior similar provisons, see Session Laws 2001-424, s. 24.2(a)-(c), Session Laws 2003-284, s. 15.2(a) and (b), Session Laws 2005-276, s. 16.2(a) and (b), and Session Laws 2007-323, s. 18.2(a) and (b), as amended by Session Laws 2008-107, s. 16.1(a).

Federal Grant Reporting. — Session Laws 2009-451, s. 19.2, provides: "The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant."

For prior similar provisions, see Session Laws 2003-284, s. 16.1, Session Laws 2005-276, s. 17.1, and Session Laws 2007-323, s. 17.5.

Project Challenge Report. — Session Laws 2009-451, s. 18.2(a) and (b), provides: "Project Challenge North Carolina, Inc., shall report to the Department of Juvenile Justice and Delinquency Prevention and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1 each year on the operation and the effectiveness of its program in providing alternative dispositions and services to juveniles who have been adjudicated delinquent or undisciplined. The report shall include information on:

"(1) The source of referrals for juveniles.

"(2) The types of offenses committed by juveniles participating in the program.

"(3) The amount of time those juveniles spend in the program.

"(4) The number of juveniles who successfully complete the program.

"(5) The number of juveniles who commit additional offenses after completing the program.

"(6) The program's budget and expenditures, including all funding sources.

"The Juvenile Assessment Center shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the effectiveness of the Center by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of juvenile assessment plans and services provided as a result of these plans. In addition, the report shall include information on the Center's budget and expenditures, including all funding sources."

For prior similar provisions, see Session Laws 2001-424, s. 24.3, Session Laws 2003-284, s. 15.3(a)-(c), Session Laws 2005-276, s. 16.3(a)-(c), as amended by Session Laws 2006-66, s. 15.1, and Session Laws 2007-323, s. 18.3(a) and (b).

Annual Evaluation of Community Programs. — Session Laws 2009-451, s. 18.1, provides: "The Department of Juvenile Justice and Delinquency Prevention shall conduct an evaluation of the Eckerd and Camp Woodson wilderness camp programs and of multipurpose group homes.

"In conducting the evaluation of each of these programs, the Department shall consider whether participation in each program results in a reduction of court involvement among juveniles. The Department also shall identify whether the programs are achieving the goals and objectives of the Juvenile Justice Reform Act, S.L. 1998-202. The Department shall report the results of the evaluation to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the chairs of the Senate and House of Representatives Appropriations Committees and the chairs of the Subcommittees on Justice and Public Safety of the Senate and House of Representatives Appropriations Committees by March 1 of each year."

For prior similar provisions, see Session Laws 2001-424, s. 24.5, Session Laws 2003-284, s. 15.5, Session Laws 2005-276, s. 16.4, as amended by Session Laws 2006-66, s. 15.4, and Session Laws 2007-323, s. 18.4.

School-Based Child and Family Team Initiative. — Session Laws 2005-276, s. 6.24, provides for the development and implementation of a School-Based Child and Family Team Initiative. See note at G.S. 115C-105.20.

Youth Accountability Planning Task Force. — Session Laws 2009-451, s. 18.9(a)-(i), provides: "(a) Task Force Established. — There is established within the Department of Juvenile Justice and Delinquency Prevention the Youth Accountability Planning Task Force. The Department of Juvenile Justice and Delinquency Prevention shall provide professional and clerical staff and other services and supplies, including meeting space, as needed for the Task Force to carry out its duties in an effective manner.

"(b) Membership. — The Task Force shall consist of 21 members. The following members or their designees shall serve as ex officio members:

"(1) The Secretary of the Department of Juvenile Justice and Delinquency Prevention.

"(2) The Director of the Administrative Office of the Courts.

"(3) The Secretary of the Department of Health and Human Services.

"(4) The Secretary of the Department of Correction.

"(5) The Secretary of the Department of Crime Control and Public Safety.

"(6) The Superintendent of Public Instruction.

"(7) The Secretary of the Department of Administration, or a designee having knowledge of programs and services for youth and young adults.

"(8) The Juvenile Defender in the Office of Indigent Defense.

"(9) One representative from the Governor's Crime Commission, appointed by the Governor.

"(10) One representative from the North Carolina Sentencing and Policy Advisory Commission, appointed by the Governor.

"The remaining members shall be appointed as follows:

"(11) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.

"(12) Three members of the Senate appointed by the President Pro Tempore of the Senate.

"(13) Two chief court counselors, appointed by the Governor, one to be from a rural county and one from an urban county.

"(14) One present or former chief district court judge or superior court judge appointed by the Chief Justice of the North Carolina Supreme Court.

"(15) One police chief appointed by the President Pro Tempore of the Senate.

"(16) One district attorney appointed by the Speaker of the House of Representatives.

"Appointments to the Task Force shall be made no later than October 1, 2009. A vacancy in the Task Force or a vacancy as chair of the Task Force resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made.

"(c) Chair; Meetings. — The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate one member to serve as cochair of the Task Force.

"The cochairs shall call the initial meeting of the Task Force on or before November 1, 2009. The Task Force shall subsequently meet upon such notice and in such manner as its members determine. A majority of the members of the Task Force shall constitute a quorum.

"(d) The Office of the Governor shall provide staff to the Task Force at the request of the Task Force.

"(e) Cooperation by Government Agencies. — The Task Force may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

"(f) Duties of Task Force. — The Task Force shall determine whether the State should amend the laws concerning persons 16 and 17 years of age who commit crimes or infractions, including a determination of whether the Juvenile Code or the Criminal Procedure Act should be revised to provide appropriate sanctions, services, and treatment for those offenders and a study of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons 16 and 17 years of age who commit crimes or infractions. As part of its study, the Task Force shall also develop an implementation plan that may be used if it is determined that it is appropriate to expand the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons 16 and 17 years of age who commit crimes or infractions. In particular, the Task Force shall consider all of the following:

"(1) The costs to the State court system and State and local law enforcement.

"(2) The relevant State laws that should be conformed or amended as a result of revising the definition of delinquent juvenile to include 16- and 17-year-old persons, including the motor vehicle and criminal laws, the laws regarding expunction of criminal records, and other juvenile laws. The Task Force shall make recommendations to the General Assembly regarding proposed legislative amendments.

"(3) Proposals to eliminate the racial disparity in complaints, commitments, community program availability, utilization and success rates, and other key decision and impact points in the juvenile justice process.

"(4) Proposals regarding community programs that would provide rehabilitative services to juveniles in a treatment-oriented environment and incorporate best practices as recommended in subdivision (3) of this subsection.

"(5) The total cost of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons who are 16 and 17 years of age who commit crimes or infractions under State law or under an ordinance of local government.

"(6) The implications of revising the definition of delinquent juvenile to include 16- and 17-year-olds, as it relates to other laws based on age, including laws requiring school attendance and drivers license laws.

"(7) Whether standards should be established for determining when a juvenile should be transferred to superior court, including whether there should be presumptions that certain offenses should or should not result in a transfer to superior court.

"(8) Whether a 16- or 17-year-old who is alleged to have committed a felony motor vehicle offense should be considered a juvenile or an adult.

"(9) Any other related issues that the Task Force considers necessary.

"(g) Consultation. — The Task Force shall consult with appropriate State departments, agencies, and board representatives on issues related to juvenile justice administration.

"(h) Report. — The Task Force shall submit an interim report to the 2010 Regular Session of the 2009 General Assembly, with copies to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Appropriations Subcommittees on Justice and Public Safety of both houses and shall submit a final report of its findings and recommendations, including legislative, administrative, and funding recommendations, by January 15, 2011, to the General Assembly, the Governor, and the citizens of the State. The Task Force shall terminate upon filing its final report.

"(i) Funding. — The Task Force may apply for, receive, and accept grants of non-State funds or other contributions as appropriate to assist in the performance of its duties. The Department of Juvenile Justice and Delinquency Prevention may also use funds appropriated to it to carry out the study and devise the implementation plan."

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2001-178, ss. 1(a) through (j), provide that the State Board of Education, in cooperation with the Department of Juvenile Justice and Delinquency Prevention, shall establish a pilot program under which participating local school administrative units place all students who are on short-term out-of-school suspension in alternative learning programs. These alternative placements may be in alternative learning programs, day reporting centers, and other similar supervised programs for students.

Session Laws 2003-284, s. 16.1, provides: "The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 14.8(a) provides: "The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, shall conduct a feasibility study for measuring the effectiveness of programs that receive Juvenile Crime Prevention Council (JCPC) grant funds. All State agencies and community-based programs that receive JCPC funding shall provide data as requested by the Commission.

"The Sentencing and Policy Advisory Commission shall provide an interim report on the results of the feasibility study to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by December 1, 2008. The final plan for measuring the effectiveness of JCPC programs shall be provided to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2009."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-118, s. 3.12(c), effective July 1, 2008, deleted the third sentence in subsection (f), relating to recommendations of the State Advisory Council.

§ 143B-517. Authority to contract with other entities.

(a) The Department may contract with any governmental agency, person, or association for the accomplishment of its duties and responsibilities. The expenditure of funds under these contracts shall be for the purposes for which the funds were appropriated and not otherwise prohibited by law.

(b) The Department may enter into contracts with, and act as intermediary between, any federal government agency and any county of this State for the purpose of assisting the county to recover monies expended by a county-funded financial assistance program. As a condition of assistance, the county shall agree to hold and save harmless the Department against any claims, loss, or expense which the Department might incur under the contracts by reason of any erroneous, unlawful, or tortious act or omission of the county or its officials, agents, or employees.

(c) The Department and any other appropriate State or local agency may purchase services from public or private agencies providing delinquency prevention programs or juvenile court services, including parenting responsibility classes. The programs shall meet State standards. As institutional populations are reduced, the Department may divert State funds appropriated for institutional programs to purchase the services under the Executive Budget Act.

(d) Each programmatic, residential, and service contract or agreement entered into by the Department shall include a cooperation clause to ensure compliance with the Department's quality assurance requirements and cost-accounting requirements. (1998-202, s. 1(b); 2000-137, s. 1(b).)

Editor's Note. — The Executive Budget Act, referred to in subsection (c), is codified at G.S. 143-1 et seq.

For establishment of a pilot program for a multifunctional juvenile facility in Eastern North Carolina, see the Editor's note under G.S. 143B-516.

§ 143B-518. Authority to assist private nonprofit foundations.

The Department may provide appropriate services or allow employees of the Department to assist any private nonprofit foundation that works directly with the Department's services or programs and whose sole purpose is to support these services and programs. A Department employee shall be allowed to work with a foundation no more than 20 hours in any one month. These services are not subject to Chapter 150B of the General Statutes.

The board of directors of each private, nonprofit foundation shall secure and pay for the services of the Department of State Auditor or employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors shall transmit to the Department a copy of the annual financial audit report of the private nonprofit foundation. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-519: Repealed by Session Laws 2008-107, s. 14.8(b), effective July 1, 2008.

§ 143B-520. Teen court programs.

(a) All teen court programs administered by the Department of Juvenile Justice and Delinquency Prevention shall operate as community resources for the diversion of juveniles pursuant to G.S. 7B-1706(c). A juvenile diverted to a teen court program shall be tried by a jury of other juveniles, and, if the jury finds the juvenile has committed the delinquent act, the jury may assign the juvenile to a rehabilitative measure or sanction, including counseling, restitution, curfews, and community service.

Teen court programs may also operate as resources to the local school administrative units to handle problems that develop at school but that have not been turned over to the juvenile authorities.

(b) Every teen court program that receives funds from Juvenile Crime Prevention Councils shall comply with rules and reporting requirements of the Department of Juvenile Justice and Delinquency Prevention. (2001-424, s. 24.8; 2002-126, s. 16.2(b).)

§§ 143B-521 through 143B-524: Reserved for future codification purposes.

Part 3. Juvenile Facilities.

§ 143B-525. Juvenile facilities.

In order to provide any juvenile in a juvenile facility with appropriate treatment according to that juvenile's need, the Department shall be responsible for the administration of statewide educational, clinical, psychological, psychiatric, social, medical, vocational, and recreational services or programs. (1998-202, s. 1(b); 2000-137, s. 1(b).)

Youth Development Center Staffing. — Session Laws 2004-124, s. 16.4.(a) to (c) provide: "With the approval of the Office of State Personnel and the Office of State Budget and Management, the Department of Juvenile Justice and Delinquency Prevention may:

"(1) Reclassify existing departmental vacant positions to establish up to 18 new positions in new job classes listed in this subsection. The Department may use departmental salary reserves and salaries from vacant positions to establish these positions. These newly established positions shall be assigned to Stonewall Jackson and Samarkand Youth Development Centers. The positions shall be reclassified as 14 youth development center youth counselors, two youth counselor supervisors, and two licensed mental health clinicians.

"(2) Use up to one hundred eighty-three thousand nine hundred ninety-two dollars ($183,992) of salary reserves to reclassify up to 68 existing positions to 58 youth counselors and 10 youth counselor supervisors.

"These new positions will provide the starting point for the potential implementation of a statewide therapeutic staffing model.

"(b) Prior to establishing new positions or reclassifying positions listed in subsection (a) of this section, the Department of Juvenile Justice and Delinquency Prevention shall prepare a long-range plan for establishing a therapeutic staffing model to be used in all youth development centers. The plan shall include:

"(1) A report on the proposed implementation of 18 new positions and reclassifications identified in subsection (a) of this section. The report shall provide information on (i) the vacant positions to be reallocated to establish new positions, (ii) the amount and source of funds used for these positions and reclassifications, (iii) how the 18 positions will be allocated between Stonewall Jackson and Samarkand and their specific duties, and (iv) how the 68 reclassified positions will be allocated among the existing youth development centers.

"(2) An outline of the cost and benefits of the proposed model for juveniles in the custody of the Department and a summary of available research regarding the use of therapeutic staffing models in juvenile facilities.

"(3) An action plan and time line for reclassifying current counselor technicians, behavioral specialists, cottage parents, or other current positions to youth counselor or youth counselor supervisor positions or to other job classes that are progressive steps towards youth counselor positions. The Department shall also estimate the number of current statewide positions likely to be reclassified to youth counselor positions, youth counselor supervisors, or other job classes based on the qualifications of the current staff.

"(4) Job specifications, salary grades, and operating costs for each new job class.

"(5) The recommended staffing for and qualifications of teachers and teacher assistants and the standards for evaluating teacher quality in youth development centers.

"(c) The Department of Juvenile Justice and Delinquency Prevention shall report by December 1, 2004, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the long-range plan required by this section and the budgetary costs for statewide implementation of the therapeutic staffing model."

Implementation of Treatment Staffing Model at Youth Development Centers. — Session Laws 2005-276, s. 16.6(a) through (c), as amended by Session Laws 2006-66, s. 15.6(a), provides: "(a) The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the treatment staffing model being piloted at Samarkand and Stonewall Jackson Youth Development Centers. The report shall include a list of total positions at each facility by job class, whether the position is vacant or filled, whether positions were filled from internal employees or new employees, and the training and certification status of each position. The report shall also describe the nature of the treatment program, the criteria for evaluating the program, and how the program is performing in comparison to these criteria. The report shall also describe the training approach to be used to train staff in using treatment methods in youth development centers and provide information on current staff training and staff training planned for the next quarter. The Department shall also develop indicators for evaluating staff performance once the model has been implemented.

"(b) The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the implementation of the treatment staffing model at Dobbs, Dillon, and Juvenile Evaluation Center Youth Development Centers. The Department shall identify the number of positions reallocated to the new treatment job classes and the source of funding for those positions.

"(c) The Department of Juvenile Justice and Delinquency Prevention shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee by November 10, 2006, on the final recommended staffing plan for youth development centers for the 2007-2008 fiscal year. The report shall include:

"(1) The latest results of the evaluation of the pilot treatment staffing models at the Samarkand and Stonewall Jackson Youth Development Centers and the progress in implementing the model at other youth development centers.

"(2) The total recommended staffing by position classification for each youth development center. Staffing by shift shall be provided for each housing unit as well as justification for the level and type of staff on each shift.

"(3) The total cost and cost per bed for each youth development center to implement the staffing model.

"(4) The primary basis for the number of staff at each youth development center by classification.

"(5) An identification of other states that have implemented a treatment based staffing model, how the staffing patterns compare to the Department of Juvenile Justice and Delinquency Prevention proposal, and any research on the benefits and outcomes of using the treatment based approach in these states."

Reporting on Treatment Staffing Model at Youth Development Centers. — Session Laws 2007-323, s. 18.6(a)-(c), provides: "(a) The Department of Juvenile Justice and Delinquency Prevention shall continue quarterly reporting during the 2007-2008 fiscal year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the implementation of the treatment staffing model at Samarkand and Stonewall Jackson Youth Development Centers, including the latest results of the evaluation of the pilot treatment staffing models at the Centers and the progress in implementing the model at other youth development centers.

"(b) The Department shall implement the staffing treatment model presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee as part of the Department's November 14, 2006, report regarding the joint use with the Department of Correction of the Swannanoa Youth Development Center campus.

"The staffing levels of the new youth development centers shall be capped at 66 staff for a 32-bed facility and 198 staff for the 96-bed facility for the 2007-2009 fiscal biennium. Staffing ratios shall be no more than 2.1 staff per every juvenile committed at every other existing youth development center.

"(c) In the April 1, 2008, report, the Department shall include a recommendation on whether the staffing and budget for youth development centers should be modified to reflect the results of the pilot treatment programs."

Treatment Staffing Model at Youth Development Centers. — Session Laws 2009-451, s. 18.4, provides: "The Department shall implement the staffing treatment model presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee as part of the Department's November 14, 2006, report regarding the joint use with the Department of Correction of the Swannanoa Youth Development Center campus.

"The staffing levels of the new youth development centers shall be capped at 66 staff for a 32-bed facility and 198 staff for the 96-bed facility for the 2009-2011 fiscal biennium. Staffing ratios shall be no more than 2.1 staff per every juvenile committed at every other existing youth development center."

Editor's Note. — For establishment of a pilot program for a multifunctional juvenile facility in Eastern North Carolina, see the Editor's note under G.S. 143B-516.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143B-526. Authority to provide necessary medical or surgical care.

The Department may provide any medical and surgical treatment necessary to preserve the life and health of juveniles committed to the custody of the Department; however, no surgical operation may be performed except as authorized in G.S. 148-22.2. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-527. Compensation to juveniles in care.

A juvenile who has been committed to the Department may be compensated for work or participation in training programs at rates approved by the Secretary within available funds. The Secretary may provide for a reasonable allowance to the juvenile for incidental personal expenses, and any balance of the juvenile's earnings remaining at the time the juvenile is released shall be paid to the juvenile or the juvenile's parent or guardian. The Department may accept grants or funds from any source to compensate juveniles under this section. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-528. Visits and community activities.

(a) The Department shall encourage visits by parents or guardians and responsible relatives of juveniles committed to the custody of the Department.

(b) The Department shall develop a program of home visits for juveniles in the custody of the Department. The visits shall begin after the juvenile has been in the custody of the Department for a period of at least six months. In developing the program, the Department shall adopt criteria that promote the protection of the public and the best interests of the juvenile. (1998-202, ss. 1(b), (2)c; 2000-137, s. 1(b).)

§ 143B-529. Regional detention services.

The Department is responsible for juvenile detention services, including the development of a statewide plan for regional juvenile detention services that offer juvenile detention care of sufficient quality to meet State standards to any juvenile requiring juvenile detention care within the State in a detention facility as follows:

(1) The Department shall plan with the counties operating a county detention facility to provide regional juvenile detention services to surrounding counties. The Department has discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate factors.

(2) The Department may plan with any county that has space within its county jail system to use the existing space for a county detention facility when needed, if the space meets the State standards for a detention facility and meets all of the requirements of G.S. 153A-221. The use of space within the county jail system shall be constructed to ensure that juveniles are not able to converse with, see, or be seen by the adult population, and juveniles housed in a space within a county jail shall be supervised closely.

(3) The Department shall plan for and administer regional detention facilities. The Department shall carefully plan the location, architectural design, construction, and administration of a program to meet the needs of juveniles in juvenile detention care. The physical facility of a regional detention facility shall comply with all applicable State

and federal standards. The programs of a regional detention facility shall comply with the standards established by the Department. (1998-202, ss. 1(b), 2(f); 1998-217, s. 57(3); 2000-137, s. 1(b).)

§ 143B-530. State subsidy to county detention facilities.

The Department shall administer a State subsidy program to pay a county that provides juvenile detention services and meets State standards a certain per diem per juvenile. In general, this per diem should be fifty percent (50%) of the total cost of caring for a juvenile from within the county and one hundred percent (100%) of the total cost of caring for a juvenile from another county. Any county placing a juvenile in a detention facility in another county shall pay fifty percent (50%) of the total cost of caring for the juvenile to the Department. The Department may vary the exact funding formulas to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care. (1998-202, ss. 1(b), 2(f); 1998-217, s. 57(3); 2000-137, s. 1(b).)

§ 143B-531. Authority for implementation.

In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Department may:

(1) Release or transfer a juvenile from one detention facility to another when necessary to administer the juvenile's detention appropriately.

(2) Plan with counties that operate county detention facilities to provide regional services and to upgrade physical facilities to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards.

(3) Allow the State to reimburse law enforcement officers or other appropriate employees of local government for the costs of transportation of a juvenile to and from any juvenile detention facility.

(4) Seek funding for juvenile detention services from federal sources, and accept gifts of funds from public or private sources. (1998-202, ss. 1(b), 2(f); 1998-217, s. 57(3); 2000-137, s. 1(b).)

§§ 143B-532 through 143B-534: Reserved for future codification purposes.

Part 4. Juvenile Court Services.

§ 143B-535. Duties and powers of chief court counselors.

The chief court counselor in each district appointed under G.S. 143B-516(b)(15) may:

(1) Appoint juvenile court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.

(2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district.

(3) Provide in-service training for staff as required by the Department.

(4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services.

(5) Delegate to a juvenile court counselor or supervisor the authority to carry out specified responsibilities of the chief court counselor to facilitate the effective operation of the district.
(6) Designate a juvenile court counselor in the district as acting chief court counselor, to act during the absence or disability of the chief court counselor. (1998-202, ss. 1(b), 2(f); 1998-217, s. 57(3); 2000-137, s. 1(b); 2009-320, s. 1.)

Cross References. — As to the duties of the chief court counselor with regard to the development of a plan for a pilot program under which participating local school administrative units place all students who are on short-term out-of-school suspension in alternative learning programs, see the (identical) notes regarding Session Laws 2001-178 at G.S. 115C-391 and 143B-516.

Editor's Note. — For establishment of a pilot program for a multifunctional juvenile facility in Eastern North Carolina, see the Editor's note under G.S. 143B-516.

Effect of Amendments. — Session Laws 2009-320, s. 1, effective July 17, 2009, inserted "juvenile" in subdivision (1), and added subdivisions (5) and (6).

§ 143B-536. Duties and powers of juvenile court counselors.

As the court or the chief court counselor may direct or require, all juvenile court counselors shall have the following powers and duties:

(1) Secure or arrange for any information concerning a case that the court may require before, during, or after the hearing.
(2) Prepare written reports for the use of the court.
(3) Appear and testify at court hearings.
(4) Assume custody of a juvenile as authorized by G.S. 7B-1900, or when directed by court order.
(5) Furnish each juvenile on probation or protective supervision and that juvenile's parents, guardian, or custodian with a written statement of the juvenile's conditions of probation or protective supervision, and consult with the juvenile's parents, guardian, or custodian so that they may help the juvenile comply with the conditions.
(6) Keep informed concerning the conduct and progress of any juvenile on probation or under protective supervision through home visits or conferences with the parents or guardian and in other ways.
(7) See that the juvenile complies with the conditions of probation or bring to the attention of the court any juvenile who violates the juvenile's probation.
(8) Make periodic reports to the court concerning the adjustment of any juvenile on probation or under court supervision.
(9) Keep any records of the juvenile's work as the court may require.
(10) Account for all funds collected from juveniles.
(11) Serve necessary court documents pertaining to delinquent and undisciplined juvenile matters.
(12) Assume custody of juveniles under the jurisdiction of the court when necessary for the protection of the public or the juvenile, and when necessary to carry out the responsibilities of juvenile court counselors under this section and under Chapter 7B of the General Statutes.
(13) Use reasonable force and restraint necessary to secure custody assumed under subdivision (12) of this section.
(14) Provide supervision for a juvenile transferred to the counselor's supervision from another court or another state, and provide supervision for any juvenile released from an institution operated by the Department when requested by the Department to do so.

(14a) Assist in the implementation of any order entered pursuant to G.S. 5A-32 as directed by a judicial official exercising jurisdiction under that section.

(15) Assist in the development of post-release supervision and the supervision of juveniles.

(16) Screen and evaluate a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.

(17) Have any other duties as the court may direct.

(18) Have any other duties as the Department may direct. (1998-202, ss. 1(b), 2(d), 2(e), 2(f); 1998-217, s. 57(3); 2000-137, s. 1(b); 2001-490, s. 2.41; 2007-168, s. 7.)

Cross References. — As to contempt by juveniles, see G.S.5A-31 et seq.

§§ 143B-537 through 143B-539: Reserved for future codification purposes.

Part 5. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

§ 143B-540. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

(a) The Department shall implement the comprehensive juvenile delinquency and substance abuse prevention plan developed by the Office of Juvenile Justice and shall coordinate with County Councils for implementation of a continuum of services and programs at the community level.

The Department shall ensure that localities are informed about best practices in juvenile delinquency and substance abuse prevention.

(b) The plan shall contain the following:

(1) Identification of the risk factors at the developmental stages of a juvenile's life that may result in delinquent behavior.

(2) Identification of the protective factors that families, schools, communities, and the State must support to reduce the risk of juvenile delinquency.

(3) Programmatic concepts that are effective in preventing juvenile delinquency and substance abuse and that should be made available as basic services in the communities, including:

a. Early intervention programs and services.

b. In-home training and community-based family counseling and parent training.

c. Adolescent and family substance abuse prevention services, including alcohol abuse prevention services, and substance abuse education.

d. Programs and activities offered before and after school hours.

e. Life and social skills training programs.

f. Classes or seminars that teach conflict resolution, problem solving, and anger management.

g. Services that provide personal advocacy, including mentoring relationships, tutors, or other caring adult programs.

(c) The Department shall cooperate with all other affected State agencies and entities in implementing this section. (1998-202, s. 1(b); 2000-137, s. 1(b).)

Editor's Note. — For establishment of a pilot program for a multifunctional juvenile facility in Eastern North Carolina, see the Editor's note under G.S. 143B-516.

§§ 143B-541, 143B-542: Reserved for future codification purposes.

Part 6. Juvenile Crime Prevention Councils.

§ 143B-543. Legislative intent.

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this Part is to develop community-based alternatives to youth development centers and to provide community-based delinquency, substance abuse, and gang prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils. (1998-202, s. 1(b); 2000-137, s. 1(b); 2001-95, s. 5; 2008-56, s. 2.)

Editor's Note. — Session Laws 2008-56, s. 1, provides: "This act shall be known and may be cited as the 'North Carolina Street Gang Prevention and Intervention Act.'"

Establishment of a Gang Prevention and Intervention Pilot Program — Session Laws 2009-451, s. 18.5 provides: "(a) As part of the Governor's Comprehensive Gang Initiative, the Department of Juvenile Justice and Delinquency Prevention shall establish a two-year Gang Prevention and Intervention Pilot Program that will focus on youth at risk for gang involvement and those who are already associated with gangs and gang activity. The Department of Juvenile Justice and Delinquency Prevention shall:

"(1) Ensure that measurable performance indicators and systems are put in place to evaluate the effectiveness of the pilot program, and

"(2) Conduct both process- and outcome-focused evaluations of the pilot program to determine community and institutional impacts of the pilot program pertaining to gang behavior, desistance, and activities. These evaluations may consider the degree of successful implementation of the program and measurable changes in gang-related and gang-affiliated behaviors noted in institutional, court system, communities, and related programs.

"(b) The Department of Juvenile Justice and Delinquency Prevention shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the implementation and continuing operation of the pilot program by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of the pilot program. In addition, the report shall include the information set out in subsection (a) of this section."

Effect of Amendments. — Session Laws 2008-56, s. 2, effective July 6, 2008, in the first paragraph, deleted "and" following "delinquency" and inserted "and gang" following "substance abuse."

§ 143B-544. Creation; method of appointment; membership; chair and vice-chair.

(a) As a prerequisite for a county receiving funding for juvenile court services and delinquency prevention programs, the board of commissioners of a county shall appoint a Juvenile Crime Prevention Council. Each County Council is a continuation of the corresponding Council created under G.S.

147-33.61. The County Council shall consist of not more than 26 members and should include, if possible, the following:

(1) The local school superintendent, or that person's designee;
(2) A chief of police in the county;
(3) The local sheriff, or that person's designee;
(4) The district attorney, or that person's designee;
(5) The chief court counselor, or that person's designee;
(6) The director of the area mental health, developmental disabilities, and substance abuse authority, or that person's designee;
(7) The director of the county department of social services, or consolidated human services agency, or that person's designee;
(8) The county manager, or that person's designee;
(9) A substance abuse professional;
(10) A member of the faith community;
(11) A county commissioner;
(12) Two persons under the age of 18 years, one of whom is a member of the State Youth Council;
(13) A juvenile defense attorney;
(14) The chief district court judge, or a judge designated by the chief district court judge;
(15) A member of the business community;
(16) The local health director, or that person's designee;
(17) A representative from the United Way or other nonprofit agency;
(18) A representative of a local parks and recreation program; and
(19) Up to seven members of the public to be appointed by the board of commissioners of a county.

The board of commissioners of a county shall modify the County Council's membership as necessary to ensure that the members reflect the racial and socioeconomic diversity of the community and to minimize potential conflicts of interest by members.

(b) Two or more counties may establish a multicounty Juvenile Crime Prevention Council under subsection (a) of this section. The membership shall be representative of each participating county.

(c) The members of the County Council shall elect annually the chair and vice-chair. (1998-202, s. 1(b); 2000-137, s. 1(b); 2001-199, s. 1.)

JCPC Grant Reporting. — Session Laws 2009-451, s. 18.7, provides: "On or before October 1 of each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council grants, including:

"(1) The amount of the grant awarded.

"(2) The membership of the local committee or council administering the award funds on the local level.

"(3) The type of program funded.

"(4) A short description of the local services, programs, or projects that will receive funds.

"(5) Identification of any programs that received grant funds at one time but for which funding has been eliminated by the Department.

"(6) The number of at-risk, diverted, and adjudicated juveniles served by each county.

"(7) The Department's actions to ensure that county JCPCs prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

"(8) The total cost for each funded program, including the cost per juvenile and the essential elements of the program.

"A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly."

For prior similar provisions, see Session Laws 2001-424, s. 24.2(a)-(c), Session Laws 2003-284, s. 15.2(a) and (b), Session Laws 2005-276, s. 16.2(a) and (b), and Session Laws 2007-323, s. 18.2(a) and (b), as amended by Session Laws 2008-107, s. 16.1(a).

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Oper-

ations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143B-545. Terms of appointment.

Each member of a County Council shall serve for a term of two years, except for initial terms as provided in this section. Each member's term is a continuation of that member's term under G.S. 147-33.62. Members may be reappointed. The initial terms of appointment began January 1, 1999. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-544(a) were appointed for an initial term ending on June 30, 2000. The initial term of the second member added to each County Council pursuant to G.S. 143B-544(a)(12) shall begin on July 1, 2001, and end on June 30, 2002. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-544(a) shall be appointed for two-year terms, beginning on July 1. All other persons appointed to the Council were appointed for an initial term ending on June 30, 2001, and, after those initial terms, persons shall be appointed for two-year terms beginning on July 1. (1998-202, s. 1(b); 1999-423, s. 15; 2000-137, s. 1(b); 2001-199, s. 2.)

Editor's Note. — G.S. 147-33.62, referred to above, was repealed by Session Laws 2000-137, which enacted this article.

§ 143B-546. Vacancies; removal.

Appointments to fill vacancies shall be for the remainder of the former member's term.

Members shall be removed only for malfeasance or nonfeasance as determined by the board of county commissioners. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-547. Meetings; quorum.

County Councils shall meet at least bimonthly, or more often if a meeting is called by the chair.

A majority of members constitutes a quorum. (1998-202, s. 1(b); 1999-423, s. 16; 2000-137, s. 1(b).)

§ 143B-548. Compensation of members.

Members of County Councils shall receive no compensation but may receive a per diem in an amount established by the board of county commissioners. (1998-202, s. 1(b); 2000-137, s. 1(b).)

§ 143B-549. Powers and duties.

(a) Each County Council shall review annually the needs of juveniles in the county who are at risk of delinquency or who have been adjudicated undisciplined or delinquent and the resources available to address those needs. In particular, each County Council shall assess the needs of juveniles in the county who are at risk or who have been associated with gangs or gang activity, and the local resources that are established to address those needs. The Council shall develop and advertise a request for proposal process and submit a written plan of action for the expenditure of juvenile sanction and prevention funds to the board of county commissioners for its approval. Upon the county's authorization, the plan shall be submitted to the Department for final approval and subsequent implementation.

(b) Each County Council shall ensure that appropriate intermediate dispositional options are available and shall prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

(c) On an ongoing basis, each County Council shall:

(1) Assess the needs of juveniles in the community, evaluate the adequacy of resources available to meet those needs, and develop or propose ways to address unmet needs.

(2) Evaluate the performance of juvenile services and programs in the community. The Council shall evaluate each funded program as a condition of continued funding.

(3) Increase public awareness of the causes of delinquency and of strategies to reduce the problem.

(4) Develop strategies to intervene and appropriately respond to and treat the needs of juveniles at risk of delinquency through appropriate risk assessment instruments.

(5) Provide funds for services for treatment, counseling, or rehabilitation for juveniles and their families. These services may include court-ordered parenting responsibility classes.

(6) Plan for the establishment of a permanent funding stream for delinquency prevention services.

(7) Develop strategies to intervene and appropriately respond to the needs of juveniles who have been associated with gang activity or who are at risk of becoming associated with gang activity.

(d) The Councils may examine the benefits of joint program development between counties within the same judicial district. (1998-202, s. 1(b); 2000-137, s. 1(b); 2008-56, s. 3.)

Editor's Note. — Session Laws 2008-56, s. 1, provides: "This act shall be known and may be cited as the 'North Carolina Street Gang Prevention and Intervention Act.'"

Effect of Amendments. — Session Laws 2008-56, s. 3, effective July 6, 2008, inserted the second sentence in subsection (a); added subdivision (c)(7).

§ 143B-550. Funding for programs.

(a) Annually, the Department shall develop and implement a funding mechanism for programs that meet the standards developed under this Part. The Department shall ensure that the guidelines for the State and local partnership's funding process include the following requirements:

(1) Fund effective programs. — The Department shall fund programs that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded.

(2) Use a formula for the distribution of funds. — A funding formula shall be developed that ensures that even the smallest counties will be able to provide the basic prevention and alternative services to juveniles in their communities.

(3) Allow and encourage local flexibility. — A vital component of the State and local partnership established by this section is local flexibility to determine how best to allocate prevention and alternative funds.

(4) Combine resources. — Counties shall be allowed and encouraged to combine resources and services.

(b) The Department shall adopt rules to implement this section. The Department shall provide technical assistance to County Councils and shall require them to evaluate all State-funded programs and services on an ongoing and regular basis.

(c) The Department of Juvenile Justice and Delinquency Prevention shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety no later than March 1, 2006, and annually thereafter, on the results of the alternatives to commitment demonstration programs funded by Section 16.7 of S.L. 2004-124. The 2007 report and all annual reports thereafter shall also include projects funded by Section 16.11 of S.L. 2005-276 for the 2005-2006 fiscal year. Specifically, the report shall provide a detailed description of each of the demonstration programs, including the numbers of juveniles served, their adjudication status at the time of service, the services/treatments provided, the length of service, the total cost per juvenile, and the six- and 12-month recidivism rates for the juveniles after the termination of program services. (1998-202, s. 1(b); 2000-137, s. 1(b); 2005-276, s. 16.11(c).)

Editor's Note. — Session Laws 2005-276, s. 16.11(c), was codified as subsection (c) of this section at the direction of the Revisor of Statutes.

Session Laws 2005-276, s. 16.11(a), provides: "Of the funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention, the sum of two hundred fifty thousand dollars ($250,000) shall be used to expand Juvenile Crime Prevention Councils demonstration projects designed to reduce commitments to youth development centers. Specifically, the funds shall be awarded to Juvenile Crime Prevention Councils to provide residential and/or community-based intensive services to juveniles who have been adjudicated delinquent with a level 2 or 3 disposition or who are reentering the community after serving time in a youth development center. The Department shall develop a competitive grant award process to allocate the funds to county Juvenile Crime Prevention Councils. The programs must initiate services to the targeted population no later than March 1, 2006. On June 30, 2006, any funds not awarded for demonstration projects pursuant to this section by the Department shall revert to the General Fund. The Department may award up to four grants to Juvenile Crime Prevention Councils, and no individual grant may exceed one hundred thousand dollars ($100,000)."

Session Laws 2005-276, s. 16.11(d), as added by Session Laws 2006-66, s. 15.5, provides: "The requirements of this section apply to all future allocations by the Department of Juvenile Justice and Delinquency Prevention of the funds appropriated to the Department by Section 16.11 of S.L. 2005-276 and Section 16.7 of S.L. 2004-124."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2008-107, s. 14.8(a), provides: "(a) The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, shall conduct a feasibility study for measuring the effectiveness of programs that receive Juvenile Crime Prevention Council (JCPC) grant funds. All State agencies and community-based programs that receive JCPC funding shall provide data as requested by the Commission.

"The Sentencing and Policy Advisory Commission shall provide an interim report on the results of the feasibility study to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by December 1, 2008. The final plan for measuring the effectiveness of JCPC programs shall be provided to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2009."

Session Laws 2008-107, s. 16.3 provides: "The Department of Juvenile Justice and Delinquency Prevention, the NC Juvenile Services Association, and the Community Alternatives for Youth, in consultation with the Fiscal Research Division, shall develop and propose a revision to the county allocation formula for Juvenile Crime Prevention Councils. The Department shall report the recommendations to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the Subcommittees on Justice and Public Safety of the House of Representatives and Senate Appropriations Committees by December 1, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§§ 143B-551 through 143B-555: Reserved for future codification purposes.

Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

§§ 143B-556, 143B-557: Repealed by Laws 2008-118, s. 3.12(a), effective July 1, 2008.

Editor's Note. — Session Laws 2008-187, s. 44.5(a), repealed Session Laws 2008-56, s. 4, which amended G.S. 143B-557 by inserting "gang prevention" in subdivisions (3) and (6) and adding a subdivision (5a) relating to review of the level of gang activity in the state.

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State Budget Act.

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Article 1.

General Provisions.

§ 143C-1-1. Purpose and definitions.

(a) Title of Chapter. — This Chapter is the "State Budget Act" and may be cited by that name.

(b) The provisions of this Chapter shall apply to every State agency, unless specifically exempted herein, and to every non-State entity that receives or expends any State funds. No State agency or non-State entity shall expend any State funds except in accordance with an act of appropriation and the requirements of this Chapter. The provisions of Chapter 120 of the General Statutes shall continue to apply to the General Assembly and to control its expenditures and in the event of a conflict with this Chapter, the provisions of Chapter 120 of the General Statutes shall control. Nothing in this Chapter abrogates or diminishes the inherent power of the legislative, executive, or judicial branch.

(c) Purpose. — This Chapter establishes procedures for the following:
- (1) Preparing the recommended State budget.
- (2) Enacting the State budget.
- (3) Administering the State budget.

(d) Definitions. — The following definitions apply in this Chapter:
- (1) Appropriation. — An enactment by the General Assembly authorizing the withdrawal of money from the State treasury. An enactment by the General Assembly that authorizes, specifies, or otherwise provides

that funds may be used for a particular purpose is not an appropriation.

(2) Biennium. — The two fiscal years beginning on July 1 of each odd-numbered year and ending on June 30 of the next odd-numbered year.

(3) Budget. — A plan to provide and spend money for specified programs, functions, activities, or objects during a fiscal year.

(4) Budget year. — The fiscal year for which a budget is proposed and enacted.

(5) Capital improvement. — A term that includes real property acquisition, new construction or rehabilitation of existing facilities, and repairs and renovations.

(6) Capital Improvements Appropriations Act. — An act of the General Assembly containing appropriations for one or more capital improvement projects.

(7) Certified budget. — The budget as enacted by the General Assembly including adjustments made for (i) distributions to State agencies from statewide reserves appropriated by the General Assembly, (ii) distributions of reserves appropriated to a specific agency by the General Assembly, and (iii) organizational or budget changes directed by the General Assembly but left to the Director to carry out.

(8) Controller. — The Office of the State Controller.

(9) Current Operations Appropriations Act. — An act of the General Assembly estimating revenue availability for and appropriating money for the current operations of State government during one or more budget years.

(10) Departmental receipt. — Fees, licenses, federal funds, grants, fines, penalties, tuition, and other similar collections or credits generated by State agencies in the course of performing their governmental functions that are applied to the cost of a program administered by the State agency or transferred to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.1, and that are not defined as tax proceeds or nontax revenues. Departmental receipts may include moneys transferred into a fiscal year from a prior fiscal year.

(11) Director. — The Director of the Budget, who is the Governor.

(12) Encumbrance. — A financial obligation created by a purchase order, contract, salary commitment, unearned or prepaid collections for services provided by the State, or other legally binding agreement.

(13) Fiscal period. — A fiscal biennium beginning in odd-numbered years or the first or second fiscal year within a fiscal biennium.

(14) Fiscal year. — The annual period beginning July 1 and ending on the following June 30.

(15) Fund. — A fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources, together with all related liabilities and residual equities or balances, and changes therein, for the purpose of carrying on stated programs, activities, and objectives of State government.

(16) General Fund Operating Budget. — The sum of all appropriations from the General Fund for a fiscal year, except appropriations for (i) capital improvements, including repairs and renovations, and (ii) one-time expenditures due to natural disasters or other emergencies shall not be included.

(17) Information technology. — As defined in G.S. 147-33.81(2).

(18) Non-State entity. — Any of the following that is not a State agency: an individual, a firm, a partnership, an association, a county, a corporation, or any other organization or group acting as a unit. The term includes a unit of local government and public authority.

(19) Nontax revenue. — Revenue that is not a tax proceed and that is required by statute to be credited to the General Fund.

(20) Object or line item. — An expenditure or receipt in a recommended or enacted budget that is designated in the Budget Code Structure of the North Carolina Accounting System Uniform Chart of Accounts prescribed by the Office of the State Controller.

(21) Performance information. — The organizational structure, agency activity statements, performance indicators, and analyses of program efficiency and effectiveness.

(22) Public authority. — A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation and (ii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

(23) Purpose or program. — A group of objects or line items for support of a specific activity outlined in a recommended or enacted budget that is designated by a nine-digit fund code in accordance with the Budget Code Structure of the North Carolina Accounting System Uniform Chart of Accounts prescribed by the Office of the State Controller.

(24) State agency. — A unit of the executive, legislative, or judicial branch of State government, such as a department, an institution, a division, a commission, a board, a council, or The University of North Carolina. The term does not include a unit of local government or a public authority.

(25) State funds. — Any moneys including federal funds deposited in the State treasury except moneys deposited in a trust fund or agency fund as described in G.S. 143C-1-3.

(26) State resources. — All financial and nonfinancial assets of the State.

(27) State revenue. — An increase, other than interfund transfers and debt issue proceeds, in the financial assets of any State governmental or proprietary fund.

(28) Statutory appropriation. — An appropriation that authorizes the withdrawal of funds from the State treasury during fiscal years extending beyond the current fiscal biennium, without further act of the General Assembly.

(29) Unit of local government. — A municipal corporation that has the power to levy taxes, including a consolidated city-county, as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

(30) Unreserved fund balance. — The available General Fund cash balance effective June 30 after excluding documented encumbrances, unearned revenue, federal grants, statutory requirements, and other legal obligations to General Fund cash as determined by the State Controller. Beginning unreserved fund balance equals ending unreserved fund balance from the prior fiscal year. (2006-66, s. 6.19(h); 2006-203, s. 3; 2006-221, s. 3A; 2006-259, s. 40(h); 2007-393, s. 2.)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, makes this Chapter effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-259, s. 40(h) was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

Session Laws 2007-323, s. 6.4, provides: "Notwithstanding G.S. 143C-6-4(b), the Office of State Budget and Management, in consultation with the Office of the State Controller and the Fiscal Research Division, may adjust the enacted budget by making transfers among purposes or programs for the sole purpose of correctly aligning authorized positions and associated operating costs with the appropriate purposes or programs as defined in G.S. 143C-1-1(d)(23). The Office of State Budget and Management shall change the certified budget to reflect these adjustments only after reporting the proposed adjustments to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. Under no circumstances shall total General Fund expenditures for a State department exceed the amount appropriated to that department from the General Fund for the fiscal year."

Session Laws 2007-323, s. 32.1, provides: "The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 30.1 provides: "The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-399, s. 5, provides: "(a) Notwithstanding Chapter 143C of the General Statutes, funds in the unreserved credit balance on June 30, 2009, may be used only to partially repay federal funds that were overdrawn in the Medicaid Program in the 2008-2009 fiscal year. The remainder of the overdrawn funds may be repaid during the 2009-2011 fiscal biennium. The Director of the Budget shall report the timing and amount of the repayment to the chairs of the Senate and House of Representatives Appropriations Committees and the Fiscal Research Division by October 1, 2009.

"(b) This section becomes effective June 30, 2009."

Session Laws 2009-451, s. 6.21, provides: "Notwithstanding Chapter 143C of the General Statutes or any other provision of law, the Director of the Budget shall use funds appropriated in this act to repay any outstanding federal Medicaid funds not repaid pursuant to Section 5 of S.L. 2009-399. If funds available in the Department of Health and Human Services over the 2009-2011 fiscal biennium are not sufficient to repay the funds, the Director may use any funds within the State budget.

"The Director of the Budget shall report the amount of funds repaid no later than 30 days after payment to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division."

Session Laws 2009-451, s. 28.1, provides: "The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

CASE NOTES

Editor's Note. *— The annotations below were decided under former G.S. 143-2 and 143-16.*

Art Museum Building Commission. — There is nothing in this Article or G.S. 143B-58 which indicates a legislative intent to exempt the Art Museum Building Commission from the requirements of this Article. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

OPINIONS OF ATTORNEY GENERAL

Whether private donations to the State or its agencies are or are not subject to this Article, the Executive Budget Act, depends upon the nature of the gift and the particular terms and directions of the donor. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

Student activity fees, which are assessed from students of the Schools for the Deaf pursuant to G.S. 115C-126.1 (see now 143B-216.44), are "State funds" and are subject to the fiscal control of this Article, the Executive Budget Act. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

Patient funds held by institutions operated by the Division of Mental Health, either in its capacity as representative payee of the patient's Social Security income or as trustee of other personal funds received voluntarily from the patient or on his behalf, are not "State funds" and are not subject to this Article, the Executive Budget Act, or fiscal policies adopted pursuant to the Act. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

"Enterprise funds," established for the enhancement of vocational rehabilitation services for clients of State-operated sheltered workshops, are "State funds" and are subject to the fiscal control of this Article, the Executive Budget Act. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

The Governor has authority to transfer money from the Wireless 911 Fund to avoid a budget deficit, although it is within his discretion as to whether to do so. See opinion of Attorney General to Mr. Charles B. Archer, Vice Chair, North Carolina Wireless 911 Board, 2001 N.C. AG LEXIS 39 (6/29/01).

§ 143C-1-2. Appropriations: constitutional requirement; reversions.

(a) Appropriation Required to Withdraw State Funds From the State Treasury. — In accordance with Section 7 of Article V of the North Carolina Constitution, no money shall be drawn from the State treasury but in consequence of appropriations made by law. A law enacted by the General Assembly that authorizes the expenditure of money from the State treasury is an appropriation; however, an enactment by the General Assembly that authorizes, specifies, or otherwise provides that funds may be used for a particular purpose is not an appropriation.

(b) Reversions. — Unless otherwise provided by law, at the end of the fiscal year the unexpended, unencumbered balance of an appropriation reverts to the fund from which the appropriation was made; except that (i) an appropriation to the General Assembly shall not revert unless otherwise provided by the Legislative Services Commission, (ii) an appropriation for a capital improvement project shall revert as provided by G.S. 143C-8-11, and (iii) an appropriation for the implementation of information technology (IT) projects shall not revert until the project is implemented or abandoned. (2006-203, s. 3.)

Cross References. — As to collegiate insignia plates and certain other special plates, see G.S. 20-81.12.

Editor's Note. — Session Laws 2009-451, s. 15.6, provides: "Notwithstanding the provisions of G.S. 143C-1-2(b), certification and renewal fees collected by the Dispute Resolution Commission are nonreverting and are only to be used at the direction of the Commission."

For prior similar provisions, see Session Laws 2007-323, s. 14.9.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143C-1-3. Fund types.

(a) Types. — The Controller shall account for State resources through use of the fund types listed in this subsection. The Controller may not establish a fund type that differs from the listed fund types unless the Governmental Accounting Standards Board has approved the use of the different fund type. The fund types are described as follows, except that where a conflict exists between a description used in this section and the definition of the corresponding fund type issued by the Governmental Accounting Standards Board, it is presumed that the definition issued by the Governmental Accounting Standards Board shall prevail.

Governmental Funds.

(1) Capital Projects Funds. — Accounts for financial resources to be used for the acquisition or construction of major capital facilities other than those financed by proprietary funds or in trust funds for individuals, private organizations, or other governments. Capital outlays financed from general obligation bond proceeds should be accounted for through a capital projects fund.
(2) Debt Service Funds. — Accounts for the accumulation of resources for, and the payment of, general long-term debt principal and interest.
(3) General Fund. — Accounts for all financial resources except those required to be reported in another fund.
(4) Special Revenue Funds. — Accounts for the proceeds of specific revenue sources, other than trusts for individuals, private organizations, or other governments or for major capital projects, that are legally restricted to expenditure for specified purposes.
(5) Permanent Funds. — Accounts for resources that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting government's programs.

Proprietary Funds.

(6) Enterprise Funds. — Accounts for any activity for which a fee is charged to external users for goods or services. Activities are required to be reported as enterprise funds if any one of the following criteria is met. Each of these criteria should be applied in the context of the activity's principal revenue sources.
    a. The activity is financed with debt that is secured solely by a pledge of the net revenues from fees and charges of the activity.
    b. Laws or regulations require that the activity's costs of providing services, including capital costs, be recovered with fees and charges rather than with taxes or similar revenues.
    c. The pricing policies of the activity establish fees and charges designed to recover its costs, including capital costs.
(7) Internal Service Funds. — Accounts for any activity that provides goods or services to other funds, departments, or agencies of the primary government and its component units, or to other governments, on a cost-reimbursement basis. Internal service funds should be used only if the reporting government is the predominant participant in the activity. Otherwise, the activity should be reported as an enterprise fund.

Agency and Trust Funds.

(8) Agency Funds. — Accounts for resources held by the reporting government in a purely custodial capacity. Agency funds typically involve only the receipt, temporary investment, and remittance of fiduciary resources to individuals, private organizations, or other governments.

(9) Investment Trust Funds. — Accounts for the external portion of investment pools reported by the sponsoring government.

(10) Pension and Other Employee Benefit Trust Funds. — Accounts for resources that are required to be held in trust for the members and beneficiaries of defined benefit pension plans, defined contribution plans, other postemployment benefit plans, or other employee benefit plans.

(11) Private-Purpose Trust Funds. — Accounts for all other trust arrangements under which principal and income benefit individuals, private organizations, or other governments.

(b) Designation. — If State resources are designated by law as a fund or an account within a fund and there is a conflict between the legal designation and the appropriate accounting designation of the State resources, then the Controller shall determine the appropriate designation of the State resources based on the intended use and financial treatment of the State resources as set out in the law establishing the fund or account. The Controller shall determine the fund type of all separate funds and account for them accordingly. The Controller shall keep the total number of funds to the minimum number practical.

(c) Notwithstanding subsections (a) and (b) of this section, funds established for The University of North Carolina and its constituent institutions pursuant to the following statutes are exempt from Chapter 143C of the General Statutes and shall be accounted for as provided by those statutes, except that the provisions of Article 8 of Chapter 143C of the General Statutes shall apply to the funds: G.S. 116-35, 116-36, 116-36.1, 116-36.2, 116-36.4, 116-36.5, 116-36.6, 116-44.4, 116-68, 116-220, 116-235, 116-238. (2006-203, s. 3.)

Editor's Note. — Session Laws 2009-451, s. 6.6B, provides: "Notwithstanding G.S. 143C-1-3 or any other provision of law to the contrary, the Office of State Budget and Management and the Office of the State Controller shall consult with the Joint Legislative Commission on Governmental Operations prior to the establishment of a new special fund as defined in G.S. 143C-1-3."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143C-1-4. Interest earnings credited to the General Fund; interest earnings on Highway Fund and Highway Trust Fund credited to those funds.

(a) Interest Earnings Credited to the General Fund. — Unless otherwise provided by law, interest earned on all funds shall be credited to the General Fund.

(b) Exception for Interest Earnings on Highway Fund and Highway Trust Fund. — Interest earned by the Highway Fund and the Highway Trust Fund shall be credited to the Highway Fund and the Highway Trust Fund respectively. (2006-203, s. 3.)

Article 2.

Director of the Budget.

§ 143C-2-1. Governor is Director of the Budget.

(a) Governor is Director of the Budget. — The Governor is the Director of the Budget. In that capacity, the Governor is required by Article III, Section 5(3) of the North Carolina Constitution to prepare and recommend a budget and to administer the budget as enacted by the General Assembly. The Governor's powers under this Chapter extend to all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known. The Governor may delegate the authority to perform a power or duty of the Director under this Chapter to the Office of State Budget and Management or to one or more persons.

(b) State Agencies and Non-State Entities to Provide Information Requested by the Director; Examination of Persons and Agencies by Director. — Upon request, all State agencies and non-State entities subject to this act shall furnish the Director, in the form and at the time requested by the Director, any information desired by the Director in relation to their respective activities or fiscal affairs so long as the information is not confidential pursuant to federal or State law. The Director may subpoena and examine under oath any person directly or indirectly responsible for the operations of any executive State agency or any non-State entity subject to the provisions of this Chapter.

(c) Governor May Request State Auditor to Audit State Agency or Non-State Entity Receiving State Funds. — As authorized by G.S. 147-64.6(c)(3), the Governor may request the State Auditor to make an audit of or cause an audit to be made of the books and accounts of any State agency and may require that the cost of the audit be borne by the State agency. The Governor may also request the State Auditor to make an audit of or cause an audit to be made of the books and records of any non-State entity receiving State funds pursuant to the State Auditor's authority granted in G.S. 147-64.7. (2006-203, s. 3.)

Annual Follow-up Analyses of Human Resources/Payroll Function Mapping Analysis. — Session Laws 2007-323, s. 6.7.(a)-(e), provides: "(a) The Office of State Budget and Management, in consultation with the Office of State Controller and the Office of State Personnel, shall conduct annual follow-up analyses of the Human Resources/Payroll Function Mapping Analysis that was completed in fiscal year 2007 by the BEACON staff and the Office of State Budget and Management. This initial analysis was conducted to provide not only a pre-implementation assessment of State agency Human Resources/Payroll staffing prior to BEACON HR/Payroll implementation but also to provide a basis on which new HR/Payroll roles required by BEACON implementation can be mapped. These follow-up analyses of State agency HR/Payroll staffing shall be completed by January 1 of each year to assure the staffing levels remain appropriate. The annual staffing analyses shall be conducted throughout the implementation of the BEACON HR/Payroll System and shall continue for a reasonable time after the implementation to assure that the staffing levels are adjusted based on the increased efficiency provided by the implementation.

"(b) The Office of State Budget and Management, in consultation with the Office of State Controller, shall conduct a staffing analysis of the business functions of State government to include, but not be limited to, agency fiscal offices, budget offices, and procurement offices to be completed by April 30, 2008. This initial analysis will serve as a pre-implementation assessment of State agency business functions staffing prior to the proposed implementation of the remaining components of the BEACON ERP System. Follow-up analyses shall be conducted annually and completed by January 1 of each year to assure the staffing levels remain appropriate. The annual staffing analyses shall be conducted throughout the implementation of future BEACON components and shall continue for a reasonable time after the implementation to assure that the staffing levels are adjusted based on the increased efficiency provided by the implementation.

"(c) By April 30, 2008, the Office of State

Budget and Management, in consultation with the Office of State Controller, and then by January 1, 2009, and annually thereafter, the Office of State Budget and Management, in consultation with the Office of State Controller and the Office of State Personnel, shall report to the Chairs of the House of Representatives Appropriations Committee, to the Chairs of the Senate Committee on Appropriations/Base Budget, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division on the results of the annual staffing analyses of State government business functions conducted pursuant to subsection (a) of this section and on the implementation of the BEACON HR/Payroll System.

"(d) Prior to any staffing changes that result from the staffing analyses conducted pursuant to subsection (b) of this section, the Office of State Budget and Management, in consultation with the Office of State Controller and the Office of State Personnel, shall report to the Chairs of the House of Representatives Appropriations Committee, to the Chairs of the Senate Committee on Appropriations/Base Budget, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division on the annual staffing analyses of State government business functions conducted pursuant to subsection (b) of this section and on the proposed implementation of the remaining components of the BEACON ERP System.

"(e) Notwithstanding any other provision of law, the Office of State Budget and Management may evaluate the impact of the BEACON Program on affected agencies and develop a plan for addressing resources affected by the Program. The State Redeployment Plan shall be implemented to the extent possible. When compliance with federal or State law requires, a new position may be created if a current or contracted position is eliminated. The Office of State Budget and Management, in consultation with the Office of the State Controller, shall report to the Joint Legislative Commission on Governmental Operations within 30 days for each employee change made under the State Redeployment Plan and shall include a five-year fiscal impact incurred by the State when converting any contracted position to a permanent position. This subsection expires June 30, 2008."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007 2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007 2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 22.5 provides: "The Office of State Budget and Management shall conduct a staffing survey of all State agencies and universities that use the BEACON system and determine the number of FTE staff assigned to BEACON training. The Office of State Budget and Management shall submit a final report outlining its findings and staffing recommendations to the House Appropriations Subcommittee on General Government, the Senate Appropriations Subcommittee on General Government and Information Technology, and the Fiscal Research Division by March 1, 2009."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143C-2-2. Collection of State Budget Statistics.

The Director shall coordinate the efforts of governmental agencies to collect, disseminate, and analyze economic, demographic, and social statistics pertinent to State budgeting. The Director shall do all of the following:

(1) Prepare and release the official demographic and economic estimates and projections for the State.

(2) Conduct special economic and demographic analyses and studies to support statewide budgeting.

(3) Develop and coordinate cooperative arrangements with federal, State, and local governmental agencies to facilitate the exchange of data to support State budgeting.

(4) Report major trends that influence revenues and expenditures in the State budget in the current fiscal year and that may influence

revenues and expenditures over the next five fiscal years. (2006-203, s. 3.)

§ 143C-2-3. Fiscal analysis required for any State agency bill that affects the budget.

A State agency proposing a bill that affects the State budget shall prepare a fiscal analysis for the bill and submit the analysis to the Fiscal Research Division upon introduction of the bill. The fiscal analysis shall estimate the impact of the legislation on the State budget for the first five fiscal years the legislation would be in effect. (2006-203, s. 3.)

§ 143C-2-4. Director of the Budget may direct State Treasurer to borrow money for certain payments.

The Director of the Budget, by and with the consent of the Governor and Council of State, may authorize and direct the State Treasurer to borrow in the name of the State, in anticipation of the collection of taxes, such sum as may be necessary to make the payments on the appropriations as even as possible and to preserve the best interest of the State in the conduct of the various State agencies during each fiscal year. (2006-203, s. 3.)

ARTICLE 3.

Development of the Governor's Recommended Budget.

§ 143C-3-1. Budget estimate for the legislative branch.

The Legislative Services Officer shall give the Director an estimate of the financial needs of the legislative branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the legislative branch shall be approved and certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include the estimates in the budget the Director submits to the General Assembly. The Director may recommend changes to these estimates in the budget submitted to the General Assembly. (2006-66, s. 6.19(g); 2006-203, s. 3; 2006-221, s. 3A; 2006-259, s. 40(g).)

Editor's Note. — Session Laws 2006-259, s. 40(g) was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

§ 143C-3-2. Budget estimate for the judicial branch.

The Administrative Officer of the Courts shall give the Director an estimate of the financial needs of the judicial branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the judiciary shall be approved and certified by the Chief Justice. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include these estimates for the judicial branch in the budget the Director submits to the General Assembly. The Director may recommend changes to these estimates in the budget the Director submits to the General Assembly. (2006-203, s. 3; 2007-393, s. 3.)

§ 143C-3-3. Budget requests from State agencies in the executive branch.

(a) General Provisions. — A State agency that is not in the legislative or judicial branch of government shall submit its budget requests for the upcoming fiscal period to the Director in accordance with the schedule prescribed by the Director. The Director shall give each State agency instructions to be used in estimating the funds required to provide necessary State government programs and capital improvements. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller and shall be approved and certified by the respective head or responsible officer of the agency submitting them.

(b) University of North Carolina System Request. — Notwithstanding subsections (c), (d), and (e) of this section, pursuant to G.S. 116-11 the Board of Governors shall prepare a unified budget request for all of the constituent institutions of The University of North Carolina, including repairs and renovations, capital fund requests, and information technology.

(c) Repairs and Renovations Funds Request. — In addition to any other information requested by the Director, any State agency proposing to repair or renovate an existing facility shall accompany that request with all of the following:

(1) A description of current deficiencies and proposed corrections with a review and evaluation of that proposal prepared by the Department of Administration.
(2) An estimate of project costs approved by the Department of Administration.
(3) A certification of project feasibility as described in G.S. 143-341.
(4) An explanation of the method by which the repair or renovation is to be financed.

(d) Capital Funds Request. — In addition to any other information requested by the Director, any State agency proposing to (i) acquire real property, (ii) construct a new facility, (iii) expand the building area (sq. ft.) of an existing facility, or (iv) rehabilitate an existing facility to accommodate new or expanded uses shall accompany that request with all of the following:

(1) An estimate of its space needs and other physical requirements, together with a review and evaluation of that estimate prepared by the Department of Administration.
(2) An estimate of project costs and cash flow requirements approved by the Department of Administration.
(3) A certification of project feasibility as described in G.S. 143-341.
(4) An explanation of the method by which the acquisition, construction, or rehabilitation is to be financed.
(5) An estimate of maintenance and operating costs, including personnel, for the project, covering the first five years of operation.
(6) An estimate of revenues, if any, to be derived from the project, covering the first five years of operation.

This subsection does not apply to requests for State resources for railroad, highway, or bridge construction or renovation.

(e) Information Technology Request. — In addition to any other information requested by the Director, any State agency requesting significant State resources, as defined by the Director, for the purpose of acquiring or maintaining information technology shall accompany that request with all of the following:

(1) A statement of its needs for information technology and related resources, including expected improvements to programmatic or business operations, together with a review and evaluation of that statement prepared by the State Chief Information Officer.

(2) A statement setting forth the requirements for State resources, together with an evaluation of those requirements by the State Chief Information Officer that takes into consideration the State's current technology, the opportunities for technology sharing, the requirements of Article 3D of Chapter 147 of the General Statutes, and any other factors relevant to the analysis.

(3) A statement by the State Chief Information Officer that sets forth viable alternatives, if any, for meeting the agency needs in an economical and efficient manner.

(4) In the case of an acquisition, an explanation of the method by which the acquisition is to be financed.

This subsection shall not apply to requests submitted by the General Assembly, the Administrative Office of the Courts, or The University of North Carolina. (2006-203, s. 3; 2007-117, s. 5(a).)

§ 143C-3-4. Budget requests from non-State entities.

Unless otherwise provided by law, budget requests from non-State entities shall be submitted to the Director or to a State agency designated by the Director. A State agency designated to receive a budget request from a non-State entity shall evaluate the request and forward its evaluation to the Director in accordance with procedures established by the Director. This section does not apply to the General Assembly or to actions of the General Assembly to appropriate funds to non-State entities. (2006-203, s. 3.)

§ 143C-3-5. Budget recommendations and budget message.

(a) Budget Proposals. — The Governor shall present budget recommendations, consistent with G.S. 143C-3-1, 143C-3-2, and 143C-3-3 to each regular session of the General Assembly at a mutually agreeable time to be fixed by joint resolution.

(b) Odd-Numbered Fiscal Years. — In odd-numbered years the budget recommendations shall include the following components:

(1) A Recommended State Budget setting forth goals for improving the State with recommended expenditure requirements, funding sources, and performance information for each State government program and for each proposed capital improvement. The Recommended State Budget may be presented in a format chosen by the Director, except that the Recommended State Budget shall clearly distinguish program continuation requirements, program reductions, program eliminations, program expansions, and new programs, and shall explain all proposed capital improvements in the context of the Six-Year Capital Improvements Plan and as required by G.S. 143C-8-6. The Director shall include as continuation requirements the amounts the Director proposes to fund for the enrollment increases in public schools, community colleges, and the university system.

(2) A Budget Support Document showing, for each budget code and purpose or program in State government, accounting detail corresponding to the Recommended State Budget.

a. The Budget Support Document shall employ the North Carolina Accounting System Uniform Chart of Accounts adopted by the State Controller to show both uses and sources of funds and shall display in separate parallel columns all of the following: (i) actual expenditures and receipts for the most recent fiscal year for which actual information is available, (ii) the certified budget for the preceding fiscal year, (iii) the currently authorized budget for the preceding fiscal year, (iv) program continuation requirements for each fiscal year of the biennium, (v) proposed expenditures and receipts for each fiscal year of the biennium, and (vi) proposed increases and decreases.

b. The Budget Support Document shall include detailed information on recommended expenditures for capital improvements as required by G.S. 143C-8-6.

c. The Budget Support Document shall include accurate projections of receipts, expenditures, and fund balances. Estimated receipts, including tuition collected by university or community college institutions, shall be adjusted to reflect actual collections from the previous fiscal year, unless the Director recommends a change that will result in collections in the budget year that differ from prior year actuals, or the Director otherwise determines there is a more reasonable basis upon which to accurately project receipts. Revenue and expenditure detail provided in the Budget Support Document shall be no less detailed than the two-digit level in the North Carolina Accounting System Uniform Chart of Accounts as prescribed by the State Controller.

d. The Budget Support Document shall clearly identify all proposed expenditures supported by existing or proposed appropriations, including statutory appropriations.

(3) A Current Operations Appropriation Act that makes appropriations for each fiscal year of the upcoming biennium for the operating expenses of all State agencies as contained in the Recommended State Budget, together with a Capital Improvements Appropriations Act that authorizes any capital improvements projects.

(4) The biennial State Information Technology Plan as outlined in G.S. 147-33-72B to be consistent in facilitating the goals outlined in the Recommended State Budget.

(c) Even-Numbered Fiscal Years. — In even-numbered years, the Governor may recommend changes in the enacted budget for the second year of the biennium. These recommendations shall be presented as amendments to the enacted budget and shall be incorporated in a recommended Current Operations Appropriation Act and a recommended Capital Improvements Appropriations Act as necessary. Any recommended changes shall clearly distinguish program reductions, program eliminations, program expansions, and new programs, and shall explain all proposed capital improvements in the context of the Six-Year Capital Improvements Plan and as required by G.S. 143C-8-6. The Governor shall provide sufficient supporting documentation and accounting detail, consistent with that required by G.S. 143C-3-5(b), corresponding to the recommended amendments to the enacted budget.

(d) Funds Included in Budget. — Consistent with requirements of the North Carolina Constitution, Article 5, Section 7(a), the Governor's Recommended State Budget, together with the Budget Support Document, shall include recommended expenditures of State funds from all Governmental and Proprietary Funds, as those funds are described in G.S. 143C-1-3. Except where provided otherwise by federal law, funds received from the federal government become State funds when deposited in the State treasury and shall be classified and accounted for in the Governor's budget recommendations no differently than funds from other sources.

(e) Revenue Estimates. — The recommended Current Operations Appropriations Act shall contain a statement showing the estimates of General Fund availability, Highway Fund availability, and Highway Trust Fund availability upon which the Recommended State Budget is based.

(f) Budget Message. — The Governor's budget recommendations shall be accompanied by a written budget message that does all of the following:

(1) Explains the goals embodied in the recommended budget.
(2) Explains important features of the activities anticipated in the budget.
(3) Explains the assumptions underlying the statement of revenue availability.
(4) Sets forth the reasons for changes from the previous biennium or fiscal year, as appropriate, in terms of programs, program goals, appropriation levels, and revenue yields.
(5) Identifies anticipated sources of funding for major spending initiatives.
(6) Prepares a fiscal analysis that addresses the State's budget outlook for the upcoming five-year period. This fiscal analysis shall include detailed estimates for five years for any proposals to create new or significantly expand programs and for proposals to create new or change existing law.

(g) Different Gubernatorial Administrations. — For years in which there will be a change in gubernatorial administrations, the incumbent Governor shall complete the budget recommendations and budget message by December 15 and deliver them to the Governor-elect. (2006-203, s. 3; 2007-393, s. 4.)

ARTICLE 4.

Budget Requirements.

§ 143C-4-1. Annual balanced budget.

The budget recommended by the Governor and the budget enacted by the General Assembly shall be balanced and shall include two fiscal years beginning on July 1 of each odd-numbered year. Each fiscal year and each fund shall be balanced separately. The budget for a fund is balanced when the beginning unreserved fund balance for the fiscal year, together with the projected receipts to the fund during the fiscal year, is equal to or greater than the sum of appropriations from the fund for that fiscal year. (2006-203, s. 3.)

§ 143C-4-2. Savings Reserve Account and appropriation of General Fund unreserved fund balance.

(a) Creation and Source of Funds. — The Savings Reserve Account is established as a reserve in the General Fund. The Controller shall reserve to the Savings Reserve Account one-fourth of any unreserved fund balance, as determined on a cash basis, remaining in the General Fund at the end of each fiscal year.

(b) Use of Funds. — The Savings Reserve Account is a component of the unappropriated General Fund balance. Funds reserved to the Savings Reserve Account shall be available for expenditure only upon an act of appropriation by the General Assembly.

(c) Goal for Savings Reserve Account Balance. — The General Assembly recognizes the need to establish and maintain sufficient reserves to address unanticipated events and circumstances such as natural disasters, economic downturns, threats to public safety, health, and welfare, and other emergencies. It is a goal of the General Assembly and the State to accumulate and maintain a balance in the Savings Reserve Account equal to or greater than eight percent (8%) of the prior year's General Fund operating budget. (2006-203, s. 3.)

Editor's Note. — Session Laws 2007-323, s. 2.2(c1), provides: "Notwithstanding G.S. 143-15.2, 143-15.3, and 143C-4-2, the State Controller shall transfer only one hundred seventy-five million dollars ($175,000,000) from the unreserved fund balance to the Savings Reserve Account on June 30, 2007. This is not an 'appropriation made by law', as that phrase is used in Article V, Section 7(1) of the North Carolina Constitution. This subsection becomes effective June 30, 2007."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 2.2(c1), provides: "Notwithstanding G.S. 143C-4-2, the State Controller shall not transfer any funds from the unreserved fund balance to the Savings Reserve Account on June 30, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143C-4-3. Repairs and Renovations Reserve Account.

(a) Creation and Source of Funds. — The Repairs and Renovations Reserve Account is established as a reserve in the General Fund. The State Controller shall reserve to the Repairs and Renovations Reserve Account one-fourth of any unreserved fund balance, as determined on a cash basis, remaining in the General Fund at the end of each fiscal year.

(b) Use of Funds. — The funds in the Repairs and Renovations Reserve Account shall be used only for the repair and renovation of State facilities and related infrastructure that are supported from the General Fund. Funds from the Repairs and Renovations Reserve Account shall be used only for the following types of projects:

(1) Roof repairs and replacements;
(2) Structural repairs;
(3) Repairs and renovations to meet federal and State standards;
(4) Repairs to electrical, plumbing, and heating, ventilating, and air-conditioning systems;
(5) Improvements to meet the requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., as amended;
(6) Improvements to meet fire safety needs;
(7) Improvements to existing facilities for energy efficiency;
(8) Improvements to remove asbestos, lead paint, and other contaminants, including the removal and replacement of underground storage tanks;
(9) Improvements and renovations to improve use of existing space;
(10) Historical restoration;
(11) Improvements to roads, walks, drives, utilities infrastructure; and
(12) Drainage and landscape improvements.

Funds from the Repairs and Renovations Reserve Account shall not be used for new construction or the expansion of the building area (sq. ft.) of an existing facility unless required in order to comply with federal or State codes or standards.

(c) Use of Funds. — Funds Available Only Upon Appropriation. — Funds reserved to the Repairs and Renovations Reserve Account shall be available for expenditure only upon an act of appropriation by the General Assembly. (2006-203, s. 3.)

Funds for Repairs and Renovations. — Session Laws 2009-451, s. 27.5(a), provides: "Of the funds in the Reserve for Repairs and Renovations for the 2009-2010 fiscal year, fifty percent (50%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143C-4-3, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty percent (50%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143C-4-3.

"Notwithstanding G.S. 143C-4-3, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

"Prior to allocating funds for the repair and renovation of facilities, the Board of Governors and the Office of State Budget and Management first shall consider allocating funds to restore cash balances transferred to the State Controller pursuant to Section 27.11 of this act. Any restoration of a cash balance for a capital improvement project at a constituent institution of The University of North Carolina or overseen by the Board of Governors shall be from the funds allocated to the Board of Governors under this subsection. Any other restoration shall be from the funds allocated to the Office of State Budget and Management under this subsection.

"The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds."

Session Laws 2009-451, s. 27.5(c), provides: "Notwithstanding G.S. 143C-4-3(b), funds allocated in subdivision (b)(2) of this section shall be used for repairs and renovations to State and university facilities that will make those facilities more energy efficient. Eligible projects under this subsection include:

"(1) Replacement of incandescent light bulbs with compact fluorescent light bulbs, installation of exit signs that employ light-emitting diode (LED) technology, the installation of occupancy sensors or optical sensors, and other lighting efficiency improvements.

"(2) For windows that need replacement, installation of more energy-efficient windows.

"(3) Insulation improvements when practicable.

"(4) Renovation, replacement, and upgrading of heating, ventilation, and air-conditioning (HVAC) systems.

"(5) Energy infrastructure renovation projects.

"(6) Any other retrofit or replacement projects that make State or university facilities more energy efficient for which the incremental cost of the project will be equal to or less than the energy savings that result over a period of three years after completion."

For prior similar provisions, see Session Laws 2007-323, s. 29.5(a)-(d), and Session Laws 2008-107, s. 27.3(a).

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143C-4-4. Contingency and Emergency Fund.

(a) Creation. — The Contingency and Emergency Fund is established within the General Fund. The General Assembly shall appropriate a specific amount to this fund for contingencies and emergencies in the Current Operations Appropriations Act or other appropriations bill.

(b) Authorized Uses. — Notwithstanding any other provision of law, funds appropriated to the Contingency and Emergency Fund may be used only for expenditures required: (i) by a court or Industrial Commission order, (ii) to respond to events as authorized under G.S. 166A-5(1)a.9. of the Emergency Management Act, or (iii) for other statutorily authorized purposes or other contingencies and emergencies.

(c) Request for Allocation. — A State agency may request an allocation from the Contingency and Emergency Fund by submitting a request in writing to the Director along with any information required by the Director. If the

Director approves the request, the Director shall present the request, together with a recommendation, to the Council of State for its approval. If the Council of State approves the request, the Director shall order the Controller to allocate the funds requested. The Director shall report on the request at the next scheduled meeting of the Joint Legislative Commission on Governmental Operations. (2006-203, s. 3.)

§ 143C-4-5. Non-State match restrictions.

Whenever money is required to match an appropriation made for a specific purpose by the State of North Carolina, the recipient of the appropriation shall actually receive as a gift, grant, earnings in actual money, or a pledge that can be used as collateral in any prudent loan transaction, the matching amount required. The recipient shall retain the matching amount received in its possession until spent for that purpose and shall spend an equal percentage of the appropriation and of the matching amount each time an expenditure is made, unless the individual appropriation requires otherwise. (2006-203, s. 3.)

§ 143C-4-6. General Fund operating budget size limited.

(a) Size Limitation. — Except as otherwise provided in this section, the General Fund operating budget each fiscal year shall not be greater than seven percent (7%) of the projected total State personal income for that fiscal year.

(b) Increase in Size Limitation. — To the extent that any percent increase in appropriations for a fiscal year for (i) Medicaid, (ii) operation of prisons, or (iii) operation of the courts or (iv) the costs of providing health insurance for teachers and State employees, exceeds the percent increase in State personal income growth for the same period, the limitation on the size of the General Fund operating budget provided in subsection (a) of this section for that fiscal year shall be increased by the dollar amount represented by the excess percentage. For all subsequent fiscal years, the percent limitation contained in subsection (a) shall then be increased to reflect that dollar adjustment.

(c) Fiscal Reports. — The Office of State Budget and Management and the Fiscal Research Division of the General Assembly shall each submit a tentative estimate of total State personal income for the upcoming fiscal year to the General Assembly no later than February 1 of each year. The Office and the Fiscal Research Division shall each submit a final projection of total State personal income for the upcoming fiscal year to the General Assembly no later than May 1 of each year. The General Assembly shall use the lower of the two final projections to calculate the limitation on the size of the General Fund operating budget provided in this section. (2006-203, s. 3; 2007-393, s. 5.)

§ 143C-4-7. Limit on number of permanent positions budgeted.

The total number of permanent budgeted positions established in State agencies shall not be increased by the end of any State fiscal year by a greater percentage rate of change than the percentage rate of change of the residential population growth for the State of North Carolina. The Office of State Budget and Management shall be responsible for computing the annual percentage rates of change for each measure. The population growth rate shall be computed by averaging the annual residential population growth rate in each of the preceding 10 fiscal years as stated in the annual estimates of residential population in North Carolina made by the United States Census Bureau. The growth rate of the number of budgeted positions shall be computed by averaging the annual rate of growth of State budgeted positions in each of the preceding 10 fiscal years. The total number of permanent budgeted positions established in State agencies shall be computed by adding the total number of budgeted Full-Time Equivalents from all fund types. This section does not apply to State-funded positions supported by the State in a local public school system or local community college institution. (2006-203, s. 3.)

Article 5.

Enactment of the Budget.

§ 143C-5-1. Rules for the introduction of the Governor's appropriations bills.

The Current Operations Appropriations Act recommended by the Governor and the Capital Improvements Appropriations Act recommended by the Governor shall be introduced by the chairs of the committee on appropriations in each house of the General Assembly. This section shall be considered and treated as a rule of procedure in the Senate and House of Representatives unless provided otherwise by a rule of either branch of the General Assembly. (2006-203, s. 3.)

§ 143C-5-2. Order of appropriations bills.

Each house of the General Assembly shall first pass its version of the Current Operations Appropriations Act on third reading and order it sent to the other chamber before placing any other appropriations bill on the calendar for second reading. This section does not apply to the following bills:

(1) An appropriations bill to respond to a disaster as defined by G.S. 166A-4(1).
(2) An appropriations bill making adjustments to the current year budget.
(3) An appropriations bill authorizing continued operations at current funding levels. (2006-203, s. 3.)

Editor's Note. — Subdivision (1) of G.S. 166A-4, referred to in subdivision (1), was redesignated as subdivision (1a) by Session Laws 2006-66, ss. 6.5(c) and (d), effective July 1, 2006.

Session Laws 2009-16, s. 1(b), provides: "General Fund Appropriation for 2009-2011 Fiscal Biennium. — Notwithstanding G.S. 143C-5-2, there is appropriated from the General Fund to the Reserve for the State Health Plan in the Office of State Budget and Management the sum of one hundred thirty-two million two hundred fourteen thousand seven hundred fifty-two dollars ($132,214,752) for the 2009-2010 fiscal year and the sum of two hundred seventy-six million one hundred seventy-nine thousand seven hundred nine dollars ($276,179,709) for the 2010-2011 fiscal year. These funds shall be used to cover health care and administrative costs to the Plan in the 2009-2011 fiscal biennium."

Session Laws 2009-16, s. 1(c), provides: "Highway Fund Appropriation for the 2009-2011 Fiscal Biennium. — Notwithstanding G.S. 143C-5-2, there is appropriated from the Highway Fund to the Reserve for the State Health Plan in the Office of State Budget and Management the sum of six million one hundred seventy thousand twenty-two dollars ($6,170,022) for the 2009-2010 fiscal year and the sum of twelve million eight hundred eighty-eight thousand three hundred eighty-six dollars ($12,888,386) for the 2010-2011 fiscal year. These funds shall be used to cover health care and administrative costs to the Plan in the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 6.6C(c), provides: "Use of ARRA [American Recovery and Reinvestment Act of 2009] Funds. — Notwithstanding G.S. 143C-5-2 and G.S. 143C-6-4, or any other provision of law to the contrary, State agencies may, with approval of the Director of the Budget and in consultation with the North Carolina Office of Economic Recovery and Investment, spend State funds as defined in G.S. 143C-1-1(25) and, in accordance with subsection (b) of this section, funds received from federal receipts and federal grants resulting from enactment of the ARRA and awarded during the 2008-2009 State fiscal year. State agencies may not allocate or otherwise obligate any ARRA funds prior to enactment of this act, except that a State agency, as defined in G.S. 143C-1-1(24), may allocate or otherwise obligate federal funds under this section if the federal government has issued rules or formal guidance stipulating that a state's lack of allocation or obligation would otherwise jeopardize its receipt of federal ARRA funds. Under these limited circumstances, the State may allocate or obligate those funds for the 2008-2009 fiscal year only."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143C-5-3. Availability statement required.

The Current Operations Appropriations Act enacted by the General Assembly shall state the General Fund, Highway Fund, and Highway Trust Fund availability used as basis for appropriations from those funds. (2006-203, s. 3.)

§ 143C-5-4. Enactment deadline.

The General Assembly shall enact the Current Operations Appropriations Act by June 15 of odd-numbered years and by June 30 of even-numbered years in which a Current Operations Appropriations Act is enacted. (2006-203, s. 3.)

§ 143C-5-5. Committee report used to construe intent of budget acts.

A committee report incorporated by reference in the Current Operations Appropriations Act or the Capital Improvements Appropriations Act and distributed on the floor of the House of Representatives and of the Senate as part of the explanation of the act is to be construed with the appropriate act in interpreting its intent. If a report conflicts with the act, the act prevails. The Director of the Fiscal Research Division of the Legislative Services Commission shall send a copy of the reports to the Director. (2006-203, s. 3.)

ARTICLE 6.

Administration of the Budget.

Part 1. Certification and Administration of the Budget.

§ 143C-6-1. Budget enacted by the General Assembly; certified budgets of State agencies.

(a) Governor to Administer the Budget as Enacted by the General Assembly. — In accordance with Section 5(3) of Article III of the North Carolina Constitution, the Governor shall administer the budget as enacted by the General Assembly. All appropriations of State funds now or hereafter made to the State agencies and non-State entities authorize expenditures only for the (i) purposes or programs and (ii) objects or line items enumerated in the Recommended State Budget and the Budget Support Document recommended to the General Assembly by the Governor, as amended and enacted by the General Assembly in the Current Operations Appropriations Act, the Capital Improvements Appropriations Act, or any other act affecting the State budget.

The Governor shall ensure that appropriations are expended in strict accordance with the budget enacted by the General Assembly.

(b) Departmental Receipts. — Departmental receipts collected to support a program or purpose shall be credited to the fund from which appropriations have been made to support that program or purpose.

(c) Certification of the Budget. — The Director of the Budget shall certify to each State agency the amount appropriated to it for each program and each object from all governmental and proprietary funds. The certified budget for each State agency shall reflect the total of all appropriations enacted for each State agency by the General Assembly in the Current Operations Appropriations Act, the Capital Improvements Appropriations Act, and any other act affecting the State budget. The certified budget for each State agency shall follow the format of the Budget Support Document as modified to reflect changes enacted by the General Assembly. (2006-203, s. 3.)

Editor's Note. — Session Laws 2008-107, s. 25.4(a)-(e), provides: "(a) Notwithstanding G.S. 143C-6-1 and G.S. 143C-6-7, the Department of Transportation and the Office of State Budget and Management shall review each of the Department's divisions' expenditure patterns and realign the continuation and certified budget for the 2009-2011 Fiscal Biennium. The certified budget shall become the current expenditure plan for each division based on anticipated expenditure patterns.

"(b) The Department of Transportation shall prepare a report on the cash spending plan based on the certified budget's fund codes. This report shall show cash expenditure plans for the 2008-2009 fiscal year.

"(c) The Department of Transportation and the Office of State Budget and Management shall jointly study alternatives and enhancements to the current budgeting process that highlight and more closely align the Department's division, DMV, ferry, rail, public transportation, and administration spending with performance outcomes and metrics. Study goals include greater clarity of budgets and cash work plans, flexible funding capabilities, and projected investment performance.

"(d) The Department of Transportation shall develop a quarterly report that evaluates the Department's achievement of performance measures for safety, preservation, capacity improvements, ITS, effective and efficient business practices, spending plans, DMV services, minority and disadvantaged business goals, and other relevant performance indicators. Division performance comparisons will be included where applicable. The fourth quarter report will serve as the annual performance evaluation and shall be submitted to the Governor and Legislature, including the Joint Legislative Transportation Oversight Committee.

"(e) The Department of Transportation and the Office of State Budget and Management shall report on its cash spending plan for the 2008-2009 fiscal year and shall present recommendations for a revised budget process to the Joint Legislative Transportation Oversight Committee, Appropriations Subcommittee for Transportation, and the Fiscal Research Division no later than November 1, 2008. The Department of Transportation shall present the Fiscal Year 2009 first quarter performance report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division no later than November 15, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143C-6-2. Methods to avoid deficit.

(a) Appropriations. — Each appropriation is maximum and conditional. The expenditures authorized by an appropriation from a fund shall be made only if necessary and only if the aggregate revenues to the fund during each fiscal year of the biennium, when added to any unreserved fund balance from the previous fiscal year, are sufficient to support the expenditures.

(b) Revenue Collections. — The Director, with the assistance of the Secretary of Revenue and other officials collecting or receiving appropriated State revenue, shall continuously survey the revenue collections. If the Director finds that revenues to any fund, when added to the beginning unreserved fund balance in that fund, will be insufficient to support appropriations from that fund, the Director shall immediately notify the General Assembly that a deficit is anticipated. The Director shall consult with the Chief Justice to identify expenditure reductions and other lawful measures the Chief Justice and Judicial Branch can implement to reduce expenditures. The Director shall report in a timely manner to the General Assembly a plan containing the expenditure reductions and other lawful measures as the Director is implementing in order to avert the deficit.

(c) Local Governments Funds. — In exercising the powers contained in Section 5(3) of Article III of the North Carolina Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated to local governments unless the Governor has exhausted all other sources of revenue of the State including any appropriated surplus remaining in the treasury at the beginning of the fiscal period.

In accordance with Section 19 of Article I of the North Carolina Constitution and the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue. This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. (2006-203, s. 3; 2007-393, s. 6.)

§ 143C-6-3. Allotments.

To receive the operating funds appropriated to it, a State agency shall submit to the Director, at intervals and in a format prescribed by the Director, a request for an allotment of the amount estimated to be required for the agency's operating costs during the ensuing fiscal period. The Director shall approve or modify the allotment requests, and the State Controller shall implement the allotments as approved or modified by the Director. (2006-203, s. 3.)

§ 143C-6-4. Budget Adjustments Authorized.

(a) Findings. — The General Assembly recognizes that even the most thorough budget deliberations may be affected by unforeseeable events. Under limited circumstances set forth in this section, the Director may adjust the enacted budget by making transfers among lines of expenditure, purposes, or programs or by increasing expenditures funded by departmental receipts. Under no circumstances, however, shall total General Fund expenditures for a State department exceed the amount appropriated to that department from the General Fund for the fiscal year.

(b) Adjustments to the Certified Budget. — Notwithstanding the provisions of G.S. 143C-6-1, a State agency may, with approval of the Director of the Budget, spend more than was authorized in the certified budget for all of the following:

(1) An object or line item within a purpose or program so long as the total amount expended for the purpose or program is no more than was authorized in the certified budget for the purpose or program.

(2) A purpose or program if the overexpenditure of the purpose or program is:
  a. Required by a court or Industrial Commission order;
  b. Authorized under G.S. 166A-5(1)a.9. of the Emergency Management Act; or
  c. Required to call out the National Guard.

(3) A purpose or program not subject to the provisions of subdivision (b)(2) of this subsection, but only in accord with the following restrictions: (i)

the overexpenditure is required to continue the purpose or programs due to complications or changes in circumstances that could not have been foreseen when the budget for the fiscal period was enacted, (ii) the scope of the purpose or program is not increased, (iii) the overexpenditure is authorized on a nonrecurring basis, and (iv) under no circumstances shall the total requirements for a State department exceed the department's certified budget for the fiscal year by more than three percent (3%) without prior consultation with the Joint Legislative Commission on Governmental Operations.

(c) Overexpenditures Reported. — The Director shall report quarterly, beginning October 31, to the Joint Legislative Commission on Governmental Operations on overexpenditures approved by the Director under subdivisions (2) and (3) of subsection (b) of this section.

(d) Overexpenditures in Senate Budget. — The President Pro Tempore of the Senate may approve expenditures for more than was authorized in the enacted budget for objects or line items in the budget of the Senate.

(e) Overexpenditures in House of Representatives Budget. — The Speaker of the House of Representatives may approve expenditures for more than was authorized in the enacted budget objects or line items in the budget of the House of Representatives.

(f) Transfers Between Line Items or Programs in General Assembly Budget Other Than Senate and House of Representatives. — Expenditures exceeding amounts authorized for programs, objects, or line items in the budget of the General Assembly other than those of the Senate and House of Representatives shall be approved jointly by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(g) Transfers in The University of North Carolina Budget. — Transfers or changes within the budget of The University of North Carolina may be made as provided in Article 1 of Chapter 116 of the General Statutes.

(h) Transfers Within the Office of the Governor. — Transfers or changes as between objects or line items in the budget of the Office of the Governor may be made by the Governor. (2006-203, s. 3; 2007-117, s. 4; 2009-281, s. 1.)

NC Wise Positions. — Session Laws 2007-323, s. 7.22, provides: "Notwithstanding G.S. 143C-6-4, the State Board of Education may, subject to the approval of the Office of State Budget and Management, in consultation with the Office of Information Technology Services, and after consultation with the Joint Legislative Commission on Governmental Operations, use funds appropriated in this act for NC WISE to create a maximum of 10 positions and incur expenditures necessary to maintain and administer the NC WISE system within the Department of Public Instruction." For prior exceptions for the NC wise System, see Session Laws 2006-66, s. 7.12(a), (b).

Editor's Note. — Session Laws 2007-323, s. 6.1(b), as amended by Session Laws 2008-107, s. 6.1, provides: "Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by the State Budget Act.

"Overrealized receipts are appropriated up to the amounts necessary to implement this subsection.

"In addition to the consultation and reporting requirements set out in G.S. 143C-6-4, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on any overrealized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount overrealized, the amount authorized for expenditure, and the rationale for expenditure."

Session Laws 2007-323, s. 6.4, provides: "Notwithstanding G.S. 143C-6-4(b), the Office of State Budget and Management, in consultation with the Office of the State Controller and the Fiscal Research Division, may adjust the enacted budget by making transfers among purposes or programs for the sole purpose of correctly aligning authorized positions and associated operating costs with the appropriate purposes or programs as defined in G.S. 143C-1-1(d)(23). The Office of State Budget and Management shall change the certified budget to reflect these adjustments only after reporting the proposed adjustments to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. Under no circumstances shall total General Fund expenditures for a State department exceed the amount appropriated to that department from the General Fund for the fiscal year."

Session Laws 2007-323, s. 8.1(b), provides: "(b) Notwithstanding G.S. 143C-6-4, the Community Colleges System Office may, subject to the approval of the Office of State Budget and Management, in consultation with the Office of Information Technology Services, and after consultation with the Joint Legislative Commission on Governmental Operations, use funds appropriated in this act for the College Information System Project to create a maximum of 10 positions or incur expenditures necessary to transfer the maintenance and administration of the College Information System Project from the vendor to the System Office. Personnel positions created pursuant to this subsection shall be located in community colleges across the State."

Session Laws 2007-323, 9.8.(a), provides: "Notwithstanding G.S. 143C-6-4, for the 2007-2008 fiscal year, the General Administration of The University of North Carolina and the State Educational Assistance Authority shall, with the approval of the Office of State Budget and Management, reorganize budget code 16012, UNC Board of Governors Related Educational Programs, so that the budget reflects and segregates each specific program individually. The Office of State Budget and Management shall work with the University of North Carolina General Administration and the State Educational Assistance Authority to ensure that each program represented in code 16012 is identified and budgeted separately."

Session Laws 2007-323, 9.8.(b), provides: "The University of North Carolina General Administration shall report the new budget structure for budget code 16012, as approved by the Office of State Budget and Management, to the Fiscal Research Division of the General Assembly no later than March 31, 2008."

Session Laws 2007-323, s. 6.19, provides: "Notwithstanding G.S. 143C-6-4(b)(2), during the 2007-2009 fiscal biennium, a State agency may, with approval of the Director of the Budget, spend more than was authorized in the certified budget for a purpose or program if the overexpenditure is required to accommodate the redistribution of salary reserve balances within a State department."

Session Laws 2007-323, 7.29.(a), as amended by Session Laws 2008-194, s. 9, which expires June 30, 2009, provides: "Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may reorganize in accordance with the plan adopted by the State Board of Education. The Department shall report to the Joint Legislative Commission on Governmental Operations on the reorganization."

Session Laws 2007-323, s. 7.35, provides: "Notwithstanding G.S. 143C-6-4, the State Board of Education may use monies from the State Public School Fund in the 2007-2008 fiscal year only to pay for the additional costs associated with an increased number of registration fees for students enrolling in Distance Education courses."

Session Laws 2007-323, s. 10.49(ff), provides: "The General Assembly finds that counties have budgeted almost one hundred twenty-one million dollars ($121,000,000) to LMEs to pay for mental health, developmental disabilities, and substance abuse services. However, the General Assembly lacks information regarding the specific services that are purchased with those county funds. The General Assembly also lacks data regarding the incomes of persons receiving mental health, developmental disabilities, and substance abuse services that are paid for by either State or county funds. This lack of data severely limits the General Assembly's ability to determine the distribution of services that are being paid for with public funds, whether persons who are eligible for Medicaid are being enrolled in that program, and whether expanding the State's Medicaid eligibility criteria would impact a significant number of mental health, developmental disabilities, and substance abuse services consumers. Therefore, LMEs shall report annually to the Division all expenditures from county funds by the LME for services, start-up expenses, and capital and operational expenditures, regardless of the source of the funds and regardless of whether the funds were earned on a payment for service or grant basis. This reporting shall include specific information regarding the expenditure of all funds provided to the LME by the county or counties contained in the LME's catchment area and the amount of expenditures for services provided by the multicounty LME to residents of each county in the multicounty LME's catchment area. To the extent possible, the information shall be submitted through the Integrated Payment and Reimbursement System. LMEs shall also gather income data for all individuals receiving services. Notwithstanding G.S. 143C-6-4, Budget Adjustments Authorized, the Department of Health and Human Services shall fully fund the State's contribution for LME system administration."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provi-

sions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 6.3, provides: "Notwithstanding G.S. 143C-6-4, the Office of State Budget and Management may adjust the enacted budget by making transfers among purposes or programs for the purpose of consolidating budget and fund codes or eliminating inactive budget and fund codes. The Office of State Budget and Management shall change the authorized budget to reflect these adjustments."

Session Laws 2008-107, s. 6.9, provides: "Notwithstanding G.S. 143C-6-4, State agencies may, with approval of the Director of the Budget, spend funds received from grants awarded subsequent to the enactment of this act, provided the applications for the grants were made prior to May 14, 2008. The Office of State Budget and Management shall work with the recipient State agencies to budget grants award according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a permanent or time-limited basis. The Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to expending any funds received from grant awards. Funds received from such grants are hereby appropriated and shall be incorporated into the certified budget of the recipient State agency."

Session Laws 2008-107, s. 8.2(b), provides: "Notwithstanding G.S. 143C-6-4, the Community Colleges System Office may, subject to the approval of the Office of State Budget and Management and in consultation with the Office of Information Technology Services, use funds appropriated in this act for the College Information System to create a maximum of three positions. Personnel positions created pursuant to this subsection shall be dedicated to maintaining and administering information technology and software upgrades to the College Information System." For prior similar provisions, see Session Laws 2007-323, s. 8.1(b).

Session Laws 2008-107, s. 10.1A, provides: "Notwithstanding G.S. 143C-6-4, for the 2008-2009 fiscal year the Department of Health and Human Services may, with approval of the Office of State Budget and Management, take actions necessary to identify and realign or adjust the authorized budgets of the Department to fund payments for audit services provided by the Office of State Auditor and for data processing services billed by the State Information Technology Services office."

Session Laws 2008-107, s. 10.10A(b), provides: "The Department of Health and Human Services, Division of Medical Assistance, shall make every effort to achieve savings within its operational budget and shall take the steps necessary to achieve overall budget reductions from the General Fund required by this act. Notwithstanding G.S. 143C-6-4(b)(3), the Department may use funds appropriated to the Division of Medical Assistance to address shortfalls in funds for direct services within the Medical Assistance Payments budget of the Division of Medical Assistance."

Session Laws 2008-107, s. 10.10A(c), provides: "Notwithstanding G.S. 143C-6-4(b)(3), the Department of Health and Human Services may use funds appropriated to the Division of Medical Assistance to address contract shortfalls within the Division of Medical Assistance budget."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 5.6, provides: "Notwithstanding G.S. 143C-6-4, State agencies may, with approval of the Director of the Budget and after consultation with the Joint Legislative Committee on Governmental Operations, spend funds received from grants awarded subsequent to the enactment of this act. The Office of State Budget and Management shall work with the recipient State agencies to budget grant awards according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a time-limited basis. The Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to expending any funds received from grant awards. Funds received from such grants are hereby appropriated and shall be incorporated into the certified budget of the recipient State agency."

Session Laws 2009-451, s. 6.2, provides: "Notwithstanding G.S. 143C-6-4, the Office of State Budget and Management may adjust the enacted budget by making transfers among purposes or programs for the purpose of consolidating budget and fund codes or eliminating inactive budget and fund codes. The Office of State Budget and Management shall change the authorized budget to reflect these adjustments."

Session Laws 2009-451, s. 6.3, provides: "Notwithstanding G.S. 143C-6-4(b), the Office of State Budget and Management, in consultation with the Office of the State Controller and the Fiscal Research Division, may adjust the enacted budget by making transfers among purposes or programs for the sole purpose of correctly aligning authorized positions and associated operating costs with the appropriate purposes or programs as defined in G.S. 143C-1-1(d)(23). The Office of State Budget and Management shall change the certified budget to reflect these adjustments only after reporting the proposed adjustments to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. Under no circumstances shall total General Fund expenditures for a State department exceed the amount appropriated to that department from the General Fund for the fiscal year."

Session Laws 2009-451, s. 6.6C(c), provides: "Use of ARRA [American Recovery and Reinvestment Act of 2009] Funds. — Notwithstanding G.S. 143C-5-2 and G.S. 143C-6-4, or any other provision of law to the contrary, State agencies may, with approval of the Director of the Budget and in consultation with the North Carolina Office of Economic Recovery and Investment, spend State funds as defined in G.S. 143C-1-1(25) and, in accordance with subsection (b) of this section, funds received from federal receipts and federal grants resulting from enactment of the ARRA and awarded during the 2008-2009 State fiscal year. State agencies may not allocate or otherwise obligate any ARRA funds prior to enactment of this act, except that a State agency, as defined in G.S. 143C-1-1(24), may allocate or otherwise obligate federal funds under this section if the federal government has issued rules or formal guidance stipulating that a state's lack of allocation or obligation would otherwise jeopardize its receipt of federal ARRA funds. Under these limited circumstances, the State may allocate or obligate those funds for the 2008-2009 fiscal year only."

Session Laws 2009-451, s. 7.14, provides: "Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may reorganize, if necessary, to implement the budget reductions set out in this act. The Department shall report to the Joint Legislative Commission on Governmental Operations on any reorganization."

Session Laws 2009-451, s. 8.7(b), provides: "Notwithstanding G.S. 143C-6-4, the Community Colleges System Office may, subject to the approval of the Office of State Budget and Management and in consultation with the Office of Information Technology Services, use funds appropriated in this act for the College Information System to create a maximum of three positions if doing so is cost-effective. Personnel positions created pursuant to this subsection shall be dedicated to maintaining and administering information technology and software upgrades to the College Information System."

Session Laws 2009-451, s. 10.59(b), provides: "The Division of Medical Assistance shall make every effort to effect savings within its operational budget and use those savings to offset its contract shortfall. Notwithstanding G.S. 143C-6-4(b)(3), the Department may use funds appropriated in this act to cover the contract shortfall in the Division of Medical Assistance if insufficient funds exist within the Division."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" in subdivision (b)(2)c.

§ 143C-6-5. No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation; no fee increases that the General Assembly has rejected.

(a) Notwithstanding any other provision of law, no funds from any source, except for gifts, grants, or funds allocated from the Repair and Renovations Account in accordance with G.S. 143C-4-3, funds allocated from the Contingency and Emergency Fund in accordance with G.S. 143C-4-4, and funds exempted from Chapter 143C in accordance with G.S. 143C-1-3(c) may be expended for any new or expanded purpose, position, or other expenditure for which the General Assembly has considered but not enacted an appropriation of funds for the current fiscal period. For the purpose of this subsection, the General Assembly has considered a purpose, position, or other expenditure when that purpose is included in a bill which fails a reading, or if the purpose is included in the version of a bill that passes one house, but the bill is enacted without the purpose.

(b) Notwithstanding any other provision of law, no fee shall be increased if the General Assembly has rejected an increase of that fee for the current fiscal period. For the purpose of this subsection, the General Assembly has rejected a fee increase when that fee increase is included in a bill which fails a reading, or if the fee increase is included in the version of a bill that passes one house, but the bill is enacted without the fee increase. (2006-66, s. 6.4; 2006-203, s. 3.)

Editor's Note. — Session Laws 2006-66, s. 6.4, enacted G.S. 143-16.7, containing provisions similar to G.S. 143C-6-5(b). G.S. 143-16.7 is repealed effective July 1, 2007, but has been added to the historical citation for G.S. 143C-6-5 at the direction of the Revisor of Statutes.

Session Laws 2009-451, s. 10.12A, provides: "Of the funds appropriated to the Department of Health and Human Services for the 2009-2011 fiscal biennium, the Department may use a portion of these funds to continue to develop and implement a health care information system for State institutions operated by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. G.S. 143C-6-5 does not apply to this section."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

CASE NOTES

Editor's Note. — *The annotations under this section were decided under former G.S. 143-16.3.*

Construction. — G.S. 143-16.3 did not prohibit a state agency from committing the state to the expenditure of funds which had not been appropriated for the purpose of a contract, because the pertinent portion of G.S. 143-16.3 stated that no funds from any source could be expended for any new or expanded purpose, position or other expenditure for which the General Assembly had considered but not enacted an appropriation of funds for the current fiscal budget; thus, G.S. 143-16.3 only prohibited the actual expenditure of funds if not appropriated. N.C. Monroe Constr. Co. v. State, 155 N.C. App. 320, 574 S.E.2d 482, 2002 N.C. App. LEXIS 1612 (2002), cert. denied, cert. dismissed, 357 N.C. 165, 580 S.E.2d 370 (2003).

OPINIONS OF ATTORNEY GENERAL

Interpretation of former G.S. 143-16.3. — It could not be determined whether grants from certain "special appropriations" which were included in committee reports, excluded from the final appropriations act, and ultimately funded from reserve funds were in violation of former G.S. 143-16.3. See opinion of Attorney General to The Hon. Leslie Merritt, Auditor, State of North Carolina, 2005 N.C. AG LEXIS 3 (9/12/05).

State Treasurer. — Because the restrictions contained in this section primarily involve controls exercised by the General Assembly, the State Treasurer is subject thereto. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

§ 143C-6-6. Positions included in the State Payroll.

(a) Before a State agency establishes a new position or changes the funding of an existing position, the agency shall submit the proposed action to the Director for approval. The Director shall review the proposed action to ensure that funds for the action are included in the amount appropriated to the agency. If the Director approves the action, the Director shall notify the agency and the Controller of the approval. The Controller shall not honor a voucher in payment of a payroll that includes a new position or a change in an existing position that has not been approved by the Director.

(b) Payments on behalf of employees for hospital-medical insurance, longevity payments, salary increments, and legislative salary increases, required employer salary-related contributions for retirement benefits, death benefits, the Disability Income Plan and social security for employees shall be paid from the General Fund or the Highway Fund, only to the extent of the proportionate part paid from the General Fund or Highway Fund, in support of the salary of the employee, and the remainder of the employer's contribution requirements shall be paid from the same source that supplies the remainder of the employee's salary.

(c) Subsection (a) of this section does not apply to The University of North Carolina. (2006-203, s. 3; 2007-484, s. 34.)

Editor's Note. — Session Laws 2009-16, s. 16, provides for salary related contributions including contribution requirements, percentages and maximum contributions.

CASE NOTES

Cited in Sanders v. State Personnel Comm'n, — N.C. App. —, 677 S.E.2d 182, 2009 N.C. App. LEXIS 687 (2009).

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Editor's Note. — *The annotations under this section were decided under former G.S. 143-34.1.*

Voluntary Indemnity Plan. — The statutes that govern the Teachers' and State Employees' Comprehensive Major Medical Plan (now State Health Plan for Teachers and State Employees) and the Statewide Flexible Benefits Program permit the Statewide Flexible Benefits Program to offer a voluntary indemnity plan that provides hospital confinement, short-stay, rehabilitation unit, surgical, heart attack, stroke, coma, paralysis, ambulance, and wellness benefits. See opinion of Attorney General to Mr. Carl Goodwin, Director, Risk Control Services, Office of State Personnel, 2001 N.C. AG LEXIS 40 (10/3/01).

Cafeteria Plan. — The University of North Carolina, or some of its campuses, may not offer a cafeteria plan which allows pre-tax premiums for dependent health coverage as such competition would impair the object of the statute, which was to establish a single statewide plan that did not compete with existing benefits. See opinion of Attorney General to Leslie Winner, Vice President and General Counsel, University of North Carolina, 2002 N.C. AG LEXIS 15 (3/26/02).

§ 143C-6-7. Compliance with Chapter and appropriations acts by State agencies.

(a) Compliance With Chapter and Appropriations Acts. — Except as otherwise provided by law, all expenditures of State funds by a State agency shall be made in compliance with the State budget as enacted by the General Assembly and certified by the Director. If the Director finds that a State agency has spent or encumbered State funds for an unauthorized purpose, the Director shall take appropriate administrative action to ensure that no further irregularities occur and shall report to the Attorney General any facts that pertain to an apparent violation of a penal statute or an apparent instance of malfeasance, misfeasance, or nonfeasance by a person.

(b) Repayment of Funds Spent for an Unauthorized Purpose. — In addition to the provisions of subsection (a) of this section, if the Director finds that a State agency violated this section, the Director shall withhold any future allocations for the unauthorized purpose and shall also withhold future allocations to the Department in an amount equal to the funds unlawfully spent. (2006-203, s. 3.)

Editor's Note. — Session Laws 2008-107, s. 25.4(a)-(e), provides: "(a) Notwithstanding G.S. 143C-6-1 and G.S. 143C-6-7, the Department of Transportation and the Office of State Budget and Management shall review each of the Department's divisions' expenditure patterns and realign the continuation and certified budget for the 2009-2011 Fiscal Biennium. The certified budget shall become the current expenditure plan for each division based on anticipated expenditure patterns.

"(b) The Department of Transportation shall prepare a report on the cash spending plan based on the certified budget's fund codes. This report shall show cash expenditure plans for the 2008-2009 fiscal year.

"(c) The Department of Transportation and the Office of State Budget and Management shall jointly study alternatives and enhancements to the current budgeting process that highlight and more closely align the Department's division, DMV, ferry, rail, public transportation, and administration spending with performance outcomes and metrics. Study goals include greater clarity of budgets and cash work plans, flexible funding capabilities, and projected investment performance.

"(d) The Department of Transportation shall develop a quarterly report that evaluates the Department's achievement of performance measures for safety, preservation, capacity improvements, ITS, effective and efficient business practices, spending plans, DMV services, minority and disadvantaged business goals, and other relevant performance indicators. Division performance comparisons will be included where applicable. The fourth quarter report will serve as the annual performance evaluation and shall be submitted to the Governor and Legislature, including the Joint Legislative Transportation Oversight Committee.

"(e) The Department of Transportation and the Office of State Budget and Management shall report on its cash spending plan for the 2008-2009 fiscal year and shall present recommendations for a revised budget process to the Joint Legislative Transportation Oversight Committee, Appropriations Subcommittee for Transportation, and the Fiscal Research Division no later than November 1, 2008. The Department of Transportation shall present the Fiscal Year 2009 first quarter performance report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division no later than November 15, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 143C-6-8. State agencies may incur financial obligations only if authorized by the Director of the Budget and subject to the availability of appropriated funds.

Unless otherwise authorized by the Director as provided by law, purchase orders, contracts, salary commitments, and any other financial obligations by State agencies shall be subject to the availability of appropriated funds or available funds that are not State funds as defined in this Chapter. (2006-203, s. 3.)

§ 143C-6-9. Use of lapsed salary savings.

Lapsed salary savings may be expended only for nonrecurring purposes or line items. (2006-203, s. 3.)

Federal Grant Matching Funds. — Session Laws 2009-451, s. 19.9, provides: "Notwithstanding the provisions of G.S. 143C-6-9, the Department of Correction may use up to the sum of one million two hundred thousand dollars ($1,200,000) during the 2009-2010 fiscal year from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds."

For prior similar provisions, see Session Laws 2007-323, s. 17.12, as amended by Session Laws 2008-107, s. 17.2.

Transfer of Equipment and Supply Funds. — Session Laws 2009-451, s. 15.2, provides: "Notwithstanding G.S. 143C-6-9, the Administrative Office of the Courts may use up to the sum of one million five hundred thousand dollars ($1,500,000) from funds available to the Department to provide the State match needed in order to receive grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds."

For prior similar provisions, see Session Laws 2007-323, s. 14.2.

Indigent Defense Services/State Match For Grants. — Session Laws 2009-451, s. 15.14, provides: "Notwithstanding G.S. 143C-6-9, the Office of Indigent Defense Services may use the sum of up to fifty thousand dollars ($50,000) from funds available to provide the State matching funds needed to receive grant funds. Prior to using funds for this purpose, the Office shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds."

For prior similar provisions, see Session Laws 2007-323, s. 14.6.

Reimburse Counties For Housing and Extraordinary Medical Costs For Inmates, Parolees, and PostRelease Supervisees Awaiting Transfer to State Prison System. — Session Laws 2009-451, s. 19.3, provides: "Notwithstanding G.S. 143C-6-9, the Department of Correction may use funds available to the Department for the 2009-2011 biennium to pay the sum of forty dollars ($40.00) per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog."

For prior similar provisions, see Session Laws 2005-276, s. 17.2 and Session Laws 2007-323, s. 17.6.

Editor's Note. — Session Laws 2007-323, s. 6.17(a), provides: "(a) The Office of State Budget and Management shall eliminate vacant positions across State government that are funded through the General Fund in order to generate a recurring annual savings of ten million thirty-eight thousand four hundred sixty-six dollars ($10,038,466) for each year of the 2007-2009 fiscal biennium, by transferring from the various State departments, agencies, and institutions the salary and benefits-related funding appropriated for State government positions. There is established in the Office of State Budget and Management a Reserve for Eliminated Positions.

"Notwithstanding G.S. 143C-6-9, the sum of ten million thirty-eight thousand four hundred sixty-six dollars ($10,038,466) shall be credited to the Reserve for Eliminated Positions from the savings associated with the elimination of vacant positions required by this section, effective July 1, 2007."

Session Laws 2007-323, s. 17.10, provides: "Notwithstanding the provisions of G.S. 143C-6-9, the Department of Correction may use funds available during the 2007-2009 biennium for the inmate medical program if expenditures are projected to exceed the Department's inmate medical continuation budget. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 15.15, provides: "Notwithstanding the provisions of G.S. 143C-6-9, in implementing reductions to the 2009-2011 budget for legal training and resources, the Office of Indigent Defense Services may use available funds as needed for registration fees, academic services, travel, and book purchases."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Oper-

ations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143C-6-10. Flexible compensation plan.

Notwithstanding any other provision of law, the Director may establish a program of dependent care assistance and a flexible compensation plan for eligible officers and employees of State agencies as provided in G.S. 126-95. With the approval of the Director, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may also be used as provided by G.S. 126-95. (2007-117, s. 3(c).)

Editor's Note. — Session Laws 2007-117, s. 8, made this section effective July 1, 2007.

Part 2. Highway Appropriations.

§ 143C-6-11. Highway appropriation.

(a) General Provisions. — Appropriations made for transportation projects are subject to the provisions in this section. If the provisions in this section conflict with the budget acts, the budget acts prevail.

(b) Cash Flow Management of Transportation Projects. — Transportation Project funds shall be budgeted, expended, and accounted for on a "cash flow" basis. Pursuant to this end, transportation project contracts shall be planned and limited so payments due at any time will not exceed the cash available to pay them.

(c) Appropriations Are for Payments and Contract Commitments to Be Made in the Appropriation Fiscal Year. — The appropriations for transportation projects are for maximum payments estimated to be made during the appropriation fiscal year and for maximum contracting authority for future years. Transportation project contracts shall be scheduled so that the total contract payments and other expenditures charged to projects in the fiscal year for each transportation project appropriation item will not exceed the current appropriations provided by the General Assembly and unspent prior appropriations made by the General Assembly for the particular appropriation item.

(d) Payments Subject to Availability of Funds. — The annual appropriations for transportation projects shall be expended only to the extent that sufficient funds are available in the Highway Fund.

(e) Retainage Fully Funded. — The Department of Transportation shall fully fund retainage from transportation project contracts in the year in which the work is performed.

(f) Five Percent (5%) of the Cash Balance Required. — The Department of Transportation shall maintain an available cash balance at the end of each month equal to at least five percent (5%) of the unpaid balance of the total transportation project contract obligations. In the event this cash position is not maintained, no further transportation project contract commitments may be entered into until the cash balance has been regained. For the purposes of awarding contracts involving federal aid, any amount due from the federal government and the Highway Bond Fund as a result of unreimbursed expenditures may be considered as cash for the purposes of this provision.

(g) Anticipation of Revenues. — In awarding State transportation project contracts requiring payments beyond a biennium, the Director may anticipate revenues as authorized and certified by the General Assembly to continue contract payments for up to seventy-five percent (75%) of the revenues which are estimated for the first fiscal year of the succeeding biennium and which are not required for other budget items. Up to fifty percent (50%) of the revenues not required for other budget items may be anticipated for the second and subsequent fiscal years' contract payments. Up to forty percent (40%) of the revenues not required for other budget items may be anticipated for the first year of the second succeeding biennium and up to twenty percent (20%) of the revenues not required for other budget items may be anticipated for the second year of the second succeeding biennium.

(h) Amounts Encumbered. — Transportation project appropriations may be encumbered in the amount of allotments made to the Department of Transportation by the Director for the estimated payments for transportation project contract work to be performed in the appropriation fiscal year. The allotments shall be multiyear allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in subsection (c) above. Payment for transportation project work performed pursuant to contract in any fiscal year other than the current fiscal year is subject to appropriations by the General Assembly. Transportation project contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any transportation project contract, and any transportation project contract shall be so terminated or suspended if funds will not be available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications.

(i) Provision Incorporated in Contracts. — The provisions of subsection (h) of this section shall be incorporated verbatim in all transportation project contracts.

(j) Existing Contracts Are Not Affected. — The provisions of this section shall not apply to transportation project contracts awarded by the Department of Transportation prior to July 15, 1980.

(k) The Department of Transportation shall do all of the following:

(1) Utilize cash flow financing to the extent possible to fund transportation projects with the goal of reducing the combined average daily cash balance of the Highway Fund and the Highway Trust Fund to an amount equal to the twelve percent (12%) of the combined estimate of the yearly receipts of the Funds. The target amount shall include an amount necessary to make all municipal-aid funding requirements of the Department.

(2) Establish necessary management controls to facilitate use of cash flow financing, such as establishment of a financial planning committee, development of a monthly financing report, establishment of appropriate fund cash level targets, review of revenue forecasting procedures, and reduction of accrued unbilled costs.

(3) Report annually, on October 1 of each year, to the Joint Legislative Transportation Oversight Committee on its cash management policies and results. (2006-203, s. 3.)

CASE NOTES

***Editor's Note.** — The annotations under this section were decided under former G.S. 143-28.1.*

Constitutionality. — This section does not violate N.C. Const., Art. V, § 3. Boneno v. State, 54 N.C. App. 690, 284 S.E.2d 170 (1981).

Authorization by this section of Department of Transportation construction and maintenance contracts using "cash flow" financing does not violate the prohibition of N.C. Const., Art. III, § 5(3) against incurring a deficit; only actual expenditures in excess of receipts would violate the provision. Boneno v. State, 54 N.C. App. 690, 284 S.E.2d 170 (1981).

§§ 143C-6-12 through 143C-6-20: Reserved for future codification purposes.

Part 3. Non-State Entities Receiving State Funds.

§ 143C-6-21. Payments to nonprofits.

Except as otherwise provided by law, an annual appropriation of one hundred thousand dollars ($100,000) or less to or for the use of a nonprofit corporation shall be made in a single annual payment. An annual appropriation of more than one hundred thousand dollars ($100,000) to or for the use of a nonprofit corporation shall be made in quarterly or monthly payments, in the discretion of the Director of the Budget. (2006-203, s. 3.)

Editor's Note. — Session Laws 2006-203, s. 3, enacted this section as G.S. 143C-6-12. It has been renumbered at the direction of the Revisor of Statutes.

§ 143C-6-22. Use of State funds by non-State entities.

(a) Disbursement and Use of State Funds. — Every non-State entity that receives, uses, or expends any State funds shall use or expend the funds only for the purposes for which they were appropriated by the General Assembly. State funds include federal funds that flow through the State Treasury.

(b) Compliance by Non-State Entities. — If the Director of the Budget finds that a non-State entity has spent or encumbered State funds for an unauthorized purpose, or fails to submit or falsifies the information required by G.S. 143C-6-23 or any other provision of law, the Director shall take appropriate administrative action to ensure that no further irregularities or violations of law occur and shall report to the Attorney General any facts that pertain to an apparent violation of a criminal law or an apparent instance of malfeasance, misfeasance, or nonfeasance in connection with the use of State funds. Appropriate administrative action may include suspending or withholding the disbursement of State funds and recovering State funds previously disbursed.

(c) Civil Actions. — Civil actions to recover State funds or to obtain other mandatory orders in the name of the State on relation of the Attorney General, or in the name of the Office of State Budget and Management, shall be filed in the General Court of Justice in Wake County. (2006-203, s. 3.)

Rural Economic Development Center/Infrastructure Program. — Session Laws 2009-451, s. 14.28(a)-(e), provides: "Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of nineteen million three hundred five thousand dollars ($19,305,000) for the 2009-2010 fiscal year and the sum of nineteen million three hundred five thousand dollars ($19,305,000) for the 2010-2011 fiscal year shall be allocated as follows:

"(1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. At least fifteen million dollars ($15,000,000) of the funds appropriated in this act for each year of the biennium must be used to provide grants under this Program.

"(2) To provide matching grants to local governments in distressed areas and equity investments in public-private ventures that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.

"(3) To provide economic development research and demonstration grants.

"The Rural Center may contract with other State agencies, constituent institutions of The University of North Carolina, and colleges within the North Carolina Community College System for certain aspects of the North Carolina Infrastructure Program, including design of Program guidelines and evaluation of Program results.

"During each year of the 2009-2011 biennium, the Rural Center may use up to three hundred eighty-five thousand dollars ($385,000) of the funds appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

"Of the funds appropriated in subsection (a) of this section to the Rural Center for the 2009-2010 fiscal year, the sum of one million five hundred forty-four thousand four hundred dollars ($1,544,400) shall be transferred to the Department of Environment and Natural Resources to be used to provide the State match to draw down maximum federal funds for the Clean Water State Revolving Loan Fund.

"By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the North Carolina Economic Infrastructure Program in the prior State fiscal year."

For prior provisions relating to the North Carolina Infrastructure Program, see Session Laws 2004-88, s. 2(a)-(f), Session Laws 2005-276, s. 13.12(a)-(f), as amended by Session Laws 2006-66, s. 12.3(b), and Session Laws 2007-323, s. 13.13(a)-(d).

Editor's Note. — Session Laws 2006-203, s. 3, enacted this section as G.S. 143C-6-13. It has been renumbered at the direction of the Revisor of Statutes.

Session Laws 2007-323, s. 13.14(a)-(i), as amended by Session Laws 2007-345, s. 7, provides: "(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of nineteen million dollars ($19,000,000) for the 2007-2008 fiscal year shall be used to expand the North Carolina Rural Economic Infrastructure Fund with targeted priority to severely distressed rural areas.

"(b) The Rural Center shall use the funds appropriated in this act to establish and implement the Rural Economic Transition Program. This program shall provide grants and equity investments to carry out transformative economic development and agricultural enhancement projects that will generate jobs and expand business activity.

"(c) Units of local government and nonprofit organizations in rural areas are eligible for grants, with priority to applicants in development tier one areas as defined in G.S. 143B-437.08.

"(d) Priority for grant funds shall be given to economic development projects that satisfy one or more of the following criteria:

"(1) It is located in a county or census area with a persistently high poverty rate of at least one hundred fifty percent (150%) of the State's poverty rate according to the most recent decennial census.

"(2) It is located in a community that has experienced a sudden and severe economic downturn as reflected in numbers of business closings, layoffs, and unemployment rate during the previous 12 months.

"(3) It is located in a small town with a population under 10,000, an agrarian growth zone as defined in G.S. 143B-437.010, or an urban progress zone as defined in G.S. 143B-437.09.

"(4) It is identified in community-based strategic planning efforts and coordinated with other economic development and community-building initiatives, such as the North Carolina Rural Economic Development Center Small Town Economic Prosperity Program, the North Carolina Department of Commerce 21stCentury Communities Program, the North Carolina Department of Commerce Main Street Program, and federally funded Comprehensive Economic Development Strategies.

"(5) It is supportive of strategies to expand entrepreneurial small business activity based on the natural, cultural, or historical assets of the community.

"(6) It has the ability to demonstrate benefits to small farm business diversifying into value-added production and marketing, and it increases opportunities in food and beverage manufacturing and distribution for small farm entrepreneurs.

"(e) Eligible units of local government and nonprofit organizations are not required to match grants received under this section, but shall demonstrate the commitment of other funds to the project.

"(f) Up to twenty percent (20%) of the funds appropriated in this section may be used for equity investments and loans through the Rural Venture Fund to private business ventures that will substantially transform and improve the economic status of rural areas, with priority to businesses locating or expanding in development tier one areas as defined in G.S. 143B-437.08.

"(g) The Rural Center may use a portion of the funds appropriated under this section, not to exceed four percent (4%), for administration of the programs created by this section.

"(h) The Rural Center may contract with other State agencies and branches of The University of North Carolina for certain aspects of the programs created under this section, including the design of program guidelines and evaluation of program results.

"(i) The Rural Center shall report to the Joint Legislative Commission on Governmental Operations on a quarterly basis concerning the progress of the programs created under this section. The first report is due no later than February 15, 2008."

Session Laws 2007-323, s. 13.15(b), provides: "For each of the Opportunities Industrialization Centers receiving funds pursuant to subsection (a) of this section, the Rural Economic Development Center, Inc., shall:

"(1) By January 15, 2008, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

"a. State fiscal year 2006-2007 program activities, objectives, and accomplishments;

"b. State fiscal year 2006-2007 itemized expenditures and fund sources;

"c. State fiscal year 2007-2008 planned activities, objectives, and accomplishments, including actual results through December 31, 2007; and

"d. State fiscal year 2007-2008 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2007.

"(2) By January 15, 2009, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

"a. State fiscal year 2007-2008 program activities, objectives, and accomplishments;

"b. State fiscal year 2007-2008 itemized expenditures and fund sources;

"c. State fiscal year 2008-2009 planned activities, objectives, and accomplishments, including actual results through December 31, 2008; and

"d. State fiscal year 2008-2009 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2008.

"(3) Notwithstanding G.S. 143-6.1(d), file annually with the State Auditor a financial statement in the form and on the schedule prescribed by the State Auditor. The financial statements must be audited in accordance with standards prescribed by the State Auditor to assure that State funds are used for the purposes provided by law.

"(4) Provide to the Fiscal Research Division a copy of the annual audited financial statement required in subdivision (3) of this subsection within 30 days of issuance of the statement."

Session Laws 2007-323, s. 13.16, provides: "(a) The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

"(b) The e-NC Authority shall report to the 2008 General Assembly on the following:

"(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access high-speed Internet.

"(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

"(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in these communities and to use the Internet to enhance the productivity of their businesses.

"The e-NC Authority shall, by September 30, 2007, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 13.9(a)-(e) provides: "(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of four million dollars ($4,000,000) for the 2008-2009 fiscal year shall be used to continue and expand the Rural Economic Transition Program for the following purposes:

"(1) To provide grants to local governments for building reuse and restoration projects leading to job or business creation, including brownfield assessment and remediation projects leading to productive reuse, with priority given to towns or communities with populations of less than 10,000.

"(2) To provide grants to support economic recovery and revitalization in small towns, with priority given to towns with populations less than 10,000 experiencing hardship posed by business losses, devastation from natural disasters, or persistent poverty.

"(3) To provide grants for innovative local and regional economic development and agriculture diversification projects that spur business activity, job creation, or public or private investment.

"(b) Priority for grant funds shall be given to eligible applicants in development tier one areas as defined in G.S. 143B-437.08.

"(c) The Rural Center may use a portion of the funds appropriated in this section, not to exceed two percent (2%), for administration of the programs for which funds are appropriated in this section.

"(d) The Rural Center may contract with other agencies and institutions for certain aspects of the programs for which funds are appropriated in this section, including the design of program guidelines and evaluation of program results.

"(e) The Rural Center shall report to the Joint Legislative Commission on Governmental Operations concerning the progress of the programs for which funds are appropriated in this section by July 1, 2009."

Session Laws 2009-451, s. 14.27(a)-(e), provides for the allocation of funds appropriated to the North Carolina Rural Economic Development Center, funding for community development grants, defining of the term community development corporation, and multi-year reporting requirements.

Session Laws 2009-451, s. 14.30(b), provides: "By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on OI Centers receiving funds pursuant to subsection (a) of this section. The report shall include data for each OI Center on all itemized expenditures and all fund sources for the prior State fiscal year. The report shall also contain a written narrative on prior fiscal year program activities, objectives, and accomplishments that were funded with funds appropriated in subsection (a) of this section."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143C-6-23. State grant funds: administration; oversight and reporting requirements.

(a) Definitions. — The following definitions apply in this section:

(1) "Grant" and "grant funds" means State funds disbursed as a grant by a State agency; however, the terms do not include any payment made by the Medicaid program, the State Health Plan for Teachers and State Employees, or other similar medical programs.

(2) "Grantee" means a non-State entity that receives State funds as a grant from a State agency but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(3) "Subgrantee" means a non-State entity that receives State funds as a grant from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(b) Conflict of Interest Policy. — Every grantee shall file with the State agency disbursing funds to the grantee a copy of that grantee's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds, and shall include actions to be taken by the grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State agency may disburse the grant funds.

(c) No Overdue Tax Debts. — Every grantee shall file with the State agency or department disbursing funds to the grantee a written statement completed by that grantee's board of directors or other governing body stating that the grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written statement shall be made under oath and shall be filed before the disbursing State agency or department may disburse the grant funds. A person who makes a false statement in violation of this subsection is guilty of a criminal offense punishable as provided by G.S. 143C-10-1.

(d) Office of State Budget Rules Must Require Uniform Administration of State Grants. — The Office of State Budget and Management shall adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees or subgrantees. The Office of State Budget and Management shall consult with the Office of the State Auditor and the Attorney General in establishing the rules required by this subsection. The rules shall establish policies and procedures for disbursements of State grants and for State agency oversight, monitoring, and evaluation of grantees and subgrantees. The policies and procedures shall:

(1) Ensure that the purpose and reporting requirements of each grant are specified to the grantee.

(2) Ensure that grantees specify the purpose and reporting requirements for grants made to subgrantees.

(3) Ensure that State funds are spent in accordance with the purposes for which they were granted.

(4) Hold the grantees and subgrantees accountable for the legal and appropriate expenditure of grant funds.

(5) Provide for adequate oversight and monitoring to prevent the misuse of grant funds.

(6) Establish mandatory periodic reporting requirements for grantees and subgrantees, including methods of reporting, to provide financial and program performance information. The mandatory periodic reporting requirements shall require grantees and subgrantees to file with the State Auditor copies of reports and statements that are filed with State agencies pursuant to this subsection. Compliance with the mandatory periodic reporting requirements of this subdivision shall not require grantees and subgrantees to file with the State Auditor the information described in subsections (b) and (c) of this section.

(7) Require grantees and subgrantees to maintain reports, records, and other information to properly account for the expenditure of all grant funds and to make such reports, records, and other information available to the grantor State agency for oversight, monitoring, and evaluation purposes.

(8) Require grantees and subgrantees to ensure that work papers in the possession of their auditors are available to the State Auditor for the purposes set out in subsection (i) of this section.

(9) Require grantees to be responsible for managing and monitoring each project, program, or activity supported by grant funds and each subgrantee project, program, or activity supported by grant funds.

(10) Provide procedures for the suspension of further disbursements or use of grant funds for noncompliance with these rules or other inappropriate use of the funds.

(11) Provide procedures for use in appropriate circumstances for reinstatement of disbursements that have been suspended for noncompliance with these rules or other inappropriate use of grant funds.

(12) Provide procedures for the recovery and return to the grantor State agency of unexpended grant funds from a grantee or subgrantee if the grantee or subgrantee is unable to fulfill the purposes of the grant.

(e) Rules Are Subject to the Administrative Procedure Act. — Notwithstanding the provisions of G.S. 150B-2(8a)b. rules adopted pursuant to subsection (d) of this section are subject to the provisions of Chapter 150B of the General Statutes.

(f) Suspension and Recovery of Funds to Grant Recipients for Noncompliance. — The Office of State Budget and Management, after consultation with the administering State agency, shall have the power to suspend disbursement of grant funds to grantees or subgrantees, to prevent further use of grant funds already disbursed, and to recover grant funds already disbursed for noncompliance with rules adopted pursuant to subsection (d) of this section. If the grant funds are a pass-through of funds granted by an agency of the United States, then the Office of State Budget and Management must consult with the granting agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking the actions authorized by this subsection.

(g) Audit Oversight. — The State Auditor has audit oversight, with respect to grant funds received by the grantee or subgrantee, pursuant to Article 5A of Chapter 147 of the General Statutes, of every grantee or subgrantee that receives, uses, or expends grant funds. A grantee or subgrantee must, upon request, furnish to the State Auditor for audit all books, records, and other information necessary for the State Auditor to account fully for the use and expenditure of grant funds received by the grantee or subgrantee. The grantee or subgrantee must furnish any additional financial or budgetary information requested by the State Auditor, including audit work papers in the possession of any auditor of a grantee or subgrantee directly related to the use and expenditure of grant funds.

(h) Report on Grant Recipients That Failed to Comply. — Not later than May 1, 2007, and by May 1 of every succeeding year, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on all grantees or subgrantees that failed to comply with this section with respect to grant funds received in the prior fiscal year.

(i) State Agencies to Submit Grant List to Auditor. — No later than October 1 of each year, each State agency shall submit a list to the State Auditor, in the format prescribed by the State Auditor, of every grantee to which the agency disbursed grant funds in the prior fiscal year. The list shall include the amount disbursed to each grantee and other information as required by the State Auditor to comply with the requirements of this section. (2006-203, s. 3; 2007-323, s. 28.22A(o); 2007-345, s. 12.)

Editor's Note. — Session Laws 2006-203, s. 3, enacted this section as G.S. 143C-6-14. It has been renumbered at the direction of the Revisor of Statutes.

Session Laws 2007-323, s. 28.22A(n), provides: "If on July 1, 2008, there are State employees or retired employees that are enrolled in the Teachers' and State Employees' Comprehensive Major Medical Plan (indemnity plan) on June 30, 2008, and that have not elected one of the optional PPO benefit plans available under the State Health Plan for Teachers and State Employees, then the Plan shall enroll those employees or retired employees in the Standard PPO Option, or its equivalent, effective July 1, 2008."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-323, s. 28.22A(o), as amended by Session Laws 2007-345, s. 12, effective July 1, 2008, substituted "State Health Plan for Teachers and State Employees" for "Teachers' and State Employees' Comprehensive Major Medical Plan" in subdivision (a)(1).

ARTICLE 7.

Federal and Other Receipts.

§ 143C-7-1. Funds creating an obligation.

(a) Report to Director. — A State agency, other than the judicial branch, that submits to the federal government or to any other party an application for funds that will be subject to this Chapter shall first provide to the Director a copy of the application along with any related information the Director may require. The judicial branch shall provide the Director with a copy of the application and any related information after making the application.

(b) Contract Provision. — A State agency that receives funds pursuant to an application that must be reported to the Director under subsection (a) of this section shall include in any related contract or other grant instrument a clause specifically stating that the expenditure of money deposited in the State treasury is subject to acts of appropriation by the General Assembly. (2006-203, s. 3; 2007-393, s. 9.)

§ 143C-7-2. Federal Block Grants.

(a) Plans Submitted and Reviewed. — The Secretary of each State agency that receives and administers federal Block Grant funds shall prepare and submit the agency's Block Grant plans to the Director of the Budget. The Director of the Budget shall submit the Block Grant plans to the Fiscal Research Division of the General Assembly not later than February 28 of each odd-numbered calendar year and not later than April 30 of each even-numbered calendar year.

(b) Information To Be Included in Plans. — Each State agency shall submit a separate Block Grant plan for each Block Grant received and administered by the agency, and each plan shall include all of the following:

(1) A delineation of the proposed dollar amount by activity and by category, including dollar amounts to be used for administrative costs.

(2) A comparison of the proposed funding with two prior years' program budgets. (2006-203, s. 3.)

ARTICLE 8.

Budgeting Capital Improvement Projects.

§ 143C-8-1. Legislative intent; purpose.

(a) Legislative Intent. — The General Assembly recognizes the need to establish a comprehensive process for capital improvement planning and budgeting that is fully integrated with State financial planning and debt management.

(b) Capital Improvement Planning and Budgeting Process. — The capital improvement planning and budgeting process shall include the following elements:

(1) An inventory of facilities owned by State agencies.

(2) Criteria used to evaluate capital improvement needs.

(3) A six-year capital improvement needs estimate.

(4) A six-year capital improvements plan.

(5) Recommendations for capital improvements set forth in the Recommended State Budget as specified in G.S. 143C-3-5.

(c) Office of State Budget and Management to Manage Planning Process. — The Office of State Budget and Management has responsibility for management of the capital improvement planning process. The Director of the Budget may assign to any State agency or institution such duties and responsibilities as may, in the Director's judgment, be necessary to the successful administration of the capital improvement planning process. (1997-443, s. 34.9; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 3.)

§ 143C-8-2. Capital facilities inventory.

The Department of Administration shall develop and maintain an automated inventory of all facilities owned by State agencies pursuant to G.S. 143-341(4). The inventory shall include the location, occupying agency, ownership, size, description, condition assessment, maintenance record, parking and employee facilities, and other information to determine maintenance needs and prepare life-cycle cost evaluations of each facility listed in the inventory. The Department of Administration shall update and publish the inventory at least once every three years. The Department shall also record in the inventory acquisitions of new facilities and significant changes in existing facilities as they occur. (1997-443, s. 34.9; 2006-203, s. 3.)

§ 143C-8-3. Capital improvement needs criteria.

The Office of State Budget and Management shall develop a weighted list of factors that may be used to evaluate the need for capital improvement projects. The list shall include all of the following:

(1) Preservation, adequacy and use of existing facilities.
(2) Health and safety considerations.
(3) Operational efficiencies.
(4) Projected demand for governmental services. (1997-443, s. 34.9; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 3.)

§ 143C-8-4. Agency capital improvement needs estimates.

(a) Needs Estimate Required. — On or before September 1 of each even-numbered year, each State agency shall submit to the Office of State Budget and Management and to the Division of Fiscal Research a six-year capital improvement needs estimate. This estimate shall describe the agency's anticipated capital needs for each year of the six-year planning period. Capital improvement needs estimates shall be shown in two parts.

(b) Repairs and Renovations Needs Estimate. — The first part of the capital improvement needs estimates shall include only requirements for repairs and renovations necessary to maintain the existing use of existing facilities. Each proposed repair and renovation expenditure shall be justified by reference to the Facilities Condition Assessment Program operated by the Office of State Construction.

(c) Real Property and New Construction or Facility Rehabilitation Needs Estimate. — The second part of the capital improvement needs estimates shall include only proposals for real property acquisition and projects involving construction of new facilities or rehabilitation of existing facilities to accommodate uses for which the existing facilities were not originally designed. Each project included in this part shall be justified by reference to the needs evaluation criteria established by the Office of State Budget and Management pursuant to G.S. 143C-8-3.

For capital projects of The University of North Carolina and its constituent institutions, the Office of State Budget and Management shall utilize the needs evaluation information approved by the Board of Governors of The University of North Carolina developed pursuant to G.S. 116-11(9). (1997-443, s. 34.9; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 3.)

§ 143C-8-5. Six-year capital improvements plan.

(a) General. — The State capital improvement plan shall address the long-term capital improvement needs of all State government agencies and shall incorporate all capital projects, however financed, proposed to meet those needs, except that transportation infrastructure projects shall be excluded. On or before December 31 of each even-numbered year, the Director of the Budget shall prepare and transmit to the General Assembly a six-year capital improvement plan. When preparing the plan, the Director of the Budget shall consider the capital improvement needs estimates submitted by State agencies as required in G.S. 143C-8-4. The plan shall be prepared in two parts.

(b) Repair and Renovations Requirements. — The first part of the capital improvement plan shall set forth repair and renovations requirements that, in the judgment of the Director of the Budget, should be met within each year of the six-year planning period to protect and preserve existing capital improvement facilities. The plan shall identify individual projects in priority order by State agency and shall specify the means of financing.

(c) Real Property Acquisition, New Construction, or Facility Rehabilitations. — The second part of the capital improvement plan shall set forth an integrated schedule for real property acquisition, new construction, or rehabilitation of existing facilities that, in the judgment of the Director of the Budget, should be initiated within each year of the six-year planning period. The plan shall contain for each project (i) estimates of real property acquisition, and construction or rehabilitation costs (ii) a means of financing the project, and (iii) an estimated schedule for the completion of the project. Where the means of financing would involve direct or indirect debt service obligations, a schedule of those obligations shall be presented. (1997-443, s. 34.9; 2006-203, s. 3.)

§ 143C-8-6. Recommendations for capital improvements set forth in the Recommended State Budget.

(a) Budget Director's Recommendations. — The Director of the Budget shall recommend expenditures for repairs and renovations of existing facilities, and real property acquisition, new construction, or rehabilitation of existing facilities in the Recommended State Budget in accordance with G.S. 143C-3-5.

(b) Repairs and Renovations in the Recommended State Budget. — The Recommended State Budget shall contain for repairs and renovations of existing facilities: (i) the amount recommended for each State agency, (ii) a summary of the recommendations by project type, and (iii) the means of financing.

(c) Repairs and Renovations in the Budget Support Document. — The Budget Support Document shall contain for each repair and renovation project recommended in accordance with 143C-8-6(b): (i) a project description and justification, (ii) a detailed cost estimate, (iii) an estimated schedule for the completion of the project, and (iv) an explanation of the means of financing.

(d) Other Capital Projects in the Recommended State Budget. — The Recommended State Budget shall contain for each capital project involving real property acquisition, new construction, building area (sq. ft.) expansions, or the rehabilitation of existing facilities to accommodate new or expanded uses: (i) a project description and statement of need, (ii) an estimate of acquisition and construction or rehabilitation costs, and (iii) a means of financing the project.

(e) Other Capital Projects in the Budget Support Document. — The Budget Support Document shall contain for each capital project recommended in accordance with 143C-8-6(c): (i) a detailed project description and justification, (ii) a detailed estimate of acquisition, planning, design, site development, construction, contingency and other related costs, (iii) an estimated schedule of cash flow requirements over the life of the project, (iv) an estimated schedule for the completion of the project, (v) an estimate of maintenance and operating costs, including personnel, for the project, covering the first five years of operation, (vi) an estimate of revenues, if any, likely to be derived from the project, covering the first five years of operation, and (vii) an explanation of the means of financing. (2006-203, s. 3; 2007-117, s. 5(b).)

§ 143C-8-7. When a State agency may begin a capital improvement project.

No State agency may expend funds for the construction or renovation of any capital improvement project except as needed to comply with this Article or otherwise authorized by the General Assembly. Funds that become available by gifts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, federal or private grants, receipts becoming a part of special funds by act of the General Assembly, or any other funds available to a State agency or institution may be utilized for advanced planning through the working drawing phase of capital improvement projects, upon approval of the Director of the Budget. (2006-203, s. 3.)

Editor's Note. — Session Laws 2007-323, s. 29.15, as added by 2007-345, s. 14.1, provides: "Notwithstanding G.S. 143C-8-7, and subject to approval by the Director of the Budget, during the 2007-2009 fiscal biennium, the Aquariums Division of the Department of Environment and Natural Resources may expend funds from the North Carolina Aquariums Fund for capital improvements projects."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

§ 143C-8-8. When a State agency may increase the cost of a capital improvement project.

Upon the request of the administration of a State agency, the Director of the Budget may, when in the Director's opinion it is in the best interest of the State to do so, increase the cost of a capital improvement project. Provided, however, that if the Director of the Budget increases the cost of a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting. The increase may be funded from gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, or direct capital improvement appropriations to that department or institution. (2006-203, s. 3.)

§ 143C-8-9. When a State agency may change the scope of a capital improvement project.

A State agency may increase the scope of a capital improvement project only if the General Assembly authorizes the increase. A State agency may decrease the scope of a capital improvement project if the Director authorizes the decrease. To obtain the Director's authorization for a decrease in the scope of a capital improvement project, a State agency shall submit its request to the Director in writing and shall state the reason for the request. (2006-203, s. 3.)

§ 143C-8-10. Project Reserve Account.

(a) Project Reserve Account. — There is established a Project Reserve Account. When a construction contract is entered for a capital improvement project for which the General Assembly has enacted an appropriation, the appropriation is encumbered for the project's costs of real property acquisition, planning, design, site development, construction, contingencies, and other related costs. If the amount appropriated for the project exceeds the amount encumbered, the excess shall be credited to the Project Reserve Account, unless otherwise required by law. The Director may authorize funds in the Account to be used for any of the following:

(1) An emergency repair and renovation project at a State facility.

(2) The award of a project contract when bids for the contract exceed the amount appropriated for it if the project was designed within the scope intended by the appropriation and if the Director finds that all means to award the contract within the appropriation were reasonably attempted.

(3) A reversion to the principal fund from which revenue was appropriated for a project when the amount encumbered for the project is less than the amount appropriated.

(b) Reporting Requirement. — Whenever the Director authorizes the use of funds from the Project Reserve Account, the Director shall report the action to the Joint Legislative Commission on Governmental Operations at its next meeting. (2006-203, s. 3; 2007-117, s. 6.)

§ 143C-8-11. Reversion of appropriation and lapse of project authorization.

(a) Reversion of Appropriation. — A State agency shall begin the planning of or the construction of an authorized capital improvement project during the fiscal year in which the funds are appropriated. If it does not, the Director may credit the appropriation to the Project Reserve Account, unless otherwise required by law. If the Director does not credit the appropriation to the Project Reserve Account, the appropriation shall revert to the principal fund from which it was appropriated. The Director may, for good cause, allow a State agency to take up to an additional 12 months to take the actions required by this subsection.

(b) Lapse of Project Authorization. — Authorizations for capital improvement projects shall lapse if any of the following occur: (i) the appropriation for a capital improvement project reverts, (ii) the construction of a project does not begin during the first two fiscal years in which funds are appropriated, or (iii) the Director redirects funds appropriated for a capital improvement project in accordance with G.S. 143C-6-2. The Director may, for good cause, allow a State agency to take up to an additional 12 months to begin construction of a project; however, if the Director approves an extension of time under this subsection and construction of the project has not begun by the end of the extension, the authorization for the project shall lapse. (2006-203, s. 3.)

Editor's Note. — Session Laws 2009-451, s. 2.2(j), provides: "Notwithstanding G.S. 143C-8-11, the sum of twenty-four million three hundred seventy-two thousand seven hundred one dollars ($24,372,701) from Capital and Repair and Renovations accounts, as specified in Section 27.11 of this act, shall be transferred to the State Controller to be deposited in Nontax

Budget Code 19978 (Intrastate Transfers) for the 2009-2010 fiscal year."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143C-8-12. University system capital improvement projects from sources that are not General Fund sources: approval of new project or change in scope of existing project.

Notwithstanding any other provision of this Chapter, the Director of the Budget may, upon request of the Board of Governors of The University of North Carolina and after consultation with the Joint Legislative Commission on Governmental Operations, approve: (i) expenditures to plan a capital improvement project of The University of North Carolina the planning for which is to be funded entirely with non-General Fund money, (ii) expenditures for a capital improvement project of The University of North Carolina that is to be funded entirely with non-General Fund money, or (iii) a change in the scope of any previously approved capital improvement project of The University of North Carolina provided that both the project and change in scope are funded entirely with non-General Fund money. (2006-203, s. 3.)

ARTICLE 9.

Special Funds and Fee Reports.

§ 143C-9-1. Medicaid Special Fund; transfers to Department of Health and Human Services.

(a) The Medicaid Special Fund is established as a nonreverting special fund in the Department of Health and Human Services. The Medicaid Special Fund shall consist of the federal Medicaid disproportionate share monies remaining after payments are made to hospitals. Annually, the Department shall transfer the disproportionate share gain, after payments are made to hospitals, to the Medicaid Special Fund. Funds deposited to the Medicaid Special Fund shall only be available for expenditure upon an act of appropriation of the General Assembly.

Political subdivisions may appropriate funds directly to the Department of Health and Human Services for Medicaid programs. Other public agencies and private sources may transfer funds to the Department for Medicaid programs. The Department may accept unconditional and unrestricted donations of such funds. Notwithstanding the provisions of this Article which might forbid such transfer or donation, the University of North Carolina Hospitals at Chapel Hill may transfer funds as provided by the previous sentence of this section.

(b) Contributed funds shall be subject to the Department of Health and Human Services administrative control and shall be allocated only as specifically provided in the Current Operations Appropriations Act, except such contributions shall not reduce State general revenue funding. At the end of any fiscal year, the unobligated balance of any such funds shall not revert to the General Fund, but shall be reappropriated for these purposes in the next fiscal year. (2006-203, s. 3; 2007-117, s. 7.)

Editor's Note. — Session Laws 2007-323, s. 10.40, provides: "Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143C-9-1, there is appropriated from the Medicaid Special Fund to the Department of Health and Human Services the sum of forty-three million dollars ($43,000,000) for the 2007-2008 fiscal year and the sum of forty-three million dollars ($43,000,000) for the 2008-2009 fiscal year. These funds shall be allocated as prescribed by G.S. 143C-9-1(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143C-9-1(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act. The Department may also use funds in the Medicaid Special Fund to fund the settlement of the Disproportionate Share Hospital payment audit issues between the Department of Health and Human Services and the federal government related to fiscal years 1997-2002, and funds are appropriated from the fund for the 2007-2009 fiscal biennium for this purpose."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 10.61, provides: "Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143C-9-1, there is appropriated from the Medicaid Special Fund to the Department of Health and Human Services the sum of forty-three million dollars ($43,000,000) for the 2009-2010 fiscal year and the sum of forty-three million dollars ($43,000,000) for the 2010-2011 fiscal year. These funds shall be allocated as prescribed by G.S. 143C-9-1(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143C-9-1(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act. The Department may also use funds in the Medicaid Special Fund to fund the settlement of the Disproportionate Share Hospital payment audit issues between the Department of Health and Human Services and the federal government related to fiscal years 1997-2002, and funds are appropriated from the Fund for the 2009-2010 fiscal year for this purpose."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143C-9-2. Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs.

(a) The Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs is established as an interest-bearing, nonreverting special trust fund in the Office of State Budget and Management. Moneys in the Trust Fund shall be held in trust and used solely to increase community-based services that meet the mental health, developmental disabilities, and substance abuse services needs of the State. The Trust Fund shall be used to supplement and not to supplant or replace existing State and local funding available to meet the mental health, developmental disabilities, and substance abuse services needs of the State.

The State Treasurer shall hold the Trust Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Trust Fund and shall invest its assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Trust Fund shall become part of the Trust Fund. Any balance remaining in the Trust Fund at the end of any fiscal year shall be carried forward in the Trust Fund for the next succeeding fiscal year.

Moneys in the Trust Fund shall be expended only in accordance with subsection (b) of this section and in accordance with limitations and directions enacted by the General Assembly.

(b) Moneys in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs shall be allocated to area programs to be used only to:

(1) Provide start-up funds and operating support for programs and services that provide more appropriate and cost-effective community treatment alternatives for individuals currently residing in the State's mental health, developmental disabilities, and substance abuse services institutions.

(2) Repealed by Session Laws 2007-323, s. 10.49(w1), effective July 1, 2007.

(3) Facilitate reform of the mental health, developmental disabilities, and substance abuse services system and expand and enhance treatment and prevention services in these program areas to remove waiting lists and provide appropriate and safe services for clients.

(4) Provide bridge funding to maintain appropriate client services during transitional periods as a result of facility closings, including departmental restructuring of services.

(5) Repealed by Session Laws 2007-323, s. 10.49(w1), effective July 1, 2007.

(c) Notwithstanding G.S. 143C-1-2, any nonrecurring savings in State appropriations realized from the closure of any State psychiatric hospitals that are in excess of the cost of operating and maintaining a new State psychiatric hospital shall not revert to the General Fund but shall be placed in the Trust Fund and shall be used for the purposes authorized in this section. Notwithstanding G.S. 143C-1-2, recurring savings realized from the closure of any State psychiatric hospitals shall not revert to the General Fund but shall be credited to the Department of Health and Human Services to be used only for the purposes of subsections (b)(1) and (b)(3) of this section.

(d) Beginning July 1, 2007, the Secretary of the Department of Health and Human Services shall report annually to the Fiscal Research Division on the expenditures made during the preceding fiscal year from the Trust Fund. The report shall identify each expenditure by recipient and purpose and shall indicate the authority under subsection (b) of this section for the expenditure. (2006-203, s. 3; 2007-323, s. 10.49(w1).)

Editor's Note. — Session Laws 2007-323, s. 10.49(u), provides: "In keeping with the United States Supreme Court decision in Olmstead v. L.C. & E.W. and State policy to provide appropriate services to clients in the least restrictive and most appropriate environment, the Department of Health and Human Services shall continue to implement a plan for the transition of patients from State psychiatric hospitals to the community or to other long-term care facilities, as appropriate. The goal is to develop mechanisms and identify resources needed to enable patients and their families to receive the necessary services and supports based on the following guiding principles:

"(1) Individuals shall be provided acute psychiatric care in non-State facilities when appropriate.

"(2) Individuals shall be provided acute psychiatric care in State facilities only when non-State facilities are unavailable.

"(3) Individuals shall receive evidence-based psychiatric services and care that are cost-efficient.

"(4) The State shall minimize cost shifting to other State and local facilities or institutions.

"The Department of Health and Human Services shall conduct an analysis of the individual patient service needs and shall develop and implement an individual transition plan, as appropriate, for patients in each hospital. The State shall ensure that each individual transition plan, as appropriate, shall take into consideration the availability of appropriate alternative placements based on the needs of the patient and within resources available for the mental health, developmental disabilities, and substance abuse services system. In developing each plan, the Department shall consult with the patient and the patient's family or other legal representative.

"The Department of Health and Human Services shall submit reports on the status of implementation of this section to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division. These reports shall be submitted on December 1, 2007, and May 1, 2008."

Session Laws 2007-323, s. 10.49(v), provides: "(v) Funds in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs (Mental Health Trust Fund) that are designated by the Department of Health and Human Services in its 2006-2007 Mental Health Trust Fund Plan for increasing community-based services, shall be disbursed in full by the Department to LMEs for this purpose not later than October 1, 2007. Funds received by LMEs on or before October 1, 2007, for this purpose and not expended or encumbered by LMEs for this purpose by June 30, 2009, shall revert on that date to the Mental Health Trust Fund.

"Notwithstanding G.S. 143C-9-2, as amended by subsection (w1) of this section, the Department of Health and Human Services may spend funds in the Mental Health Trust Fund for the 2007-2008 fiscal year for allowable purposes other than community-based programs provided that such purposes were included in the 2006-2007 Mental Health Trust Fund Plan. As used in this subsection "allowable purposes" means the statutory authorization in effect under G.S. 143-15.3D on June 30, 2007."

Session Laws 2007-323, s. 10.49(w2) and (w3) provides: "(w2) Notwithstanding G.S. 143C-9-2(c), additional savings in the 2007-2008 and 2008-2009 fiscal years shall be used to fund the State's contribution for local management entity system administration.

"(w3) Notwithstanding G.S. 143C-9-2(b) requiring allocation of funds to area programs, the Department of Health and Human Services may use up to one million five hundred thousand dollars ($1,500,000) in each of the 2007-2008 and 2008-2009 fiscal years from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs for the purposes authorized under G.S. 143C-9-2(b)(1), (3), and (4)."

Session Laws 2007-323, s. 10.49(x), provides: "Notwithstanding G.S. 143C-9-2, as amended by this act, the Secretary of Health and Human Services may use funds for the 2007-2008 fiscal year from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs (Trust Fund) or, if funds in the Trust Fund are insufficient, from other available sources in the Department of Health and Human Services, to support up to 66 new positions in the Julian F. Keith Alcohol and Drug Abuse Treatment Center, provided that these funds may be used only if the Julian F. Keith Alcohol and Drug Abuse Treatment Center opens before July 1, 2008."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 143C-9-3. Settlement Reserve Fund.

(a) The "Settlement Reserve Fund" is established as a restricted reserve in the General Fund. Except as otherwise provided in this section, funds shall be expended from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

(b) A Health Trust Account is established in the Settlement Reserve Fund. The portion of each Master Settlement Agreement payment identified in Section 6(3) of S.L. 1999-2 shall be credited to the Health Trust Account. The State Controller shall transfer all funds in the Health Trust Account to the Health and Wellness Trust Fund created in Article 6C of Chapter 147 of the General Statutes.

(c) A Tobacco Trust Account is established in the Settlement Reserve Fund. The portion of each Master Settlement Agreement payment identified in Section 6(2) of S.L. 1999-2 shall be credited to the Tobacco Trust Account. The State Controller shall transfer all funds in the Tobacco Trust Account to the Tobacco Trust Fund created in Article 75 of Chapter 143 of the General Statutes.

(d) Unless prohibited by federal law, federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be credited to the Settlement Reserve Fund. Unless otherwise encumbered or distributed under a settlement agreement or final order or judgment of the court, funds paid to the State or a State agency pursuant to a tobacco litigation settlement agreement, or a final order or judgment of a court in litigation between tobacco companies and the states, shall be credited to the Settlement Reserve Fund. (2006-203, s. 3.)

Cross References. — As to University Cancer Research Fund, see G.S. 116-29.1.

Editor's Note. — Session Laws 2007-532, s. 5, as amended by Session Laws 2009-550, s. 9, provides: "Notwithstanding G.S. 143C-9-3(b) and G.S. 147-86.30, of the funds credited to the Health Trust Account from the Master Settlement Agreement pursuant to Section 6(3) of S.L. 1999-2 during the 2008-2009 fiscal year, the sum of five million dollars ($5,000,000) for the 2008-2009 fiscal year shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund) to the North Carolina Health Insurance Risk Pool, as enacted by this act."

Session Laws 2008-107, s. 2.2(e), provides: "Notwithstanding G.S. 143C-9-3, of the funds credited to the Tobacco Trust, the sum of five million dollars ($5,000,000) shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2008-2009 fiscal year. These funds shall be transferred on or after April 30, 2009."

Session Laws 2008-107, s. 2.2(f), provides: "Notwithstanding G.S. 143C-9-3, of the funds credited to the Health Trust Account, the sum of five million dollars ($5,000,000) that would otherwise be deposited in the Fund Reserve shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2008-2009 fiscal year."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 2.2(h), provides: "Notwithstanding G.S. 143C-9-3, of the funds credited to the Tobacco Trust, the sum of five million dollars ($5,000,000) shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) to support General Fund appropriations for the 2009-2010 and 2010-2011 fiscal years. These funds shall be transferred on or after April 30, 2010."

Session Laws 2009-451, s. 2.2(i), provides: "Notwithstanding G.S. 143C-9-3, of the funds credited to the Health Trust Account, the sum of five million dollars ($5,000,000) that would otherwise be deposited in the Fund Reserve shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) to support General Fund appropriations for the 2009-2010 and 2010-2011 fiscal years. These funds shall be transferred on or after April 30, 2010."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 143C-9-4. Biennial fee report.

The Office of State Budget and Management shall prepare a report biennially on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous two fiscal years. The report shall include the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year. (2006-203, s. 3; 2007-323, s. 6.3.)

§ 143C-9-5. Assignment to the State of rights to tobacco manufacturer escrow funds.

A tobacco product manufacturer that elects to place funds into escrow pursuant to G.S. 66-291(a)(2) may make an assignment of its interest in the funds to the benefit of the State. The assignment applies to all funds, and any earnings and appreciation, that are in the escrow account at the time of the assignment or are subsequently deposited into the escrow account and are not released under the provisions of subdivision (1) or (2) of G.S. 66-291(b) at any time on or before the expiration of 10 years from the date of assignment. The assignment is irrevocable and shall include any reversionary interest in the escrow account and the funds therein that would otherwise belong to the tobacco manufacturer, including the right to receive the escrowed funds pursuant to G.S. 66-291(b)(3).

An assignment of rights executed pursuant to this section shall be in writing and shall be signed by a duly authorized representative of the tobacco product manufacturer making the assignment. An assignment is effective upon delivery to the Attorney General and the financial institution where the escrow account is maintained. (2006-66, s. 6.19(d); 2006-221, s. 3A; 2006-259, ss. 40(d), 40.5.)

Editor's Note. — Session Laws 2006-66, s. 6.19(d) as added by Session Laws 2006-221, s. 3A, makes this section effective July 1, 2007.

This section was enacted as G.S. 143C-9-3A by Session Laws 2006-66, s. 6.19(d), as added by Session Laws 2006-221, s. 3A. It was recodified as G.S. 143C-9-5 by Session Laws 2006-259, s. 40.5, effective August 23, 2006.

Session Laws 2006-259, s. 40(d) was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 6.19(e), as added by Session Laws 2006-221, s. 3A, provides: "If a final judgment by a court of competent jurisdiction declares that G.S. 143C-9-3A [G.S. 143C-9-5], as enacted by subsection (d) of this section, is invalid or unenforceable, then the statute is repealed, and any assignment made under it is void. If, as a result of a final judgment, it is determined that G.S. 143C-9-3A [G.S. 143C-9-5] as enacted by subsection (b) of this section, would subject payments to this State by participating manufacturers under the Master Settlement Agreement, as defined in G.S. 66-290, to a Non-Participating Manufacturer Adjustment under Section IX of that Agreement, then G.S. 143C-9-3A [G.S. 143C-9-5] is repealed, and any assignment made under it is void."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143C-9-6. JDIG Reserve Fund.

(a) The State Controller shall establish a reserve in the General Fund to be known as the JDIG Reserve. Funds from the JDIG Reserve shall not be expended or transferred except in accordance with G.S. 143B-437.63.

(b) It is the intent of the General Assembly to appropriate funds annually to the JDIG Reserve established in this section in amounts sufficient to meet the anticipated cash requirements for each fiscal year of the Job Development Investment Grant Program established pursuant to G.S. 143B-437.52. (2006-66, s. 6.19(f); 2006-221, s. 3A; 2006-259, ss. 40(f), 40.5.)

Editor's Note. — Session Laws 2006-221, s. 3A, made this section effective July 1, 2007.

This section was enacted as G.S. 143C-3B by Session Laws 2006-66, s. 6.19(f), as added by S.L. 2006-221, s. 3A. It was recodified as G.S. 143C-9-6 by Session Laws 2006-259, s. 40.5, effective August 23, 2006.

Session Laws 2006-259, s. 40(f) was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

ARTICLE 10.

Penalties.

§ 143C-10-1. Offenses for violation of Chapter.

(a) Class 1 misdemeanor. — It is a Class 1 misdemeanor for a person to knowingly and willfully do any one or more of the following:

(1) Withdraw funds from the State treasury for any purpose not authorized by an act of appropriation.

(2) Approve any fraudulent, erroneous, or otherwise invalid claim or bill to be paid from an appropriation.

(3) Make a written statement, give a certificate, issue a report, or utter a document required by this Chapter, any portion of which is false.

(4) Fail or refuse to perform a duty imposed by this Chapter.

(b) Class A1 misdemeanor. — It is a Class A1 misdemeanor for a person to make a false statement in violation of G.S. 143C-6-23(c).

(c) Forfeiture of Office or Employment. — An appointed officer or employee of the State or an officer or employee of a political subdivision of the State, whether elected or appointed, forfeits his office or employment upon conviction of an offense under this section. An elected officer of the State is subject to impeachment for committing any of the offenses specified in this section. (2006-203, s. 3.)

§ 143C-10-2. Civil liability for violation of Chapter.

A person convicted of an offense under G.S. 143C-10-1 is liable in a civil action for any damages suffered by the State in consequence of the offense. (2006-203, s. 3.)

§ 143C-10-3. Suspension from office or impeachment for refusal to comply with Chapter.

(a) State Officers or Employees of the Executive Branch. — The Governor may suspend from the performance of his or her duties any State officer or employee of the executive branch except an officer elected by the people, who persists, after notice and warning, in failing or refusing to comply with the provisions of this Chapter or any lawful administrative directive issued pursuant to this Chapter. Before acting to suspend, the Governor shall give the accused notice and an opportunity to be heard in his or her own defense. The Governor shall report the facts leading to suspension to the Attorney General who may initiate appropriate criminal or civil proceedings. The Governor may apply to the General Court of Justice for a restraining order and injunction if a suspended officer or employee persists in performing official acts.

(b) Elected Officers. — A State officer elected by the people who knowingly and willfully fails or refuses to comply with any provision of this Chapter or any lawful administrative directive issued under this Chapter is subject to impeachment. (2006-203, s. 3; 2007-393, s. 10.)

Chapter 143D.

The State Governmental Accountability and Internal Control Act.

Article 1.

General Provisions.

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143D-2. Purpose.
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Accountability.

143D-11. Violations.
143D-12. Penalties.

Article 1.

General Provisions.

§ 143D-1. Title.

This Chapter shall be known and may be cited as the "State Governmental Accountability and Internal Control Act." (2007-520, s. 1.)

Editor's Note. — Session Laws 2007-520, s. 2, made this Chapter effective January 1, 2007.

The preamble to Session Laws 2007-520 provides: "Whereas, the people of North Carolina entrust the oversight of public institutions to elected and appointed officials for the purpose of furthering the public interest; and

"Whereas, the oversight of those public institutions requires an effective and efficient system of internal control providing reasonable assurance that the public's objectives are met; and

"Whereas, ensuring such a system of internal control requires applicable statewide standards and specific assignment of related responsibilities; and

"Whereas, for a system of internal control to continue to operate properly, responsibilities for and within the system must be clearly demarked; Now, therefore,".

§ 143D-2. Purpose.

The purpose of this Chapter is to ensure a strong and effective system of internal control within State government and to clearly indicate responsibilities related to that system of internal control. Therefore, it is the intent of the General Assembly in this Chapter to clearly establish responsibilities related to internal control within State government. (2007-520, s. 1.)

§ 143D-3. Definitions.

The following definitions apply in this Chapter:

(1) Internal control. — An integral process, effected by an entity's governing body, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives related to the effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.
(2) Principal executive officer. — Executive head of a State agency.
(3) Principal fiscal officer. — Chief fiscal officer of a State agency.

(4) State agency. — Any department, institution, board, commission, committee, division, bureau, officer, official, or any other entity for which the State has oversight responsibility, including, but not limited to, any university, mental or specialty hospital, community college, or clerk of court. (2007-520, s. 1.)

§§ **143D-4, 143D-5:** Reserved for future codification purposes.

Article 2.

Internal Control Responsibilities.

§ 143D-6. Standards setting responsibilities.

The State Controller, in consultation with the State Auditor, shall establish comprehensive standards, policies, and procedures to ensure a strong and effective system of internal control within State government. These standards, policies, and procedures shall be made readily available to all State agencies, and the State Controller shall make appropriate education efforts to inform relevant State agency staffs of the standards, policies, procedures, and internal control best practices. These efforts shall include the development of training courses, manuals, and other information sources to promulgate internal control standards, policies, procedures, and best practices throughout all State agencies. (2007-520, s. 1.)

§ 143D-7. Agency management responsibilities.

The management of each State agency bears full responsibility for establishing and maintaining a proper system of internal control within that agency. Each principal executive officer and each principal fiscal officer shall annually certify, in a manner prescribed by the State Controller, that the agency has in place a proper system of internal control. The State Controller shall develop policies and procedures to direct agencies in their evaluation.

The management of each State agency also bears the responsibility periodically to submit accurate and complete financial information to the State Controller for compilation into North Carolina State government's various financial reports and other related financial information disseminated to the public. With the submission of such periodic reports to the State Controller, each agency's principal executive officer and each agency's principal fiscal officer shall certify, in a manner prescribed by the State Controller, to the accuracy and completeness of the financial information submitted. (2007-520, s. 1.)

§ 143D-8. Internal control documentation.

Each State agency shall maintain documentation, as prescribed by the State Controller, of the system of internal control within that agency. All internal control documentation shall be available upon request for examination by the State Controller and the State Auditor. (2007-520, s. 1; 2008-187, s. 27.)

Effect of Amendments. — Session Laws 2008-187, s. 27, effective August 7, 2008, substituted "Internal" for "Internet" in the catchline.

§§ **143D-9, 143D-10:** Reserved for future codification purposes.

ARTICLE 3.

Accountability.

§ 143D-11. Violations.

The State Controller, in consultation with the State Auditor, shall establish a mechanism to allow for the reporting and investigation of violations of the provisions of this Chapter. This mechanism shall encourage all State employees to become familiar with the provisions of this Chapter and to report any known violations. (2007-520, s. 1.)

§ 143D-12. Penalties.

A willful or continued failure of an employee paid from State funds or employed by a State agency to adhere to the requirements of this Chapter is sufficient cause for disciplinary action, up to and including dismissal of the employee. (2007-520, s. 1.)

Article 3.

Accountability.

§ 143D-11. Violations.

The State Controller, in consultation with the State Auditor, shall establish a mechanism to allow for the reporting and investigation of violations of the provisions of this Chapter. This mechanism shall encourage all State employees to become familiar with the provisions of this Chapter and to report any known violations. (2007-520, s. 1.)

§ 143D-12. Penalties.

A willful or continued failure of an employee paid from State funds or employed by a State agency to adhere to the requirements of this Chapter is sufficient cause for disciplinary action, up to and including dismissal of the employee. (2007-520, s. 1.)

Chapter 144.

State Flag, Official Governmental Flags, Motto, and Colors.

Sec.
144-1. State flag.
144-2. State motto.
144-3. Flags to be displayed on public buildings and institutions.
144-4. Flags to be displayed at county courthouses.

Sec.
144-5. Flags to conform to law.
144-6. State colors.
144-7. Display of official governmental flags; public restrictions.
144-8. State salute to the North Carolina flag.

§ 144-1. State flag.

The flag of North Carolina shall consist of a blue union, containing in the center thereof a white star with the letter "N" in gilt on the left and the letter "C" in gilt on the right of said star, the circle containing the same to be one third the width of said union. The fly of the flag shall consist of two equally proportioned bars, the upper bar to be red, the lower bar to be white; the length of the bars horizontally shall be equal to the perpendicular length of the union, and the total length of the flag shall be one half more than its width. Above the star in the center of the union there shall be a gilt scroll in semicircular form, containing in black letters this inscription: "May 20th 1775" and below the star there shall be a similar scroll containing in black letters the inscription: "April 12th 1776". (1885, c. 291; Rev., s. 5321; C.S., s. 7535; 1991, c. 361, s. 1.)

Editor's Note. — Session Laws 2005-360, s. 2, effective October 1, 2005, and applicable to construction of ordinances adopted before, on or after that date, rewrote the heading of Chapter 144, which formerly read: "State Flag, Motto And Colors."

§ 144-2. State motto.

The words "esse quam videri" are hereby adopted as the motto of this State, and as such shall be engraved on the great seal of North Carolina and likewise at the foot of the coat of arms of the State as a part thereof. On the coat of arms, in addition to the motto, at the bottom, there shall be inscribed at the top the words, "May 20th, 1775." (1893, c. 145; Rev., s. 5320; C.S., s. 7536.)

§ 144-3. Flags to be displayed on public buildings and institutions.

The board of trustees or managers of the several State institutions and public buildings shall provide a North Carolina flag, of such dimensions and material as they may deem best, and the same shall be displayed from a staff upon the top of each and every such building, at all times except during inclement weather, and upon the death of any State officer or any prominent citizen the flag shall be put at half-staff until the burial of such person has taken place. (1907, c. 838, s. 2; C.S., s. 7537; 2009-570, s. 23.)

Effect of Amendments. — Session Laws 2009-570, s. 23, effective August 28, 2009, substituted "half-staff" for "half-mast" near the end of the section.

§ 144-4. Flags to be displayed at county courthouses.

The boards of county commissioners of the several counties in this State shall likewise authorize the procuring of a North Carolina flag, to be displayed either on a staff upon the top or draped behind the judge's stand, in each and every courthouse in the State, and the State flag shall be displayed at each and every term of court held, and on such other public occasions as the commissioners may deem proper. (1907, c. 838, s. 3; C.S., s. 7538.)

§ 144-5. Flags to conform to law.

No State flag shall be allowed in or over any building here mentioned unless such flag conforms to the description of the State flag contained in this chapter. (1907, c. 838, s. 4; C.S., s. 7539.)

§ 144-6. State colors.

Red and blue, of shades as adopted and appearing in the North Carolina State flag and the American flag, shall be, and hereby are, declared to be the official State colors for the State of North Carolina.

The use of such official State colors on ribbons attached to State documents with the great seal and/or seals of State departments is permissive and discretionary but not directory. (1945, c. 878.)

§ 144-7. Display of official governmental flags; public restrictions.

(a) A county, city, consolidated city-county, or unified government shall not prohibit an official governmental flag from being flown or displayed if the official governmental flag is flown or displayed:

(1) In accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended; and

(2) Upon private or public property with the consent of either the owner of the property or of any person having lawful control of the property.

(b) Notwithstanding subsection (a) of this section, for the purpose of protecting the public health, safety, and welfare, reasonable restrictions on flag size, number of flags, location, and height of flagpoles are not prohibited, provided that such restrictions shall not discriminate against any official governmental flag in any manner.

(c) For purposes of this section, an "official governmental flag" shall mean any of the following:

(1) The flag of the United States of America.

(2) The flag of nations recognized by the United States of America.

(3) The flag of the State of North Carolina.

(4) The flag of any state or territory of the United States.

(5) The flag of a political subdivision of any state or territory of the United States. (2005-360, s. 1.)

Editor's Note. — This section was enacted as G.S. 144-7.1 and was redesignated as G.S. 144-7 at the direction of the Revisor of Statutes.

§ 144-8. State salute to the North Carolina flag.

The phrase "I salute the flag of North Carolina and pledge to the Old North State love, loyalty, and faith." is adopted as the official salute to the North Carolina flag. (2007-36, s. 1.)

Cross References. — As to desecration of State and United States flag, G.S. 14-381. As to flagpoles and display of flags in state parks, G.S. 100-17. As to display of the United States and North Carolina flags and the recitation of the Pledge of Allegiance, G.S. 116-69.1.

Editor's Note. — Session Laws 2007-36, s. 2, made this section effective May 4, 2007.

The preamble of Session Laws 2007-36, provides: "Whereas, an official State flag was first recognized in 1861, with a new design adopted in 1885; and

"Whereas, in 1907 the General Assembly enacted legislation requiring the flag to be displayed at all State institutions, public buildings, and courthouses; and

"Whereas, many organizations and groups use the salute to the North Carolina flag at their meetings and conventions; and

"Whereas, there is no record of an official pledge to the State flag having been adopted; and

"Whereas, for the purpose of promoting greater loyalty and respect to the State of North Carolina and inasmuch as a special act of the legislature adopted an emblem of our government known as the North Carolina flag; Now, therefore,".

§ 144-8. State salute to the North Carolina flag.

The phrase: "I salute the flag of North Carolina and pledge to the Old North State love, loyalty, and faith" is adopted as the official salute to the North Carolina flag. (2007-36, s. 1.)

Cross References. - As to definition of State and United States flag, G.S. 144-1. As to flagpoles and display of flags in state parks, G.S. 100-17. As to display of the United States and North Carolina flags and the recitation of the Pledge of Allegiance, G.S. 115C-47(29a).

Editor's Note. - Session Laws 2007-36, s. 2, made this section effective May 4, 2007.

The preamble of Session Laws 2007-36, provides: "Whereas, an official State flag was first recognized in 1861, with a new design adopted in 1885; and

"Whereas, in 1907 the General Assembly enacted legislation requiring the flag to be displayed in all State institutions, public buildings, and courthouses; and

"Whereas, many organizations and groups use the salute to the North Carolina flag at their meetings and conventions; and

"Whereas, there is no record of an official pledge to the State flag having been adopted; and

"Whereas, for the purpose of fostering greater loyalty and respect to the State of North Carolina and inasmuch as a special act of the legislature adopted some emblem of our government known as the North Carolina flag; Now, therefore,"

Chapter 145.

State Symbols and Other Official Adoptions.

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145-5. State mammal.
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145-21. State Aviation Hall of Fame and Museum and State Museum of Aviation.
145-22. State carnivorous plant.
145-23. State birthplace of traditional pottery.
145-24. Official State dances.
145-25. State Christmas tree.
145-26. State freshwater trout.
145-27. State Collard Festival.
145-28. State food festival.
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§ 145-1. State flower.

The dogwood is hereby adopted as the official flower of the State of North Carolina. (1941, c. 289.)

§ 145-2. State bird.

The cardinal is hereby declared to be the official State bird of North Carolina. (1943, c. 595.)

§ 145-3. State tree.

The pine is hereby adopted as the official State tree of the State of North Carolina. (1963, c. 41.)

§ 145-4. State shell.

The Scotch bonnet is hereby adopted as the official State shell of the State of North Carolina. (1965, c. 681.)

§ 145-5. State mammal.

The gray squirrel *(Sciurus carolinensis)* is hereby adopted as the official State mammal of the State of North Carolina. (1969, c. 1207.)

§ 145-6. State saltwater fish.

The channel bass (red drum) is hereby adopted as the official State saltwater fish of the State of North Carolina. (1971, c. 274.)

§ 145-7. State insect.

The honeybee is hereby adopted as the official State insect of the State of North Carolina. (1973, c. 55.)

§ 145-8. State stone.

The emerald is hereby adopted as the official State precious stone of the State of North Carolina. (1973, c. 136, s. 1.)

§ 145-9. State reptile.

The turtle is adopted as the official State reptile of the State of North Carolina, and the eastern box turtle is designated as the emblem representing the turtles inhabiting North Carolina. (1979, c. 154, s. 1.)

§ 145-10. State rock.

Granite is adopted as the official State rock of the State of North Carolina. (1979, c. 906, s. 1.)

§ 145-10.1. State beverage.

Milk is hereby adopted as the official State beverage of the State of North Carolina. (1987, c. 347, s. 1.)

§ 145-11. State historical boat.

The Shad Boat is adopted as the official State historical boat of the State of North Carolina. (1987, c. 366, § 1.)

§ 145-12. State language.

(a) Purpose. — English is the common language of the people of the United States of America and the State of North Carolina. This section is intended to preserve, protect and strengthen the English language, and not to supersede any of the rights guaranteed to the people by the Constitution of the United States or the Constitution of North Carolina.

(b) English as the Official Language of North Carolina. — English is the official language of the State of North Carolina.

(c) Expired. (1987, c. 480, s. 1; c. 877, s. 1.1.)

Legal Periodicals. — For comment, "Language Rights and the Legal Status of English-Only Law in the Public and Private Sector," see 20 N.C. Cent. L.J. 65 (1992).

§ 145-13. The State dog.

The Plott Hound is adopted as the official dog of the State of North Carolina. (1989, c. 773, s. 1.)

§ 145-14. The State Military Academy.

Oak Ridge Military Academy, in Oak Ridge, North Carolina, as long as it remains a military academy is adopted as the official military academy of the State of North Carolina. (1991, c. 728, s. 1.)

Editor's Note. — Session Laws 1991, c. 728, s. 2 provides: "It is the intent of the General Assembly to give Oak Ridge Military Academy an honorary designation as the official military academy of North Carolina. It is not the intent of the General Assembly to establish a new State agency or educational institution or qualify Oak Ridge Military Academy for State funds and this act confers no liability on the State."

§ 145-15. State tartan.

The Carolina Tartan is adopted as the official tartan of the State of North Carolina. (1991, c. 85, s. 1.)

§ 145-16. State Watermelon Festivals.

(a) The Hertford County Watermelon Festival is adopted as the official Northeastern North Carolina Watermelon Festival. The Hertford County Watermelon Festival shall be observed annually during the last four days of the first week in August.

(b) The Fair Bluff Watermelon Festival in Columbus County is adopted as the official Southeastern North Carolina Watermelon Festival. The Fair Bluff Watermelon Festival shall be observed annually during mid-July.

(c) Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act.

(d) Nothing in this act shall be construed to obligate Hertford County or Columbus County to expend funds for the purposes of this act. (1993, c. 212, s. 1.)

§ 145-17. State vegetable.

The sweet potato is adopted as the official vegetable of the State of North Carolina. (1995, c. 521, s. 3.)

§ 145-18. State fruit and State berries.

(a) The official fruit of the State of North Carolina is the Scuppernong grape (Vitis genus).

(b) The official red berry of the State is the strawberry (Fragaria genus).

(c) The official blue berry of the State is the blueberry (Vaccinium genus). (2001-488, s. 1.)

Editor's Note. — The preamble to Session Laws 2001-488, provides:

"PART I. NORTH CAROLINA'S HERITAGE OF FARMING.

"Whereas, North Carolina's economy originated and developed as an agrarian economy with a cornucopia of fruits and vegetables; and

"Whereas, the State takes great pride in its rich heritage of farming; and

"Whereas, there are still many families who base their livelihood in farming and who are continuing the North Carolina tradition of producing goods from our land; and

"Whereas, one of the main sources of agricultural production in the State is the production of fruits and berries of several varieties; and

"PART II. THE SCUPPERNONG GRAPE.

"Whereas, North Carolina is the home of our nation's first cultivated grape, the Scuppernong; and

"Whereas, the Scuppernong grape was named after the Scuppernong River in North Carolina; and

"Whereas, British explorers in 1584 and 1585 reported to Queen Elizabeth and Sir Walter Raleigh that the barrier islands of what is now, in part, Roanoke Island were full of grapes and that the soil of the land was 'so abounding with sweet trees that bring rich and most pleasant gummes, grapes of such greatness, yet wild, as France, Spain, nor Italy hath not greater …'; and

"Whereas, Sir Walter Raleigh's colony discovered the famous Scuppernong 'Mother Vineyard' on Roanoke Island, a vine that is now over 400 years old and has a trunk over two feet thick; and

"Whereas, the State toast, penned in 1904, references North Carolina as the land '[w]here the scuppernong perfumes the breeze at night,'; and

"PART III. THE STRAWBERRY AND THE BLUEBERRY.

"Whereas, there are over 1,700 acres of strawberries and over 3,600 acres of blueberries harvested in North Carolina each year; and

"Whereas, in 2000, strawberry growers in the State produced 23,000,000 pounds of strawberries, yielding $17,325,000 in revenues; and

"Whereas, in 2000, blueberry growers in the State produced 17,500,000 pounds of blueberries, resulting in an increase in the State's economy of over $18,000,000 in revenues; and

"Whereas, these delicious berries are a good source of vitamins, a number of life-sustaining minerals, and dietary fiber;

"Whereas, the blueberry is an antioxidant, which has been proven to reduce cholesterol and lower the risk of heart disease; and

"Whereas, each year the Town of Chadbourn in Columbus County hosts the North Carolina Strawberry Festival, which is one of the most celebrated traditions in the State; and

"Whereas, the State of North Carolina does not have an official fruit nor an official berry; Now, therefore,"

§ 145-19. State International Festival.

Folkmoot USA is adopted as the official international festival of the State of North Carolina. (2003-315, s. 1.)

§ 145-20. State wildflower.

The Carolina Lily (Lilium michauxii) is adopted as the official wildflower of the State of North Carolina. (2003-426, s. 1.)

Editor's Note. — This section was originally enacted as G.S. 145-19. It has been renumbered as G.S. 145-20 at the direction of the Revisor of Statutes.

The preamble to Session Laws 2003-426, provides: "Whereas, North Carolina is blessed with an abundance of wildflowers from the mountains to the coast; and

"Whereas, the Carolina Lily is a scarce and beautiful flower that is found throughout North Carolina in upland pine-oak woods and pocosins; and

"Whereas, the Carolina Lily (Lilium michauxii) is one of many plants named for the distinguished French botanist Andre Michaux who traveled widely in the southeastern United States; and

"Whereas, Andre Michaux (1747-1802), a genuine hero of science and exploration, referred to the North Carolina mountains as 'the great botanical laboratory and paradise of North America'; and

"Whereas, the Carolina Lily, sometimes referred to as Michaux's Lily, bears up to six reddish-yellow, spotted flowers with petals that bend backwards; and

"Whereas, each nodding flower grows to about three inches in diameter; and

"Whereas, this magnificent flower bears the name of our great State; and

"Whereas, the State of North Carolina does not have an official wildflower; Now, therefore,

"The General Assembly of North Carolina enacts:"

Session Laws 2003-426, s. 3, made this section effective August 19, 2003.

§ 145-21. State Aviation Hall of Fame and Museum and State Museum of Aviation.

The Asheboro Municipal Airport is designated as the official location of the North Carolina Aviation Hall of Fame and the North Carolina Aviation Museum. The Wilmington International Airport is designated as the official location of the North Carolina Museum of Aviation. (2003-363, s. 1.)

Editor's Note. — Session Laws 2003-263, s. 2, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act."

Session Laws 2003-263, s. 3, provides: "Nothing in this act shall be construed to obligate the City of Asheboro, the City of Wilmington, Randolph County, or New Hanover County to expend funds for the purposes of this act."

§ 145-22. State carnivorous plant.

The Venus flytrap (Dionaea muscipula) is adopted as the official carnivorous plant of the State of North Carolina. (2005-74, s. 1.)

Editor's Note. — The preamble to Session Laws 2005-74, provides: "Whereas, the Venus flytrap is a small flowering perennial plant that grows in boggy areas of the Southeastern United States; and

"Whereas, the Venus flytrap is unique in that it is a carnivorous plant characterized by leaves with hinged lobes that spring shut when stimulated by insects; and

"Whereas, the Venus flytrap is native to the Coastal Plain of North Carolina and is legally protected by the State as a species of special concern; and

"Whereas, the Venus flytrap deserves to be adopted as the official carnivorous plant of the State of North Carolina because it is a mysterious and wonderful natural resource; Now, therefore,"

§ 145-23. State birthplace of traditional pottery.

The Seagrove area, including portions of Randolph, Chatham, Lee, Moore, and Montgomery Counties, is designated as the official location of the birthplace of North Carolina traditional pottery. (2005-78, s. 1; 2006-264, s. 70.)

Editor's Note. — The preamble to Session Laws 2005-78, provides: "Whereas, the art of crafting traditional pottery in North Carolina began around 1750 in the Seagrove area, which today includes portions of Randolph, Chatham, Moore, and Montgomery Counties; and

"Whereas, this craft has been carried on for 200 years and, in some cases, by people who represent the eighth and ninth generation of potters in their families; and

"Whereas, early families of the Seagrove area associated with North Carolina traditional pottery included the Chriscoe, Cole, Craven, Luck, McNeill, Owen, and Teague families; and

"Whereas, the pottery craft is a tradition that encompasses both aesthetic and utilitarian elements in its design; and

"Whereas, the annual Seagrove Pottery Festival has become the premier traditional pottery event in the State; and

"Whereas, during the festival, thousands of people are drawn to pottery displays, demonstrations of pottery making, and the pottery auction; and

"Whereas, plans have been made to establish the Museum of North Carolina Traditional Pottery to preserve and perpetuate the history and tradition of North Carolina traditional pottery; and

"Whereas the North Carolina Pottery Museum was established in 1998 to promote an awareness of the history and heritage of North Carolina pottery making traditions; and

"Whereas, Seagrove is considered the State's pottery capital; and

"Whereas, it is fitting to recognize the Seagrove area as the birthplace of North Carolina traditional pottery; Now, therefore,"

§ 145-24. Official State dances.

(a) Clogging is adopted as the official folk dance of North Carolina.

(b) Shagging is adopted as the official popular dance of North Carolina. (2005-218, s. 1.)

Editor's Note. — The preamble to Session Laws 2005-218, provides: "Whereas, clogging and shagging are popular dances that have entertained both participants and spectators in this State for decades; and

"Whereas, clogging is a traditional American folk dance that developed during the Colonial period in the Southern Appalachian mountains of the United States; and

"Whereas, clogging has been influenced by European, African-American, and Native American folk dance traditions; and

"Whereas, clogging is characterized by distinct, dignified, and beautiful footwork performed by individuals, couples, and groups; and

"Whereas, a number of clogging events and competitions are held across the State each year; and

"Whereas, the shag is a form of swing dancing that evolved from the jitterbug and jump blues of the big band jazz era and originated at Carolina Beach during the 1940s; and

"Whereas, the shag is most often associated with beach music, which refers to songs that are rhythm and blues based and, according to Bo Bryan, a noted shag historian and resident of Beaufort County, is a term that was coined at Carolina Beach; and

"Whereas, rhythm and blues groups, such as Jimmy Cavallo and the Houserockers, bolstered the popularity of the shag during the 1940s when they performed in Fayetteville, White Lake, and other areas around the State; and

"Whereas, today, the shag is a recognized dance in national and international dance competitions held across the United States; and

"Whereas, North Carolina is home to some of the most successful national shag champions, including multiple championship title winners, including Charlie Womble, Jackie McGee, Michael Norris, LeAnn Best, and Sam and Sarah West; and

"Whereas, North Carolina natives Clarice Reavis of Fayetteville and Harry Driver of Dunn are recognized as Queen of Shag and Father of Shag respectively; and

"Whereas, numerous North Carolinians have been inducted into the Shaggers Hall of Fame; and

"Whereas, North Carolina has the most beach music clubs in the nation and has a number of radio stations that depend solely upon the listenership of shag enthusiasts; and

"Whereas, it is fitting to adopt clogging and shagging as official State dances; Now, therefore,"

§ 145-25. State Christmas tree.

The Fraser fir (Abies fraseri) is adopted as the official Christmas tree of the State of North Carolina. (2005-387, s. 1.)

Editor's Note. — The preamble to Session Laws 2005-387, provides: "Whereas, North Carolina has 1,500 Christmas tree growers and produces more trees than any other state except Oregon; and

"Whereas, North Carolina tree growers produce over 50 million Fraser firs each year; and

"Whereas, the Fraser fir constitutes more than 90% of all the Christmas trees grown in North Carolina; and

"Whereas, the Fraser fir is named for John Fraser, a Scottish botanist who explored the Southern Appalachian mountains of North Carolina in the late 1700s; and

"Whereas, the Fraser fir is a pyramid-shaped tree that reaches a maximum height of 80 feet and a trunk diameter of one to one and one-half feet; and

"Whereas, the Fraser fir grows naturally only in the Southern Appalachians; and

"Whereas, Fraser fir trees grown in North Carolina have won the National Christmas Tree Association's annual tree competition more than any other species; and

"Whereas, North Carolina contains innumerable mountain streams and coldwater fisheries habitats; and

"Whereas, these mountain streams are home to brook trout (Salvelinus fontinalis), which is North Carolina's only native freshwater trout species; and

"Whereas, the Southern Appalachian form of brook trout is a scientifically-recognized unique and genetically distinct form locally known as 'specks' or 'speckle' trout because of the numerous specks on its skin; and

"Whereas, North Carolina is home to some 400 self-sustaining populations of Southern Appalachian brook trout, more than in any other state; and

"Whereas, these wild and colorful fish are important keystones of ecological diversity, indicators of outstanding water quality, and representatives of the pure and unspoiled areas that they inhabit; and

"Whereas, Southern Appalachian brook trout are cooperative sport fish, and may be caught by anglers using traditional fly-fishing equipment and locally-adapted fly patterns, thereby supporting extensive recreational fishing opportunities, economic development, and tourism; and

"Whereas, by their character and contribution, these unique fish are woven into the historical and cultural fabric of Western North Carolina; and

"Whereas, the Fraser fir deserves recognition as the official Christmas tree of the State of North Carolina and the Southern Appalachian brook trout deserves recognition as the official freshwater trout of the State of North Carolina; Now, therefore,"

§ 145-26. State freshwater trout.

The Southern Appalachian strain of brook trout (Salvelinus fontinalis) is adopted as the official freshwater trout of the State of North Carolina. (2005-387, s. 2.)

Editor's Note. — The preamble to Session Laws 2005-387, provides: "Whereas, North Carolina has 1,500 Christmas tree growers and produces more trees than any other state except Oregon; and

"Whereas, North Carolina tree growers produce over 50 million Fraser firs each year; and

"Whereas, the Fraser fir constitutes more than 90% of all the Christmas trees grown in North Carolina; and

"Whereas, the Fraser fir is named for John Fraser, a Scottish botanist who explored the Southern Appalachian mountains of North Carolina in the late 1700s; and

"Whereas, the Fraser fir is a pyramid-shaped tree that reaches a maximum height of 80 feet and a trunk diameter of one to one and one-half feet; and

"Whereas, the Fraser fir grows naturally only in the Southern Appalachians; and

"Whereas, Fraser fir trees grown in North Carolina have won the National Christmas Tree Association's annual tree competition more than any other species; and

"Whereas, North Carolina contains innumerable mountain streams and coldwater fisheries habitats; and

"Whereas, these mountain streams are home to brook trout (Salvelinus fontinalis), which is North Carolina's only native freshwater trout species; and

"Whereas, the Southern Appalachian form of brook trout is a scientifically-recognized unique and genetically distinct form locally known as 'specks' or 'speckle' trout because of the numerous specks on its skin; and

"Whereas, North Carolina is home to some 400 self-sustaining populations of Southern Appalachian brook trout, more than in any other state; and

"Whereas, these wild and colorful fish are important keystones of ecological diversity, indicators of outstanding water quality, and representatives of the pure and unspoiled areas that they inhabit; and

"Whereas, Southern Appalachian brook trout are cooperative sport fish, and may be caught by anglers using traditional fly-fishing equipment and locally-adapted fly patterns, thereby supporting extensive recreational fishing opportunities, economic development, and tourism; and

"Whereas, by their character and contribution, these unique fish are woven into the historical and cultural fabric of Western North Carolina; and

"Whereas, the Fraser fir deserves recognition as the official Christmas tree of the State of North Carolina and the Southern Appalachian brook trout deserves recognition as the official freshwater trout of the State of North Carolina; Now, therefore,"

§ 145-27. State Collard Festival.

The Ayden Collard Festival is adopted as the official collard festival of the State of North Carolina. (2007-28, s. 1.)

Editor's Note. — Session Laws 2007-28, s. 2, made this section effective April 28, 2007.

The preamble to Session Laws 2007-28, provides: "Whereas, since 1975, the Town of Ayden has held an annual collard festival to bring the community and surrounding areas together in celebration of the Town's farming and agricultural heritage; and

"Whereas, the Ayden Collard Festival has grown into a great marketing and promotional tool for the Ayden community, Pitt County, and eastern North Carolina; and

"Whereas, the Ayden Collard Festival should be adopted as the official collard festival of the State of North Carolina; Now, therefore."

§ 145-28. State food festival.

The Lexington Barbecue Festival is adopted as the official food festival of the Piedmont Triad Region of the State of North Carolina. (2007-533, s. 1.)

Editor's Note. — Session Laws 2007-533, s. 1, enacted this section as G.S. 145-27; it was recodified as G.S. 145-28 at the direction of the Revisor of Statutes.

Session Laws 2007-533, s. 1, enacted this section as G.S. 145-27; it was recodified as G.S. 145-28 at the direction of the Revisor of Statutes.

Session Laws 2007-533, s. 2, made this section effective August 31, 2007.

The preamble of Session Laws 2007-533, provides: "Whereas, the first barbecue restaurant opened in the Town of Lexington in 1919; and

"Whereas, Lexington has become well known for its barbecue and has been referred to as the Barbecue Capital of the World; and

"Whereas, since 1984, Lexington has held an annual Barbecue Festival; and

"Whereas, the Lexington Barbecue Festival has become one of the most popular food festivals in the country; and

"Whereas, at the Lexington Barbecue Festival more than 150,000 visitors enjoy delicious food as well as a number of rides, games, and regional music; and

"Whereas, during the Lexington Barbecue Festival, civic and nonprofit organizations sponsor events and sell goods to raise funds and present educational information to the public, and a number of local artists showcase and sell their crafts; and

"Whereas, the Lexington Barbecue Festival was named "One of the Top Ten Food Festivals in the Country" by Travel and Leisure Magazine and a "Top 20 Event for the Month of October 2002" by the Southeast Tourism Society; and

"Whereas, the Piedmont Triad Region of the State of North Carolina does not have an official food festival; Now, therefore,".

§ 145-29. State community theater.

The Thalian Association in Wilmington, North Carolina, is adopted as the official community theater of North Carolina. (2007-68, s. 1.)

Editor's Note. — Session Laws 2007-68, s. 1, enacted this section as G.S. 145-28; it was recodified as G.S. 145-29 at the direction of the Revisor of Statutes.

Session Laws 2007-68, s. 2, made this section effective June 7, 2007.

§ 145-30. State potato festival.

The Albemarle Potato Festival is adopted as the official Irish potato festival of the State of North Carolina. (2009-24, s. 1.)

Editor's Note. — Session Laws 2009-24, s. 2, made this section effective May 13, 2009.

The preamble to Session Laws 2009-24, provides: "Whereas, North Carolina's northeast region has been home of the Albemarle Potato Festival, now known as the North Carolina Potato Festival, for over 24 years; and

"Whereas, of the more than 17,000 acres statewide used for Irish potato cultivation, the northeast region of the Albemarle contains 12,000 of those acres; and

"Whereas, the economic impact of Irish potato farming is at least 13 to 16 million dollars annually in the northeast region; and

"Whereas, the festival showcases the Albemarle area's major Irish potato producing counties, with Pasquotank County being the largest producer in the State; and

"Whereas, the festival entertainment, street fair, water activities, and evening dance draw attention throughout the northeast region; and

"Whereas, the tourism industry flourishes during the North Carolina Potato Festival, benefiting the economy of not only the northeast region but also the entire State; Now, therefore."

Chapter 146.

State Lands.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

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SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 1.

General Provisions.

§ 146-1. Intent of Subchapter.

(a) It is the purpose and intent of this Subchapter to vest in the Department of Administration, subject to rules and regulations adopted by the Governor and approved by the Council of State as hereinafter provided, responsibility for the management, control and disposition of all vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands, title to which is vested in the State or in any State agency, to be exercised subject to the provisions of this Subchapter.

(b) Further, it is the intent of this Subchapter to establish within the Department, a method for obtaining easements for State-owned lands covered by navigable waters that includes compensation, recognizes the common law rights of riparian or littoral property owners, and balances those rights with the State's obligation to protect public trust rights for all of its citizens. The North Carolina General Assembly finds that the State is unable to provide the necessary access for its citizens to exercise public trust rights and, therefore, recognizes the role that publicly and privately owned piers, docks, wharves, marinas, and other structures located in or over State-owned lands covered by navigable waters generally serve in furthering public trust purposes including:

(1) Providing citizens with access and ability to exercise public trust boating, fishing, and swimming activities;

(2) Enhancing the value of appurtenant upland property values with the resulting increased collection of ad valorem taxes;

(3) Enhancing tourism which is essential to the economy of the State and, in particular, to the coastal counties; and

(4) Increasing local participation in boating and fishing activities with the resulting increase in taxes paid for fuel, fishing tackle, boat equipment, and imported boats and motors which taxes contribute to the sound economy of the State, and some of which are paid into the federal Wallop-Breaux Fund for redistribution to the State for water resource enhancements and water access improvements.

(c) Nothing in this Subchapter shall apply to a privately owned lake or any hydroelectric reservoir licensed by the Federal Energy Regulatory Commission.

(d) Nothing in this Subchapter shall be construed to limit or expand the full exercise of common law riparian or littoral rights. (1959, c. 683, s. 1; 1995, c. 529, s. 1.)

Cross References. — As to exception from this Chapter for property transfers under the State Psychiatric Hospital Finance Act, see G.S. 142-104.

Editor's Note. — Session Laws 1995, c. 529, s. 5, provides in part that nothing in the act shall require the adoption of rules to implement the provisions therein, and further provides that authorization established under the act applies only to the Department of Administration and shall not be used by any other agency to administer or regulate activities affecting the public trust.

Legal Periodicals. — For article, "Estuarine Land of North Carolina: Legal Aspect of Ownership, Use and Control," see 46 N.C.L. Rev. 779 (1968).

For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

For note, "A First Step in the Wrong Direction: Slavin v. Town of Oak Island and the Taking of Littoral Rights of Direct Beach Access," see 82 N.C.L. Rev. 1510 (2004).

For article, "North Carolina Oceanfront Property and Public Waters and Beaches: The

Rights of Littoral Owners in the Twenty-First Century," see 83 N.C. L. Rev. 1427 (2005).

CASE NOTES

Illustrative Cases. — Where the town entered into a project to preserve ocean turtle habitat, and built a fence to protect the restored sand dune area, the oceanfront property owners' contention that the town could not, without compensation, in any way limit their direct access to the ocean was inconsistent with the qualified nature of that right pursuant to the State Lands Act, codified at G.S. 146-1 et seq.; further, the property owners did not have a vested appurtenant littoral right of direct access to the ocean, and summary judgment in favor of the town was proper. Slavin v. Town of Oak Island, 160 N.C. App. 57, 584 S.E.2d 100, 2003 N.C. App. LEXIS 1670 (2003), notice of appeal dismissed, cert. denied, 357 N.C. 659, 590 S.E.2d 271 (2003).

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979); West v. Slick, 313 N.C. 33, 326 S.E.2d 601 (1985); Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

§ 146-2. Department of Administration given control of certain State lands; general powers.

The power to manage, control, and dispose of the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands is hereby vested in the Department of Administration, subject to rules and regulations adopted by the Governor and approved by the Council of State, and subject to the provisions of this Subchapter. The Department of Administration shall have the following general powers and duties with respect to those lands:

(1) To take such measures as it deems necessary to establish, protect, preserve, and enhance the interest of the State in those lands, and to call upon the Attorney General for legal assistance in performing this duty.

(2) Subject to the approval of the Governor and Council of State, to adopt such rules and regulations at it may deem necessary to carry out its duties under the provisions of this Subchapter. (1959, c. 683, s. 1.)

Legal Periodicals. — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

Article 2.

Dispositions.

§ 146-3. What lands may be sold.

Any State lands may be disposed of by the State in the manner prescribed in this Chapter, with the following exceptions:

(1) No submerged lands may be conveyed in fee, but easements therein may be granted, as provided in this Subchapter.

(2) No natural lake belonging to the State or to any State agency on January 1, 1959, and having an area of 50 acres or more, may be in any manner disposed of, but all such lakes shall be retained by the State for the use and benefit of all the people of the State and administered as provided for other recreational areas owned by the State. (1854-5, c. 21; R.C., c. 42, s. 1; Code, s. 2751; Rev., s. 1693; 1911, c. 8; C.S., ss. 7540, 7544; 1929, c. 165; G.S., ss. 146-1, 146-7, 146-12; 1959, c. 683, s. 1.)

Legal Periodicals. — For note on defining navigable waters and the application of the public trust doctrine in North Carolina, see 49 N.C.L. Rev. 888 (1971).

For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

For comment, "Sunbathers Versus Property Owners: Public Access to North Carolina Beaches," see 64 N.C.L. Rev. 159 (1985).

CASE NOTES

Littoral rights do not include ownership of the foreshore. The littoral owner may, however, in exercise of his right of access, construct a pier in order to provide passage from the upland to the sea. But the passage under the pier must be free and substantially unobstructed over the entire width of the foreshore. This means that from low to high water mark it must be at such a height that the public will have no difficulty in walking under it when the tide is low or in going under it in boats when the tide is high. West v. Slick, 313 N.C. 33, 326 S.E.2d 601 (1985).

Ownership of Foreshore Remains in State. — There is nothing in this section or G.S. 146-64 to change the general rule that ownership of the foreshore remains in the State. On the contrary, it is noteworthy that a special class was created for the protection of the foreshore and the marginal seas. Therefore, littoral rights do not include ownership of the foreshore. Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970). See also West v. Slick, 313 N.C. 33, 326 S.E.2d 601 (1985).

The foreshore is reserved for the use of the public. West v. Slick, 313 N.C. 33, 326 S.E.2d 601 (1985).

Controlling Effect of Local Act over Inconsistent Provision of Subdivision (1). — Session Laws 1963, c. 511, which granted the town of Carolina Beach title in reclaimed seashore lands down to the low watermark, controls over an inconsistent provision in subdivision (1) of this section which provides that State land under navigable waters cannot be conveyed in fee. Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970).

Applied in State v. Forehand, 67 N.C. App. 148, 312 S.E.2d 247 (1984).

Cited in Capune v. Robbins, 273 N.C. 581, 160 S.E.2d 881 (1968).

§ 146-4. Sales of certain lands; procedure; deeds; disposition of proceeds.

The Department of Administration may sell the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, at public or private sale, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every deed conveying any part of those lands in fee shall be executed in the manner required by G.S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein required. The net proceeds of all such sales of those lands shall be paid into the State Literary Fund. Whenever negotiations are begun by the Department for the purpose of selling swampland or the timber thereon, the Department shall promptly notify the State Board of Education of that fact. If the Board deems the proposed sale inadvisable, it may so inform the Governor and Council of State, who may give due consideration to the representations of the Board in determining whether to approve or disapprove the proposed transaction. (R.C., c. 66, s. 12; 1872-3, c. 194, s. 2; Code, ss. 2514, 2515, 2529; 1889, c. 243, s. 4; Rev., s. 4049; C.S., s. 7621; G.S., s. 146-94; 1959, c. 683, s. 1.)

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

§ 146-5. Reservation to the State.

In any sale of the vacant and unappropriated lands or swamplands by the State, the following powers may be expressly reserved to the State, to be exercised according to law:

(1) The State may make any reasonable and expedient regulations respecting the repair of the canals which have been cut by the State, or the enlargement of such canals.

(2) The State may impose taxes on the lands benefited by those canals for their repair, and they shall not be closed.

(3) The navigation of the canals shall be free to all persons, subject to a right in the State to impose tolls.

(4) All landowners on the canals may drain into them, subject only to such general regulations as now are or hereafter may be made by law in such cases.

(5) The roads along the banks of the canals shall be public roads. (1872-3, c. 118; Code, s. 2534; Rev., s. 4050; C.S., s. 7622; G.S., s. 146-95; 1959, c. 683, s. 1.)

§ 146-6. Title to land raised from navigable water.

(a) If any land is, by any process of nature or as a result of the erection of any pier, jetty or breakwater, raised above the high watermark of any navigable water, title thereto shall vest in the owner of that land which, immediately prior to the raising of the land in question, directly adjoined the navigable water. The tract, title to which is thus vested in a riparian owner, shall include only the front of his formerly riparian tract and shall be confined within extensions of his property lines, which extensions shall be perpendicular to the channel, or main watercourses.

(b) If any land is, by act of man, raised above the high watermark of any navigable water by filling, except such filling be to reclaim lands theretofore lost to the owner by natural causes or as otherwise provided under the proviso of subsection (d), title thereto shall vest in the State and the land so raised shall become a part of the vacant and unappropriated lands of the State, unless the commission of the act which caused the raising of the land in question shall have been previously approved in the manner provided in subsection (c) of this section. Title to land so raised, however, does not vest in the State if the land was raised within the bounds of a conveyance made by the State Board of Education, which included regularly flooded estuarine marshlands or lands beneath navigable waters, or if the land was raised under permits issued to private individuals pursuant to G.S. 113-229, G.S. 113A-100 through 113A-128, or both.

(c) If any owner of land adjoining any navigable water desires to fill in the area immediately in front of his land, he may apply to the Department of Administration for an easement to make such fill. The applicant shall deliver to each owner of riparian property adjoining that of the applicant, a copy of the application filed with the Department of Administration, and each such person shall have 30 days from the date of such service to file with the Department of Administration written objections to the granting of the proposed easement. If the Department of Administration finds that the purpose of the proposed fill is to reclaim lands theretofore lost to the owner by natural causes, no easement to fill shall be required. In such a case the Department shall give the applicant written permission to proceed with the project. If the purpose of the proposed fill is not to reclaim lands lost by natural causes and the Department finds that the proposed fill will not impede navigation or otherwise interfere with the use of the navigable water by the public or injure any adjoining riparian owner, it shall issue to such applicant an easement to fill and shall fix the consideration to be paid for the easement, subject to the approval of the Governor and Council of State in each instance. The granting by the State of the written permission or easement so to fill shall be deemed conclusive evidence and proof that the applicant has complied with all requisite conditions precedent to the issuance of such written permission or easement, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part. None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States. Upon completion of such filling, the Governor and Council of State may, upon request, direct the execution of a quitclaim deed therefor to the owner to whom the easement was granted, conveying the land so raised, upon such terms as are deemed proper by the Department and approved by the Governor and Council of State.

(d) If an island is, by any process of nature or by act of man, formed in any navigable water, title to such island shall vest in the State and the island shall become a part of the vacant and unappropriated lands of the State. Provided, however, that if in any process of dredging, by either the State or federal government, for the purpose of deepening any harbor or inland waterway, or clearing out or creating the same, a deposit of the excavated material is made upon the lands of any owner, and title to which at the time is not vested in either the State or federal government, or any other person, whether such excavation be deposited with or without the approval of the owner or owners of such lands, all such additions to lands shall accrue to the use and benefit of the owner or owners of the land or lands on which such deposit shall have been made, and such owner or owners shall be deemed vested in fee simple with the title to the same.

(e) The Governor and Council of State may, upon proof satisfactory to them that any land has been raised above the high watermark of any navigable water by any process of nature or by the erection of any pier, jetty or breakwater, and that this, or any other provision of this section vests title in the riparian owner thereof, whenever it may be necessary to do so in order to establish clear title to such land in the riparian owner, direct execution of a quitclaim deed thereto, conveying to such owner all of the State's right, title, and interest in such raised land.

(f) Notwithstanding the other provisions of this section, the title to land in or immediately along the Atlantic Ocean raised above the mean high water mark by publicly financed projects which involve hydraulic dredging or other deposition of spoil materials or sand vests in the State. Title to such lands raised through projects that received no public funding vests in the adjacent littoral proprietor. All such raised lands shall remain open to the free use and enjoyment of the people of the State, consistent with the public trust rights in ocean beaches, which rights are part of the common heritage of the people of this State. (1959, c. 683, s. 1; 1979, c. 414; 1985, c. 276.)

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

For comment, "Sunbathers Versus Property Owners: Public Access to North Carolina Beaches," see 64 N.C.L. Rev. 159 (1985).

For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

For article, "The Pearl in the Oyster: The Public Trust Doctrine in North Carolina," see 12 Campbell L. Rev. 23 (1989).

For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

For article, "The Changing Face of the Shoreline: Public and Private Rights to the Natural and Nourished Dry Sand Beaches of North Carolina," see 78 N.C.L. Rev. 1869 (2000).

For note, "A First Step in the Wrong Direction: Slavin v. Town of Oak Island and the Taking of Littoral Rights of Direct Beach Access," see 82 N.C.L. Rev. 1510 (2004).

For article, "North Carolina Oceanfront

Property and Public Waters and Beaches: The Rights of Littoral Owners in the Twenty-First Century," see 83 N.C. L. Rev. 1427 (2005).

CASE NOTES

"Any Other Provision of This Section" Construed. — Although the language of subsection (e) is rather awkward, the reference in subsection (e) to "any other provision of this section" encompasses subsection (d) as well as subsection (a). Lackey v. Tripp, 63 N.C. App. 765, 306 S.E.2d 464, cert. denied, 309 N.C. 821, 310 S.E.2d 350 (1983).

Extension of Property Lines Under Subsection (e). — Since subsection (e) is silent on how property lines are to be extended, the lines may be drawn as the Governor and Council of State in their discretion deem proper in a case controlled by subsection (e) and not by subsection (a). Lackey v. Tripp, 63 N.C. App. 765, 306 S.E.2d 464, cert. denied, 309 N.C. 821, 310 S.E.2d 350 (1983).

Because the renourishment projects undertaken by the town to restore ocean turtle habitat were publicly financed sand placement projects, title to the newly-created beach was vested in the State, and despite the protests of ocean front property owners, nothing in the State Lands Act, codified at G.S. 146-1 et seq., which limited the authority of a town or city to enact regulations in order to protect a public beach located within its municipal limits. Slavin v. Town of Oak Island, 160 N.C. App. 57, 584 S.E.2d 100, 2003 N.C. App. LEXIS 1670 (2003), notice of appeal dismissed, cert. denied, 357 N.C. 659, 590 S.E.2d 271 (2003).

Applied in Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970).

OPINIONS OF ATTORNEY GENERAL

Title to Raised Land Vested in State. — Although good title to beach property was conveyed to a town through a special legislative grant in 1939, recent publicly funded projects, which raised land above the mean high water mark by hydraulic dredging or deposition of spoil or sand, would have vested title in the State by operation of law pursuant to this section. See opinion of Attorney General to P.A. Wojciechowski, Division of Marine Fisheries, 1998 N.C.A.G. 18 (4/6/98).

Ownership of Accreted Land. — If a town's blocking off an old navigational channel were to cause significant accretion along the old (existing) channel's shoreline, the newly accreted land would be owned by the current owner of the upland property. See opinion of Attorney General to Representative Jean Preston, 2003 N.C.A.G. 7 (9/15/03).

Ownership of Raised Lands. — If a town were to directly place a portion of dredged material along an old (existing) channel shoreline (i.e., beside threatened homes), thereby creating a small strip of land along that shoreline above the mean high water mark, title to the raised lands would vest in the adjacent upland owner in accordance with subsection (d) of this section. See opinion of Attorney General to Representative Jean Preston, 2003 N.C.A.G. 7 (9/15/03).

§ 146-6.1: Repealed by Session Laws 1977, c. 366.

§ 146-7. Sale of timber rights; procedure; instruments conveying rights; disposition of proceeds.

The Department of Administration may sell timber rights in the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, at public or private sale, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every instrument conveying timber rights shall be executed in the manner required of deeds by G.S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein required, or by the agency designated by the Governor and Council of State to approve conveyances of such rights. The net proceeds of all sales of timber from those lands shall be paid into the State Literary Fund. (1959, c. 683, s. 1.)

§ 146-8. Disposition of mineral deposits in State lands under water.

The State, acting at the request of the Department of Environment and Natural Resources, is fully authorized and empowered to sell, lease, or otherwise dispose of any and all mineral deposits belonging to the State which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State. The State, acting at the request of the Department of Environment and Natural Resources, is authorized and empowered to convey or lease to such person or persons as it may, in its discretion, determine, the right to take, dig, and remove from such bottoms such mineral deposits found therein belonging to the State as may be sold, leased, or otherwise disposed of to them by the State. The State, acting at the request of the Department of Environment and Natural Resources, is authorized to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the State and to the best interest of the State. Before any such sale, lease, or contract is made, it shall be approved by the Department of Administration and by the Governor and Council of State.

Any sale, lease, or other disposition of such mineral deposits shall be made subject to all rights of navigation and subject to such other terms and conditions as may be imposed by the State.

The net proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the treasury of the State, but the same shall be used exclusively by the Department of Environment and Natural Resources in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the advice of the Council of State. (1937, c. 285; C.S., s. 113-26; 1959, c. 683, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 218; 1997-443, s. 11A.119(a).)

§ 146-9. Disposition of mineral deposits in State lands not under water.

The Department of Administration may sell, lease, or otherwise dispose of mineral rights or deposits in the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, not lying beneath the waters of the State, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every instrument conveying such rights shall be executed in the manner required of deeds by G.S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein provided, or by the agency designated by the Governor and Council of State to approve conveyances of such rights. The net proceeds of dispositions of all such mineral rights or deposits shall be paid into the State Literary Fund. (1959, c. 683, s. 1.)

§ 146-10. Leases.

The Department of Administration may lease or rent the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, at such times, upon such consideration, in such portions, and upon such terms as it may deem proper. Every lease or rental of such lands by the Department shall be approved by the Governor and Council of State, or by the agency designated by the Governor and Council of State to approve such leases and rentals. (1959, c. 683, s. 1.)

§ 146-11. Easements, rights-of-way, etc.

The Department of Administration may grant easements, rights-of-way, dumping rights and other interests in State lands, for the purpose of

(1) Cooperating with the federal government,
(2) Utilizing the natural resources of the State, or
(3) Otherwise serving the public interest.

The Department shall fix the terms and consideration upon which such rights may be granted. Every instrument conveying such interests shall be executed in the manner required of deeds by G.S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein provided, or by the agency designated by the Governor and Council of State to approve conveyances of such interests. (1959, c. 683, s. 1.)

§ 146-12. Easements in lands covered by water.

(a) The Department of Administration may grant, to adjoining riparian or littoral owners, easements in lands covered by navigable waters or by the waters of any lake owned by the State for such purposes and upon such conditions as it may deem proper, with the approval of the Governor and Council of State. The Department may, with the approval of the Governor and Council of State, revoke any such easement upon the violation by the grantee or his assigns of the conditions upon which it was granted.

Every such easement shall include only the front of the tract owned by the riparian or littoral owner to whom the easement is granted, shall extend no further than the deep water, and shall in no respect obstruct or impair navigation.

When any such easement is granted in front of the lands of any incorporated town, the governing body of the town shall regulate the line on deep water to which wharves may be built.

(b) Easements Not Requiring Approval by the Governor or Council of State. — In accordance with the provisions in subsections (c) through (m) of this section, the Department of Administration shall grant easements to adjoining riparian or littoral owners in State-owned lands covered by navigable waters without the approval of the Governor and the Council of State for:

(1) Existing structures permitted under Article 7 of Chapter 113A or structures existing prior to the effective date of the permitting requirements of Article 7 of Chapter 113A of the General Statutes.
(2) New structures permitted under Article 7 of Chapter 113A of the General Statutes after the effective date of this section.

(c) Voluntary Easement Applications for Existing Structures. — Riparian or littoral property owners of existing structures may voluntarily obtain an easement under subsection (b) of this section in accordance with the procedures set forth in this section. For purposes of this section, the term "existing structures" means all presently existing piers, docks, marinas, wharves, and other structures located over or upon State-owned lands covered by navigable waters. Applications for voluntary easements shall be received by the State Property Office no later than October 1, 2001.

(d) Notification of Availability of Voluntary Easements. — The State Property Office shall provide public notice of the availability of voluntary easements by placing an advertisement in one newspaper of general circulation in each of the coastal counties identified under G.S. 113A-103(2) at least once every six months. The final notice shall be placed no later than September 1, 2001.

(e) Mandatory Easement Applications for New Structures. — Riparian or littoral property owners of new structures shall obtain an easement under subsection (b) of this section in accordance with the procedures set forth in this section.

(f) Easement Application. — An application by a riparian or littoral owner of a new or existing structure for an easement under subsection (b) of this section shall include all of the following and shall:

(1) Be made in writing to the State Property Office and include the full name and address of the easement applicant.
(2) Include a plat depicting the footprint and total square footage of all structures located in or over State-owned lands covered by navigable waters. The footprint shall include the total square footage of the area of State-owned lands covered by navigable waters that are enclosed on three or more sides by any structure.
(3) Include a copy of any "CAMA" permit required for structures under Article 7 of Chapter 113A of the General Statutes.
(4) Include a copy of the deed or other instrument through which the applicant establishes ownership of the adjacent riparian or littoral property.
(5) Specify the use or uses associated with the structure to be covered by the easement.
(6) Include the appropriate easement purchase payment.

(g) Easement Terms. — Any easement granted under subsection (b) of this section shall be in a form suitable for recordation and shall be executed by either the Director or Deputy Director of the State Property Office. The State-owned lands covered by navigable waters included within the easement shall be limited to the footprint of the structure. The terms of each easement shall provide that the easement:

(1) Is appurtenant to specifically described, adjacent riparian or littoral property and runs with the land.
(2) Specifies that the holder of the easement shall not exclude or prevent the public from exercising public trust rights, including commercial and recreational fishing, shellfishing, seine netting, pound netting, and other fishing rights.
(3) Specifies that the holder of the easement obtains no additional rights to interfere with the approval, issuance, or renewal of shellfish or water column leases or to interfere with the use or cultivation of existing shellfish leases, water column leases, or shellfish franchises.
(4) Specifies that any rights conveyed to the holder of the easement are not inconsistent with the rights conferred by previous conveyances made by the State for the same property.
(5) Is valid for a term of 50 years from the date of issuance.
(6) Is eligible for one renewal term of 50 years.
(7) Is granted in the public interest for good and valuable consideration received by the State.
(8) Specifies by metes and bounds description or attached plat the footprint of the structure for which the easement is issued.
(9) Describes the uses of the structure for which the easement is being granted, which may include:
    a. Providing reasonable access for all vessels traditionally used in the main watercourse area to deep water or, where present, to a specified navigational channel;
    b. Mooring vessels at or adjacent to the structure;
    c. Enhancing or improving the value of the adjacent riparian or littoral property; and
    d. All other reasonable, nonexclusive public trust uses as specified in the easement application, to the extent not otherwise limited by provisions of this Subchapter or any other law.

(10) Specifies that rights granted include the right to repair, rebuild, or restore existing structures consistent with Article 7 of Chapter 113A of the General Statutes.

(11) Specifies that the exercise of any rights under the easement shall be contingent upon obtaining all required permits.

(h) Easement Purchase Payment. — The easement purchase payment for easements issued under subsection (b) of this section shall be computed on the basis of one thousand dollars ($1,000) per acre of footprint coverage prorated in increments of two hundred fifty dollars ($250.00) rounded up to the nearest quarter acre. The minimum payment shall be five hundred dollars ($500.00) if any payment is owed after the riparian credit is applied. In recognition of common law riparian and littoral rights and a declared public policy concern that easements provided under this section be available to all citizens, a credit shall be given against any easement purchase payment in an amount equal to the number of linear feet of shoreline multiplied by a factor of 54 feet. No linear feet of shoreline may be used in computing the credit if that area of shoreline has been the basis of a previous credit. For purposes of determining the linear feet of shoreline owned, an application submitted by a corporation or other entity whose members include riparian or littoral lot owners, which owners have the right to use the structure for which the easement is sought, and whose lots are restricted from construction thereon of other structures for similar use, shall be considered an application whose easement purchase payment shall be determined by using the entirety of such use restricted shoreline for purposes of determining the applicable riparian credit. Shoreline utilization shall be considered "use restricted" if riparian or littoral structures are prohibited by either permit condition or by restrictive covenant or similar, enforceable private restriction.

(i) Easement Issuance. — Within 75 days of receipt of a completed application under subsection (f) of this section, the Director or Deputy Director of the State Property Office shall issue the requested easement in a form sufficient for recording in the register of deeds of the county or counties in which any part of the structure is located. The act of easement issuance under subsection (b) of this section shall be exempt from the provisions in Chapter 150B of the General Statutes. Failure to issue the requested easement within 75 days of receipt of a completed application and any applicable easement purchase payments shall be treated as issuance of the requested easement and shall entitle the applicant to execution and issuance of the easement.

(j) Easement Renewal. — Upon written request from the current easement holder, easements shall be renewed for one additional term of 50 years. Renewal easements shall be subject to the terms, conditions, and purchase payments applicable to initial easements at the time of renewal. Written notification of expiring easements shall be provided by the State Property Office at least 180 days prior to expiration of the initial easement term. Letter applications for renewal easements shall be submitted within 180 days of the notice of expiration by the State Property Office.

(k) Easement Modification. — Any expansion of the footprint of an existing structure shall require an easement or modification of any existing easement. The application for a modification of an easement shall be as provided in subsection (f) of this section. The easement purchase payment shall be based only on the footprint of the expansion after applying the riparian credit. The minimum easement purchase payment shall be five hundred dollars ($500.00) if any payment is owed after the riparian credit is applied. Easement holders may voluntarily apply for modification of an easement to correct any material errors or omissions. No easement purchase payment shall be required for the modification of an existing use that does not expand the footprint of the existing structure. No refunds shall be provided for any modification that reduces the footprint.

(*l*) Easement Transfers. — An easement granted under subsection (b) of this section shall be transferred to a subsequent owner of the adjacent riparian or littoral property upon written notification to the State Property Office. The notification shall be given within 12 months of the transfer of title to the adjacent riparian or littoral property and shall be accompanied by the instrument of transfer and an easement purchase payment as follows:

(1) During the first 25 years of the easement term, the easement purchase payment shall be the same as the initial payment; and

(2) During the second 25 years of the easement term, the easement purchase payment shall be twice the amount of the initial payment.

(m) Easement Revocation. — Easements issued under subsection (b) of this section may be revoked in accordance with the provisions of G.S. 146-12(a). Any revocation shall entitle the easement holder to seek administrative review in accordance with the provisions of Article 3 of Chapter 150B of the General Statutes.

(n) Exemptions. — The following types of structures shall not require an easement under this section:

(1) Piers, docks, or similar structures for the exclusive use of the owner or occupant of the adjacent riparian or littoral property, which generate no revenue directly related to the structure and which accommodate no more than ten vessels;

(2) Structures constructed by any public utility that provide or assist in the provision of utility service;

(3) Structures constructed or owned by the State of North Carolina, or any political subdivision, agency, or department of the State, for the duration that the structures are owned by the entity; or

(4) Structures on submerged lands or lands covered by navigable waters not owned by or for the benefit of the public that have been created by dredging or excavating lands. (1854-5, c. 21; R.C., c. 42, s. 1; Code, s. 2751; 1889, c. 555; 1891, c. 532; 1893, cc. 4, 17, 349; 1901, c. 364; Rev., s. 1696; C.S., s. 7543; G.S., s. 146-6; 1959, c. 683, s. 1; 1995, c. 529, s. 2; 1998-217, s. 35(a), (b).)

Local Modification. — Craven: 1973, c. 1129.

Cross References. — For note relating to the State-Owned Submerged Lands Advisory Committee, see Editor's notes to G.S. 146-1.

Editor's Note. — Session Laws 1995, c. 529, s. 5, provides in part that nothing in this act shall require the adoption of rules to implement the provisions therein, and further provides that authorization established under this act applies only to the Department of Administration and shall not be used by any other agency to administer or regulate activities affecting the public trust.

Session Laws 1998-217, s. 35(c), provides: "This section is effective retroactively to August 31, 1998, and applies to applications for voluntary easements received by the State Property Office on or after that date."

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

For article, "North Carolina Oceanfront Property and Public Waters and Beaches: The Rights of Littoral Owners in the Twenty-First Century," see 83 N.C. L. Rev. 1427 (2005).

CASE NOTES

Editor's Note. — *Most of the cases below were decided under corresponding sections of this Chapter as it stood before its revision in 1959, or under earlier statutes from which they were derived.*

Riparian Rights Go with Land. — Riparian rights, being incident to land abutting on navigable water, cannot be conveyed without a conveyance of such land, and lands covered by navigable water are subject to entry only by the owner of the land abutting thereon. Zimmerman v. Robinson, 114 N.C. 39, 19 S.E. 102 (1874); Land Co. v. Hotel, 134 N.C. 397, 46 S.E. 748 (1904).

An adjacent riparian owner acquires only an easement in the bed of navigable waters in front of his shore lots for the purpose of building a wharf. Atlantic & N.C.R.R. v. Way, 172 N.C. 774, 90 S.E. 937 (1916).

Easement Required. — The Department of Administration was required to grant an easement for the construction of a commercial marina by a private developer over public trust waters pursuant to this section (1991) and N.C. Admin. Code tit. 1, r. 6B.0605 (June 1987). Walker v. North Carolina Dep't of Env't, Health & Natural Resources, 111 N.C. App. 851, 433 S.E.2d 767 (1993), cert. denied, 335 N.C. 243, 439 S.E.2d 164 (1993).

Easement Not Required. — This section does not require an easement prior to the issuance of a Coastal Area Management Act permit, when a riparian owner constructs piers and docks to gain excess to navigable waters. Rusher v. Tomlinson, 119 N.C. App. 458, 459 S.E.2d 285 (1995), aff'd, 343 N.C. 119, 468 S.E.2d 57 (1996).

Navigable waters may be entered to the deep water line for wharfage purposes. Barfoot v. Willis, 178 N.C. 200, 100 S.E. 303 (1919).

But this right of entry is restricted to a riparian owner, and applies only to his immediate water front. Bond v. Wool, 107 N.C. 139, 12 S.E. 281 (1890).

Right to build a wharf in front of riparian property does not give riparian owner exclusive fishing privileges in the navigable part of the stream on which his property fronts; but the riparian owner will be protected from wrongful interference. Beil v. Smith, 171 N.C. 116, 87 S.E. 987 (1916).

Correction of Error in Survey of Deep Water Line. — In case the line marked out is not the deep water line, a riparian owner has a right to have the error corrected, and he will not be estopped because of a grant had under the erroneous survey. Wool v. Town of Edenton, 117 N.C. 1, 23 S.E. 40 (1895).

For case holding that a city whose limits extended to a navigable stream had jurisdiction only to the low watermark, see State v. Eason, 114 N.C. 787, 19 S.E. 88 (1894).

Mandamus to Compel Regulation of Deep Water Line. — Mandamus will lie by the riparian owner of land lying within the limits of an incorporated town or city to compel the town or city to regulate the deep water line to which wharves may be built, as required by statute. Wool v. Town of Edenton, 115 N.C. 10, 20 S.E. 165 (1894).

Under former statutory wording, a riparian owner in a city could not make an entry and the Secretary of State could not issue a grant until the line of deep water had been regulated by the municipal corporation. Wool v. Saunders, 108 N.C. 729, 13 S.E. 294 (1891).

Applied in State v. Forehand, 67 N.C. App. 148, 312 S.E.2d 247 (1984).

Cited in Capune v. Robbins, 273 N.C. 581, 160 S.E.2d 881 (1968); MacDonald v. Newsome, 437 F. Supp. 796 (E.D.N.C. 1977).

§ 146-13. Erection of piers on State lakes restricted.

No person, firm, or corporation shall erect upon the floor of, or in or upon, the waters of any State lake, any dock, pier, pavilion, boathouse, bathhouse, or other structure, without first having secured a permit to do so from the Department of Administration, or from the agency designated by the Department to issue such permits. Each permit shall set forth in required detail the size, cost, and nature of such structure; and any person, firm, or corporation erecting any such structure without a proper permit or not in accordance with the specifications of such permit shall be guilty of a Class 3 misdemeanor. The State may immediately proceed to remove such unlawful structure through due process of law, or may abate or remove the same as a nuisance after five days' notice. (1933, c. 516, s. 3; G.S., s. 146-10; 1959, c. 683, s. 1; 1993, c. 539, s. 1051; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Applied in Woodlief v. Johnson, 75 N.C. App. 49, 330 S.E.2d 265 (1985).

§ 146-14. Proceeds of dispositions of certain State lands.

The net proceeds of all sales, leases, rentals, or other dispositions of the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, and all interests and rights therein, shall be paid into the State Literary Fund, except as otherwise provided in this Chapter. (1959, c. 683, s. 1.)

Legal Periodicals. — For article, "Removing Local Elected Officials From Office in North Carolina," see 16 Wake Forest L. Rev. 547 (1980).

§ 146-14.1. Natural Resources Easement Fund.

The Natural Resources Easement Fund is established as a nonreverting fund within the Department of Administration. All easement purchase payment monies collected by the Secretary shall be deposited in the Fund. The Fund may be used for direct costs of administering the program. Fifty percent (50%) of the net proceeds in the Fund shall be transferred annually to the Marine Fisheries Commission, and fifty percent (50%) of the net proceeds in the Fund shall be transferred annually to the Wildlife Resources Commission, to be used by both Commissions for the sole purpose of enhancing public trust resources and increasing the public's access to and use of public trust resources, including, but not limited to, meeting the State's cost share obligations for federal Wallop-Breaux Fund projects, enhancing water resources and expanding the number of public boat ramps and other means of public waters access within the counties designated under G.S. 113A-103(2), and other public trust access purposes. (1995, c. 529, s. 3.)

Editor's Note. — Session Laws 1995, c. 529, s. 5, provides in part that nothing in this act shall require the adoption of rules to implement the provisions therein, and further provides that authorization established under this act applies only to the Department of Administration and shall not be used by any other agency to administer or regulate activities affecting the public trust.

§ 146-15. Definition of net proceeds.

For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State; and
(2) Repealed by Session Laws 1993, c. 553, s. 52, effective July 24, 1993.
(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, no service charge shall be paid into the State Land Fund from proceeds derived from the sale of land or products of land owned or held for the use of the Wildlife Resources Commission, or purchased or acquired with funds of the Wildlife Resources Commission. (1959, c. 683, s. 1; 1993, c. 553, s. 52.)

ARTICLE 3.

Discovery and Reclamation.

§ 146-16. Department of Administration to supervise.

The Department of Administration shall be responsible for discovering, inventorying, surveying, and reclaiming the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, and shall take all measures necessary to that end. All expenses incurred in the performance of these activities shall be paid from the State Land Fund, unless otherwise provided by the General Assembly. (1959, c. 683, s. 1.)

§ 146-17. Mapping and discovery agreements.

The Department of Administration, acting on behalf of the State, for the purpose of discovering State lands, may, with the approval of the Governor and Council of State, enter into agreements with counties, municipalities, persons, firms, and corporations providing for the discovery of State land by the systematic mapping of the counties of the State and by other appropriate means. All expenses incurred by the Department incident to such mapping and discovery agreements shall be paid from the State Land Fund, unless otherwise provided by the General Assembly. (1959, c. 683, s. 1.)

CASE NOTES

Cited in West v. Slick, 313 N.C. 33, 326 S.E.2d 601 (1985).

§ 146-17.1. Rewards; reclamation of certain State lands; wrongful removal of timber from State lands.

(a) The Department of Administration, acting on behalf of the State, for the purpose of discovering State lands, may, with the approval of the Governor and Council of State, pay any person, firm or corporation who shall provide information that leads to the successful reclamation of any swamplands or vacant and unappropriated lands of the State, a reward equal to one percent (1%) of the appraised value of the reclaimed land, or one thousand dollars ($1,000), whichever sum is less. All expenses incurred by the Department pursuant to this subsection shall be paid from the State Land Fund, unless otherwise provided by the General Assembly.

(b) The Department of Administration, acting on behalf of the State, may, with the approval of the Governor and Council of State, pay any person, firm or corporation who shall provide information that leads to a successful monetary recovery by the State from any person, firm or corporation who wrongfully cuts or removes timber from State lands, a reward equal to one percent (1%) of the amount of said monetary recovery, or one thousand dollars ($1,000), whichever sum is less. All expenses incurred by the Department pursuant to this subsection shall be paid from said monetary recovery, unless otherwise provided by the General Assembly.

(c) No State employee or official, or other public employee or official, shall be eligible for a reward pursuant to subsections (a) or (b) of this section for providing any information obtained in the normal course of his or her official duties. (1979, c. 742, s. 1.)

ARTICLE 4.

Miscellaneous Provisions.

§ 146-18. Recreational use of State lakes regulated.

All recreation, except hunting and fishing, in, upon, or above any or all of the State lakes referred to in this Subchapter may be regulated in the public interest by the State agency having administrative authority over these areas. (1933, c. 516, s. 1; G.S., s. 146-8; 1959, c. 683, s. 1.)

§ 146-19. Fishing license fees for nonresidents of counties in which State lakes are situated.

The Wildlife Resources Commission, through its authorized agent or agents, is hereby authorized to require of nonresidents of the county within which a State lake is situated a daily or weekly permit in lieu of the regular "resident State license" for fishing with hook and line or rod and reel within said lake in accordance with the regulations of the Commission relating to said lake. Except for the provisions of this section, the laws and regulations dealing with the issuance of fishing permits by said Commission must be complied with. (1933, c. 516, s. 4; G.S., s. 146-11; 1959, c. 683, s. 1.)

§ 146-20. Forfeiture for failure to register deeds.

All the grants and deeds for swamplands made prior to November 1, 1883, must have been proved and registered, in the county where the lands are situate, within 12 months from November 1, 1883, and every such grant or deed, not being so registered within that time, shall be void, and the title of the proprietor in such lands shall revert to the State; but the provisions of this section shall be applicable only to the swamplands which have been surveyed or taken possession of by, or are vested in, the State or its agencies. (R.S., c. 67, s. 10; R.C., c. 66, s. 10; Code, ss. 2513, 3866; Rev., s. 4046; C.S., s. 7623; G.S., s. 146-96; 1959, c. 683, s. 1.)

§ 146-20.1. Conveyance of certain marshlands validated; public trust rights reserved.

(a) Validation. — All conveyances of swamplands, including regularly flooded estuarine marshlands, that have previously been made by the Literary Fund, the North Carolina Literary Board, or the State Board of Education are declared valid, and the person to whom the conveyance was made or his successor in title is declared to have title to the marshland.

(b) Reservation. — Areas of regularly flooded estuarine marshlands within conveyances validated by subsection (a) remain subject to all public trust rights. (1985, c. 278, s. 1.)

Legal Periodicals. — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

CASE NOTES

Navigable Waters. — If a body of water in its natural condition can be navigated by watercraft, it is navigable in fact and, therefore, navigable in law, even if it has not been used for such purpose. Lands lying beneath such waters that are navigable in law are the subject of the public trust doctrine. Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

Marshlands Covered by Navigable Waters. — The General Assembly did not convey the marshlands covered by navigable waters to the State Board of Education (SBE) free of any applicable public trust rights and, therefore, the SBE could not convey such lands to the plaintiffs' predecessors in title free of such public trust rights; thus, to the extent the marshlands at issue were covered by navigable waters, the people of North Carolina retained their full public trust rights. Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

Marshlands Not Covered by Navigable Waters Free of Public Trust Rights. — To apply this section to impose public trust rights on any parts of plaintiffs' marshlands not covered by navigable waters and which therefore are free of public trusts rights would be contrary to G.S. 146-83. Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 5.

General Provisions.

§ 146-21. Intent of Subchapter.

It is the purpose and intent of this Subchapter to provide for and regulate the acquisition, disposition, and management of all State lands other than the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands. (1959, c. 683, s. 1.)

ARTICLE 6.

Acquisitions.

§ 146-22. All acquisitions to be made by Department of Administration.

(a) Every acquisition of land on behalf of the State or any State agency, whether by purchase, condemnation, lease, or rental, shall be made by the Department of Administration and approved by the Governor and Council of State.

(b) If the proposed acquisition is a purchase or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), and the acquisition is for other than a transportation purpose, the acquisition may only be made after written notice to the Joint Legislative Commission on Governmental Operations, to the board of commissioners and the county manager, if any, of the county in which the land is located, and to the governing body and the city manager, if any, of the municipality in which the land is located if the land is located within a municipality. The notice shall be given to the chairs of the Commission and of the county and municipal governing boards at least 30 days prior to the acquisition, and the chairs shall forward a copy of the notice to the members of their respective bodies within three days of their receipt of the notice. The board of commissioners, individual commissioners, the governing body of the municipality, and individual members of that body may provide written comments on the acquisition to the Department of Administration; the Department shall forward the comments to the Governor and the Council of State.

In determining whether the appraised value is at least twenty-five thousand dollars ($25,000), the value of the property in fee simple shall be used.

The State may not purchase land as a tenant-in-common without consultation with the Joint Legislative Commission on Governmental Operations if the appraised value of the property in fee simple is at least twenty-five thousand dollars ($25,000).

(c) Acquisitions on behalf of the University of North Carolina Health Care System shall be made in accordance with G.S. 116-37(i), acquisitions on behalf of the University of North Carolina Hospitals at Chapel Hill shall be made in accordance with G.S. 116-37(a)(4), acquisitions on behalf of the clinical patient care programs of the School of Medicine of The University of North Carolina at Chapel Hill shall be made in accordance with G.S. 116-37(a)(4), and acquisitions on behalf of the Medical Faculty Practice Plan of the East Carolina University School of Medicine shall be made in accordance with G.S. 116-40.6(d). (1957, c. 584, s. 6; G.S., s. 146-103; 1959, c. 683, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97; 1998-212, s. 11.8(d); 2005-39, s. 1; 2007-322, s. 11; 2007-396, s. 1.)

Cross References. — As to the exception of acquisitions of an interest in real property by lease pursuant to G.S. 116-31.12 from the provisions of Article 36 of Chapter 143 of the General Statutes and Article 6 of Chapter 146 of the General Statutes, see G.S. 116-31.12.

Editor's Note. — Session Laws 2007-322, s. 12, provides that the University of North Carolina shall report ot the Joint Legislative Commission on Governmental Operations by July 1, 2008, on the implementation of the amendment of this section by this act. See amendment note 2007-396 for further clarification.

CASE NOTES

Procedures for acquisition to the time of condemnation are governed by this Article, while the condemnation, if required, is regulated by Article 9 of Chapter 136. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

By this Article the legislature merely appointed the Department of Administration as acquisition agent and established the procedure it should follow in acquiring land. A statute which merely sets forth a mode of procedure will not impliedly grant the power of eminent domain. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

No Carte Blanche to Condemn Property. — This Article and G.S. 143-341(4)d do not give the Department (with the approval of the Governor and Council of State) carte blanche to condemn property. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The Department can only effect the condemnation which the legislature authorizes. It may not decide the public purpose or initiate the project for which the State's power of eminent domain may be used. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Steps Required for Acquisition of Land by Purchase or Condemnation. — This Article provides that all acquisitions of land by the State or any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. Before the Department can acquire land by purchase or condemnation the following steps must be taken: (1) The agency must file with the Department an application setting forth its need for the requested acquisition; (2) The Department must investigate all aspects of the requested acquisition (including the availability of the necessary funds) as detailed in G.S. 146-23; (3) After investigation, the Department must determine that the best interests of the State require that the land be acquired; (4) The Department must then negotiate with the owners for the purchase. If terms are agreed upon and the Governor and Council of State approve them, the Department buys the land; (5) If negotiations are unsuccessful and the Governor and Council of State give permission, the Department institutes condemnation proceedings as provided in G.S. 146-24 and G.S. 136-103. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Limits on Authority of Council of State upon Submission to It of Lowest Lease Proposal. — Once the Department of Administration has submitted to the Council of State the lowest lease proposal in accordance with requirements set forth in lease specifications, the Council of State does not have the authority to examine all lease proposals and to require the Department of Administration to negotiate and enter a lease other than the lease proposal submitted by the Department of Administration. Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

Applied in State v. Johnson, 282 N.C. 1, 191 S.E.2d 641 (1972).

Cited in State v. Williams & Hessee, 53 N.C. App. 674, 281 S.E.2d 721 (1981).

OPINIONS OF ATTORNEY GENERAL

G.S. 116-40.6(d) does not exempt the Medical Faculty Practice Plan from the requirements contained in this section and G.S. 146-27 pertaining to consultation with the Joint Legislative Commission on Governmental Operations and approval by the

Governor and Council of State with regard to acquisitions and dispositions of real property. See opinion of Attorney General to Mr. Layton Getsinger, Associate Vice-Chancellor for Administration & Finance and Executive Director of Business Services, East Carolina University, 1999 N.C.A.G. 6 (3/1/99).

§ 146-22.1. Acquisition of property.

In order to carry out the duties of the Department of Administration as set forth in Chapters 143 and 146 of the General Statutes, the Department of Administration is authorized and empowered to acquire by purchase, gift, condemnation or otherwise:

(1) Lands necessary for the construction and operation of State buildings and other governmental facilities.

(2) Lands necessary for construction and operation of parking facilities.

(3) An area in the City of Raleigh bounded by Edenton Street, Person Street, Peace Street, the right-of-way of the main line of Seaboard Coast Line Railway and North McDowell Street for the expansion of State governmental facilities, the public interest in, public use of, and the necessity for the acquisition of said area, being hereby declared as a matter of legislative determination.

(4) Lands necessary for the location, expansion, operation and improvement of hospital and mental health facilities and similar institutions maintained by the State of North Carolina.

(5) Lands necessary for public parks and forestry purposes.

(6) Lands involving historical sites, together with such adjacent lands as may be necessary for their preservation, maintenance and operation.

(7) Lands necessary for the location, expansion and improvement of any educational, penal or correctional institution.

(8) Lands necessary to provide public access to the waters within the State.

(9) Lands necessary for agricultural, experimental and research facilities.

(10) Utility and access easement, rights-of-way, estates for terms of years or fee simple title to lands necessary or convenient to the operation of state-owned facilities.

(11) Lands necessary for the development and preservation of the estuarine areas of the State.

(12) Lands necessary for the development of waterways within the State.

(13) Lands necessary for acquisition of all or part of an area of environmental concern, as requested pursuant to G.S. 113A-123.

(14) Lands necessary for the construction of hazardous waste facilities as defined in G.S. 130A-290, inactive hazardous substance or waste disposal sites as defined in G.S. 130A-310, Superfund sites as described in G.S. 130A-310.22, and lands necessary for the construction of low-level radioactive waste facilities as defined in G.S. 104E-5. (1969, c. 1091, s. 1; 1973, c. 1284, s. 2; 1981, c. 704, s. 23; 1989, c. 286, s. 11.)

Editor's Note. — Session Laws 1973, c. 1284, which added subdivision (13), in s. 3, as amended by Session Laws 1975, c. 452, s. 5, provided an expiration date of June 30, 1983. However, Session Laws 1973, c. 1284, was amended by Session Laws 1981, c. 932, s. 2.1, so as to delete the provision in s. 3 of the 1973 act, as amended, for expiration of the act on June 30, 1983.

CASE NOTES

No request from a State agency is necessary under present law in order for the Department of Administration to acquire property "by purchase, gift, condemnation or otherwise" for certain authorized purposes. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

The State has the right under this section to condemn property to expand a State park in order to protect a historic "swimming hole" and to assure the public of continued access to the site. State v. Williams & Hessee, 53 N.C. App. 674, 281 S.E.2d 721 (1981).

Illustrative Case. — State had express statutory authority, and its statement of public use was sufficient, to condemn defendant's one-fifth land interest, held as tenant in common with State, as necessary and convenient for the operation and maintenance of government-owned impoundments. State v. Coastland Corp., 134 N.C. App. 269, 517 S.E.2d 655, 1999 N.C. App. LEXIS 749 (1999), cert. denied, 351 N.C. 111, 540 S.E.2d 371 (1999).

§ 146-22.2. Appraisal of property to be acquired by State.

(a) Where an appraisal of real estate or an interest in real estate is required by law to be made before acquisition of the property by the State or an agency of the State, the appraisal shall be made by a real estate appraiser licensed or certified by the State under Article 5 of Chapter 93A of the General Statutes.

(b) The provisions of subsection (a) of this section shall not apply to appraisals of real estate or an interest in real estate made by personnel within the Department of Transportation when the appraisal is anticipated to be less than ten thousand dollars ($10,000). In the event that the real estate or interest in real estate is in fact appraised at ten thousand dollars ($10,000) or more, the Department of Transportation must comply with the provisions of subsection (a) of this section. (1989 (Reg. Sess., 1990), c. 827, s. 12; 1991, c. 94, s. 1; 1993, c. 519, s. 1; 1993 (Reg. Sess., 1994), c. 691, s. 1; 1995, c. 135, s. 1.)

§ 146-22.3. Acquisition of land to be used to restore, enhance, preserve, or create wetlands.

(a) Payment. — A State agency that acquires land by purchase for the purpose of restoring, enhancing, preserving, or creating wetlands as required by a permit or an authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 must pay to the county in which the land is located, as reimbursement, a sum equal to the estimated amount of ad valorem taxes that would have accrued to the county for the next 20 years had the land not been acquired by the State agency.

(b) Exception. — This section does not apply when the land purchased by the State agency and the wetlands permitted to be lost are located in the same county. In other circumstances, the governing body of the county and the State agency may enter into a written agreement to waive payment.

(c) Amount. — The estimated amount of ad valorem taxes that would have accrued for the next 20 years is the total assessed value of the acquired land excluded from the county's tax base multiplied by the tax rate set by the county board of commissioners in its most recent budget ordinance adopted under Chapter 159 of the General Statutes, and then multiplied by 20.

(d) Application. — This section applies only to land acquired in counties designated as a development tier one area under G.S. 143B-437.08. (2004-188, s. 4; 2006-252, s. 2.14.)

§ 146-22.4. Acquisition of wetlands from private mitigation banking companies.

(a) Payment for Taxes. — A State agency that acquires wetlands from a private mitigation banking company must pay a sum in lieu of ad valorem taxes to the county where the wetlands are located. The sum is equal to the estimated amount of ad valorem taxes that would have accrued for the next 20 years as computed in G.S. 146-22.3(c).

(b) Requirement for Acquisition. — A State agency may require, as a condition of accepting a donation of wetlands by a private mitigation banking company, that the company make adequate provisions for the long-term maintenance and management of the wetlands. These provisions may include reimbursement to the agency for payment of a sum in lieu of ad valorem taxes.

(c) Application. — This section applies only to land acquired in counties designated as a development tier one area under G.S. 143B-437.08. (2004-188, s. 5; 2006-252, s. 2.15.)

§ 146-22.5. Reimbursement of payment in lieu of future ad valorem taxes.

(a) If a State agency acquires land under G.S. 146-22.3 or G.S. 146-22.4 and later uses this land to mitigate wetlands permitted to be lost in the same county, then the county shall reimburse the State agency. The reimbursement shall equal the estimated amount of ad valorem taxes paid for the land in accordance with G.S. 146-22.3 minus ten percent (10%) of this amount multiplied by the number of years the State agency held the land before the wetlands were lost.

(b) Application. — This section applies only to land acquired in counties designated as a development tier one area under G.S. 143B-437.08. (2004-188, s. 6; 2005-435, s. 44; 2006-252, s. 2.16.)

§ 146-23. Agency must file statement of needs; Department must investigate.

Any State agency desiring to acquire land, whether by purchase, condemnation, lease, or rental, shall file with the Department of Administration an application setting forth its needs, and shall furnish such additional information as the Department may request relating thereto. Upon receipt of such application, the Department of Administration shall promptly investigate all aspects of the requested acquisition, including the existence of actual need for the requested property on the part of the requesting agency; the availability of land already owned by the State or by any State agency which might meet the requirements of the requesting agency; the availability, value, and status of title of other land, whether for purchase, condemnation, lease, or rental, which might meet the requirements of the requesting agency; and the availability of funds to pay for land if purchased, condemned, leased, or rented. The Department of Administration may make acquisitions at the request of the Governor and Council of State upon compliance with the investigation herein required. (1957, c. 584, s. 6; G.S., s. 146-104; 1959, c. 683, s. 1; 1969, c. 1091, s. 2.)

CASE NOTES

Compliance Shown. — Affidavits and exhibits, together with Secretary of Administration's findings, indicated that statutory requirements were addressed, and the trial court reasonably determined that DOA properly investigated "all aspects of the requested acquisition" in compliance with this section. State v. Coastland Corp., 134 N.C. App. 269, 517 S.E.2d 655, 1999 N.C. App. LEXIS 749 (1999), cert. denied, 351 N.C. 111, 540 S.E.2d 371 (1999).

Cited in State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 146-23.1. Buildings having historic, architectural or cultural significance.

In order to promote the use of buildings having historic, architectural or cultural significance, the Department of Administration shall inform the North Carolina Historical Commission of all geographical areas in the State within which the State is actively seeking to lease space for the accommodation of State agencies. Within 60 days of the receipt of such information, the North Carolina Historical Commission shall identify for the Department of Administration all buildings within such geographical areas that (i) are known to be of historic, architectural or cultural significance (including but not limited to buildings listed or eligible to be listed on the National Register established pursuant to 16 U.S.C. 470(a)), and (ii) which may be suitable, whether or not in need of repair, alteration or addition, for acquisition or lease to meet the public building and space needs of State agencies. In addition, the North Carolina Historical Commission shall furnish the Department of Administration such additional information on the physical condition, usable space, and the nature and approximate costs of necessary historic rehabilitation as the department may request in order for the department to determine whether the acquisition or lease of space in such buildings is feasible and prudent.

In acquiring lease space pursuant to G.S. 146-25.1, the Department of Administration shall give preference to lease proposals involving buildings identified by the North Carolina Historical Commission as having historic, architectural or cultural significance. Provided, however, that such preference shall be given only when the Department of Administration, after investigation as provided in this Article, determines that such proposal is feasible, prudent and in the best interest of the State, as compared with available alternatives, such determination to include the State's policy to preserve historic buildings. (1977, c. 998, s. 1.)

§ 146-23.2. Purchase of buildings constructed or renovated to a certain energy-efficiency standard.

(a) A State agency shall not acquire by purchase any building unless the building was designed and constructed to at least the same standards for energy efficiency and water use that the design and construction of a comparable State building was required to meet at the time the building under consideration for purchase was constructed. Further, a State agency shall not acquire by purchase any building that had a major renovation unless the major renovation of the building was designed and constructed to at least the same standards for energy efficiency and water use that the design and construction of a major renovation of a comparable State building was required to meet at the time the building under consideration for purchase was renovated.

(b) This section does not apply to the purchase of a building having historic, architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the General Statutes. This section does not apply to buildings that are acquired by devise or gift. (2008-203, s. 3.)

Editor's Note. — Session Laws 2008-203, s. 7, made this section effective August 8, 2008.

§ 146-24. Procedure for purchase or condemnation.

(a) If, after investigation, the Department determines that it is in the best interest of the State that land be acquired, the Department shall proceed to negotiate with the owners of the desired land for its purchase.

(b) If the purchase price and other terms are agreed upon, the Department shall then submit to the Governor and Council of State the proposed purchase, together with a copy of the deed, for their approval or disapproval. If the Governor and Council of State approve the proposed purchase, the Department shall pay for the land and accept delivery of a deed thereto. All conveyances of purchased real property shall be made to "the State of North Carolina," and no such conveyance shall be made to a particular agency, or to the State for the use or benefit of a particular agency.

(c) If negotiations for the purchase of the land are unsuccessful, or if the State cannot obtain a good and sufficient title thereto by purchase from the owners, then the Department of Administration may request permission of the Governor and Council of State to exercise the right of eminent domain and acquire any such land by condemnation in the same manner as is provided for the Board of Transportation by Article 9 of Chapter 136 of the General Statutes. Upon approval by the Governor and Council of State, the Department may proceed to exercise the right of eminent domain. Approval by no other State agency shall be required as a prerequisite to the exercise of the power of eminent domain by the Department. Provided that when the procedures of Article 9 of Chapter 136 are employed by the Department, any person named in or served with a complaint and declaration of taking shall have 120 days from the date of service thereof within which to file answer. (1957, c. 584, s. 6; G.S., s. 146-105; 1959, c. 683, s. 1; 1967, c. 512, s. 1; 1973, c. 507, s. 5; 1981, c. 245, s. 1.)

CASE NOTES

Strict Construction. — In construing statutes which are claimed to authorize the exercise of the power of eminent domain, a strict rather than a liberal construction is the rule. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Power of Eminent Domain as Prerogative of Sovereign State. — The right to take private property for public use, the power of eminent domain, is one of the prerogatives of a sovereign state. The right is inherent in sovereignty; it is not conferred by constitutions. Its exercise, however, is limited by the constitutional requirements of due process and payment of just compensation for property condemned. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The right of eminent domain must be conferred by statute, either in express words or by necessary implication. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The right of eminent domain lies dormant in the State until the legislature, by statute, confers the power and points out the occasion, mode, conditions and agencies for its exercise. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

As only the legislative branch can authorize exercise of the power of eminent domain and prescribe the manner of its use. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

And the executive branch cannot, without the authority of some statute, proceed to condemn property for its own uses. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

But once authority is given to exercise the power of eminent domain, the matter ceases to be wholly legislative. The executive authorities may then decide whether the power will be invoked and to what extent, and the judiciary must decide whether the statute authorizing the taking violates any constitutional rights; moreover, the fixing of compensation is wholly a judicial question. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Procedures for acquisition to the time of condemnation are governed by this Article, while the condemnation, if required, is regulated by Article 9 of Chapter 136. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

Inference That Acquisition Is in Best Interest of State. — This section does not require a specific written report that the acquisition is in the best interest of the State, and where the Department did in fact proceed to acquire the land, it was a permissible inference that such a determination was made. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

Cited in State v. Forehand, 67 N.C. App. 148, 312 S.E.2d 247 (1984).

§ 146-24.1. The power of eminent domain.

In carrying out the duties and purposes set forth in Chapters 143 and 146 of the General Statutes, the Department of Administration is vested with the power of eminent domain and shall have the right and power to acquire such lands, easements, rights-of-way or estates for years by condemnation in the manner prescribed by G.S. 146-24 of the General Statutes. The power of eminent domain herein granted is supplemental to and in addition to the power of eminent domain which may be now or hereafter vested in any State agency as defined by G.S. 146-64 and the Department of Administration may exercise on behalf of such agency the power vested in said agency or the power vested in the Department of Administration herein; and the Department of Administration may follow the procedure set forth in G.S. 146-24 or the procedure of such agency, at the option of the Department of Administration. Where such acquisition is made at the request of an agency, such agency shall make a determination of the necessity therefor; where such acquisition is on behalf of the State or at the request of the Department of Administration, such findings shall be made by the Director of Administration. Provided, however, that all such acquisitions shall have the approval of the Governor and Council of State as provided in G.S. 146-24.

This section shall not apply to public projects and condemnations for which specific statutory condemnation authority and procedures are otherwise provided. (1969, c. 1091, ss. 3, 4.)

CASE NOTES

Illustrative Case. — State had express statutory authority, and its statement of public use was sufficient, to condemn defendant's one-fifth land interest, held as tenant in common with State, as necessary and convenient for the operation and maintenance of government-owned impoundments. State v. Coastland Corp., 134 N.C. App. 269, 517 S.E.2d 655, 1999 N.C. App. LEXIS 749 (1999), cert. denied, 351 N.C. 111, 540 S.E.2d 371 (1999).

§ 146-25. Leases and rentals.

If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be leased or rented for the use of the State or of any State agency, the Department shall proceed to negotiate with the owners for the lease or rental of such property. All lease and rental agreements entered into by the Department shall be promptly submitted to the Governor and Council of State for approval or disapproval. (1957, c. 584, s. 6; G.S., s. 146-106; 1959, c. 683, s. 1.)

CASE NOTES

Limits on Authority of Council of State upon Submission to It of Lowest Lease Proposal. — Once the Department of Administration has submitted to the Council of State the lowest lease proposal in accordance with requirements set forth in lease specifications, the Council of State does not have the authority to examine all lease proposals and to require the Department of Administration to negotiate and enter a lease other than the lease proposal submitted by the Department of Administration. Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

§ 146-25.1. Proposals to be secured for leases.

(a) If pursuant to G.S. 146-25, the Department of Administration determines that it is in the best interest of the State to lease or rent land and the rental is estimated to exceed twenty-five thousand dollars ($25,000) per year or the term will exceed three years, the Department shall require the State agency desiring to rent land to prepare and submit for its approval a set of specifications for its needs. Upon approval of specifications, the Department shall prepare a public advertisement. The State agency shall place such advertisement in a newspaper of general circulation in the county for proposals from prospective lessors of said land and shall make such other distribution thereof as the Department directs. The advertisement shall be run for at least five consecutive days, and shall provide that proposals shall be received for at least seven days from the date of the last advertisement in the State Property Office of the Department. The provisions of this section do not apply to property owned by governmental agencies and leased to other governmental agencies.

(b) The Department may negotiate with the prospective lessors for leasing of the needed land, taking into account not only the rental offered, but the type of land, the location, its suitability for the purposes, services offered by the lessor, and all other relevant factors. In the event either no proposal or no acceptable proposal is received after advertising in accordance with subsection (a) of this section, the Department may negotiate in the open market for leasing of the needed land.

(c) The Department of Administration shall present the proposed transaction to the Council of State for its consideration as provided by this Article. In the event the lowest rental proposed is not presented to the Council of State, that body may require a statement of justification, and may examine all proposals. (1973, c. 1448; 1975, c. 523; 1977, c. 485; 1979, c. 43, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97; 1999-252, s. 1.)

CASE NOTES

Limits on Authority of Council of State upon Submission to It of Lowest Lease Proposal. — Once the Department of Administration has submitted to the Council of State the lowest lease proposal in accordance with requirements set forth in lease specifications, the Council of State does not have the authority to examine all lease proposals and to require the Department of administration to negotiate and enter a lease other than the lease proposal submitted by the Department of Administration. Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

OPINIONS OF ATTORNEY GENERAL

As to applicability of section to nonbinding agreements to lease made prior to April 13, 1974, to leases which expire after April 13, 1974, and must be renegotiated, and to "emergency situations," see opinion of Attorney General to Mr. M.E. White, N.C. Department of Administration, 43 N.C.A.G. 402 (1974).

§ 146-26. Donations and devises to State.

No devise or donation of land or any interest therein to the State or to any State agency shall be effective to vest title to the land or any interest therein in the State or in any State agency until the devise or donation is accepted by the Governor and Council of State. If the land is devised or donated to the State or to any State agency as an historic property, then title shall not vest until the Historical Commission reports to the Joint Legislative Commission on Governmental Operations as provided in G.S. 121-9. Upon acceptance by the Governor and Council of State, title to the said land or interest therein shall immediately vest as of the time title would have vested but for the above requirement of reporting to the Joint Legislative Commission on Governmental Operations if an historic property and acceptance by the Governor and

Council of State. (1957, c. 584, s. 6; G.S., s. 146-107; 1959, c. 683, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 7.7(b).)

§ 146-26.1. Relocation assistance.

In the acquisition of any real property by the Department of Administration for a public use, the Department of Administration shall be vested with the authority as set forth in Article 2 of Chapter 133 of the General Statutes. (1971, c. 540; 1973, c. 507, s. 5; 1977, c. 464, s. 34; 1993, c. 553, s. 52.1.)

ARTICLE 7.

Dispositions.

§ 146-27. The role of the Department of Administration in sales, leases, and rentals.

(a) General. — Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. — If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(c) Expired effective September 1, 2007. (1957, c. 584, s. 6; G.S., s. 146-108; 1959, c. 683, s. 1; 1977, c. 425, ss. 1, 2; 1987, c. 738, s. 47(b); 1993, c. 561, s. 32(a); 1998-159, s. 5; 2005-276, s. 6.25(a).))

Cross References. — As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see G.S. 160A-274.

Editor's Note. — Session Laws 2005-276. s. 6.25(c), provides that s. 6.25(a), which amended this section expires on September 1, 2007.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.5 is a severability clause.

CASE NOTES

An agreement to lease should be governed by the same statutory provisions as a lease itself. To hold otherwise would defeat the legislative intent to protect the State and taxpayers from liability for the unauthorized and invalid agreements of the State's numerous agents. Stewart v. Graham, 72 N.C. App. 676, 325 S.E.2d 53, cert. denied, 313 N.C. 611, 330 S.E.2d 616 (1985).

OPINIONS OF ATTORNEY GENERAL

G.S. 116-40.6(d) does not exempt the Medical Faculty Practice Plan from the requirements contained in G.S. 146-22 and this section pertaining to consultation with the Joint Legislative Commission on Governmental Operations and approval by the Governor and Council of State with regard to acquisitions and dispositions of real property. See opinion of Attorney General to Mr. Layton Getsinger, Associate Vice-Chancellor for Administration & Finance and Executive Director of Business Services, East Carolina University, 1999 N.C.A.G. 6 (3/1/99).

§ 146-28. Agency must file application with Department; Department must investigate.

Any State agency desiring to sell, lease, or rent any land owned by the State or by any State agency shall file with the Department of Administration an application setting forth the facts relating to the proposed transaction, and shall furnish the Department with such additional information as the Department may request relating thereto. Upon receipt of such application, the Department of Administration shall promptly investigate all aspects of the proposed transaction, including particularly present and future State need for the land proposed to be conveyed, leased, or rented. (1957, c. 584, s. 6; G.S., s. 146-109; 1959, c. 683, s. 1.)

CASE NOTES

Cited in Granville County Bd. of Comm'rs v. North Carolina Hazardous Waste Mgt. Comm'n, 329 N.C. 615, 407 S.E.2d 785 (1991).

§ 146-29. Procedure for sale, lease, or rental.

If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be sold, leased, or rented, the Department shall proceed with its sale, lease, or rental, as the case may be, in accordance with rules adopted by the Governor and approved by the Council of State. If an agreement of sale, lease, or rental is reached, the proposed transaction shall then be submitted to the Governor and Council of State for their approval or disapproval. Every conveyance in fee of land owned by the State or by any State agency shall be made and executed in the manner prescribed in G.S. 146-74 through 146-78. (1957, c. 584, s. 6; G.S., s. 146-110; 1959, c. 683, s. 1.)

CASE NOTES

Discretionary Nature of Bidding Process. — Plaintiff public contracts bidder's 18 U.S.C.S. § 1962 Racketeer Influenced and Corrupt Organizations Act claims against defendants, a state official, other bidders, and co-conspirators, based upon illegal campaign contributions solicited by the official in connection with awarding state fair contracts, failed for lack of standing because being awarded contracts was an expectancy interest only and the discretionary criteria involved in the decision-making process, as evident from G.S. 146-29, 146-29.1, 143-129, in awarding contracts precluded proximate cause as required under 18 U.S.C.S. § 1964(c). Strates Shows v. Amusements of Am., 379 F. Supp. 2d 817, 2005 U.S. Dist. LEXIS 15741 (E.D.N.C. 2005).

Cited in Granville County Bd. of Comm'rs v. North Carolina Hazardous Waste Mgt. Comm'n, 329 N.C. 615, 407 S.E.2d 785 (1991).

§ 146-29.1. Lease or sale of real property for less than fair market value.

(a) Real property owned by the State or any State agency may not be sold, leased, or rented at less than fair market value to any private entity that operates, or is established to operate for profit.

(b) Real property owned by the State or by any State agency may be sold, leased, or rented at less than fair market value to a public entity. "Public entity" means a county, municipal corporation, local board of education, community college, special district or other political subdivision of the State and the United States or any of its agencies. Any such sale, lease, or rental shall be reported at least 30 days prior to the sale, lease, or rental to the Joint

Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office, with the details of such transaction.

(c) Real property owned by the State or by any State agency may be sold, leased, or rented at less than market value to a private, nonprofit corporation, association, organization or society if the Department of Administration determines both of the following:

(1) The transaction is in consideration of public service rendered or to be rendered by the nonprofit.

(2) The property will be used in connection with the nonprofit's tax-exempt purpose and not in connection with its unrelated trade or business, as defined in section 513 of the Code. For the purposes of this subdivision, the term "Code" has the same meaning as in G.S. 105-228.90.

The transaction shall be reported in detail at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office. The fact that any sale of property under this subsection shall not be subject to a reversionary interest in the State shall be expressly made known to the Joint Legislative Commission on Government Operations, and the Governor and Council of State, prior to the transaction being authorized.

(d) Any sale, lease, or rental of real property made in conformity with the provisions of this section is not a violation of G.S. 66-58(a).

(e) All sales, leases, or rentals, prior to July 15, 1986, of real property owned by the State or any State agency are not invalid because of a conflict with G.S. 66-58(a) or with a prior version of this section, but any renewal of any such lease or rental agreement on or after July 15, 1986, shall conform to the requirements of this section. (1985, c. 479, s. 172(a); 1985 (Reg. Sess., 1986), c. 1014, s. 188(a); 1993, c. 561, s. 32(c); 1999-252, s. 2.)

Editor's Note. — Session Laws 1985, c. 757, s. 173 provided that this section, as enacted by Session Laws 1985, c. 479, s. 172, would not apply to the lease of property for the Ronald McDonald House that was approved by the Board of Governors of the University of North Carolina on June 28, 1985.

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 26 provides: "The Department of Administration may enter into leases with the North Carolina Aquarium Society, a nonprofit corporation whose sole purpose is to assist financially the three State supported aquariums. Any leases entered into pursuant to this section are exempt from the provisions of G.S. 146-29.1."

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 179 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1992-93 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1992-93 fiscal year."

CASE NOTES

Discretionary Nature of Decisions. — Plaintiff public contracts bidder's 18 U.S.C.S. § 1962 Racketeer Influenced and Corrupt Organizations Act claims against defendants, a state official, other bidders, and co-conspirators, based upon illegal campaign contributions solicited by the official in connection with awarding state fair contracts, failed for lack of standing because being awarded contracts was an expectancy interest only and the discretionary criteria involved in the decision-making process, as evident from G.S. 146-29, 146-29.1, 143-129, in awarding contracts precluded proximate cause as required under 18 U.S.C.S. § 1964(c). Strates Shows v. Amusements of Am., 379 F. Supp. 2d 817, 2005 U.S. Dist. LEXIS 15741 (E.D.N.C. 2005).

§ 146-29.2. Lease provisions for communications towers.

The State may lease real property, or any interest in real property, for the purposes of construction and placement of communications towers on State land or for placement of antennas upon State-owned structures. The following additional requirements shall apply to such leases:

(1) The lease shall require the lessee to permit other telecommunications carriers to co-locate on the communications tower on commercially reasonable terms between the lessee and the co-locating carrier until the communications tower reaches its capacity. Unless the State determines that co-location is not feasible at that location, the communications tower shall be designed and constructed to accommodate other carriers on the tower.

(2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.

(3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.

(4) The State shall not lease lands of the State Parks System for such purposes.

For purposes of this section, "co-locate and co-location" mean the sharing of a communications tower by two or more services.

City and county ordinances apply to communications towers and antennas authorized under this section. (1998-158, s. 3.)

Legal Periodicals. — See legislative survey, 21 Campbell L. Rev. 323 (1999).

§ 146-30. Application of net proceeds.

(a) The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer. Provided, however, nothing herein shall be construed as prohibiting the disposition of any State lands by exchange for other lands, but if the appraised value in fee simple of any property involved in the exchange is at least twenty-five thousand dollars ($25,000), then such exchange may not be made without consultation with the Joint Legislative Commission on Governmental Operations.

(b) For the purposes of this Subchapter, the term "net proceeds " means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State; and

(2) Repealed by Session Laws 1993, c. 553, s. 52.2.

(3) A service charge to be paid into the State Land Fund.

(b1) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands that are designated as part of the Centennial Campus as defined by G.S. 116-198.33(4), that are designated as part of the Horace Williams Campus as defined by G.S. 116-198.33(4a), or that are designated as part of a Millennial Campus as defined by G.S. 116-198.33(4b). All net proceeds of those dispositions are governed by G.S. 116-36.5.

(b2) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands purchased and owned by the North Carolina State Highway Patrol, Department of Crime Control and Public Safety, as part of the Voice Interoperability Plan for Emergency Responders (VIPER) project being managed by the North Carolina State Highway Patrol, Department of Crime Control and Public Safety. All net proceeds of these dispositions shall be deposited into an account created in the Department of Crime Control and Public Safety to be used only for the purpose of constructing, maintaining, or supporting the VIPER network.

(c) The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. Provided, however, the net proceeds derived from the sale of land or timber from land owned by or under the supervision and control of the Department of Agriculture and Consumer Services shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services, to be used for such specific capital improvement projects or other purposes as are provided by transfer of funds from those accounts in the Capital Improvement Appropriations Act. Provided further, the net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Environment and Natural Resources shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as provided by transfer of funds from those accounts in the Capital Improvement Appropriations Act. In the Capital Improvement Appropriations Act, line items for purchase of park and agricultural lands will be established for use by the Departments of Administration and Agriculture. The use of such funds for any specific capital improvement project or land acquisition is subject to approval by the Director of the Budget. No other use may be made of funds in these line items without approval by the General Assembly except for incidental expenses related to the project or land acquisition. Additionally with the approval of the Director of the Budget, either Department may request funds from the Contingency and Emergency Fund when the necessity of prompt purchase of available land can be demonstrated and funds in the capital improvement accounts are insufficient. Provided further, the net proceeds derived from the sale of any portion of the land owned by the State in or around the Butner Reservation on or after July 1, 1980, shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Health and Human Services to make capital improvements on or to property owned by the State in the Butner Reservation subject to approval by the Office of State Budget and Management, and may be used to build industrial access roads to industries located or to be located on the Butner Reservation, to construct new city streets in the Butner Reservation, extend water and sewer service on the Butner Reservation, repair storm drains on the Butner Reservation, and for other capital uses on the Reservation as determined by the Secretary. (1959, c. 683, s. 1; 1975, 2nd Sess., c. 983, s. 30; 1977, c. 771, s. 4; c. 1012; 1979, c. 608, s. 1; 1981, c. 859, s. 23.4; c. 1127, s. 33; 1981 (Reg. Sess., 1982), c. 1282, s. 24; 1983, c. 717, ss. 86, 86.1, 86.2, 87; c. 761, s. 166; 1983 (Reg. Sess., 1984), c. 1034, s. 164; c. 1116, s. 97(d); 1989, c. 727, s. 218(155); c. 799, s. 26; 1993, c. 321, s.

260.1; c. 553, s. 52.2; 1997-261, s. 109; 1997-443, s. 11A.119(a); 1998-159, s. 4; 1999-234, s. 8; 2000-140, s. 93.1(a); 2000-177, s. 9; 2001-424, s. 12.2(b); 2007-269, s. 12; 2009-376, s. 15.)

Cross References. — As to net proceeds from certain University of North Carolina land sales being trust funds of the University, see G.S. 116-36.1.

Editor's Note. — Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71." The Charter of the Town of Butner was precleared by letter dated October 1, 2007.

Session Laws 2007-323, s. 29.11A(a), provides: "All proceeds from the pending sale of the former Buncombe County Headquarters parcel, located at 5 Brown Road, Asheville, North Carolina, by the Department of Environment and Natural Resources, Division of Forest Resources, shall be transferred to the Department for deposit into a capital improvement account. These proceeds shall be used to construct an office, equipment storage building, and other improvements related to a new Buncombe County Headquarters facility. These proceeds shall not be subject to the service charge payable to the State Land Fund pursuant to G.S. 146-30."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 27.4.(b), provides: "From funds deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services pursuant to G.S. 146-30, the sum of thirty thousand dollars ($30,000) for the 2008-2009 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be used, notwithstanding G.S. 146-30, by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, environmental studies, and for the management of the plant conservation program preserves owned by the Department."

Session Laws 2009-451, s. 27.4(b), provides: "From funds deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services pursuant to G.S. 146-30, the sum of thirty thousand dollars ($30,000) for the 2009-2010 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be used, notwithstanding G.S. 146-30, by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, environmental studies, and for the management of the plant conservation program preserves owned by the Department."

For former similar provisions, see Session Laws 2007-323, s. 29.6(a).

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-376, s. 15, effective July 31, 2009, added subsection (b2).

OPINIONS OF ATTORNEY GENERAL

For opinion that service charge was not applicable in gift of trust situation described, see opinion of Attorney General to Mr. Carroll L. Mann, Jr., Property Control and Construction Division, Department of Administration, 41 N.C.A.G. 738 (1972).

ARTICLE 8.

Miscellaneous Provisions.

§ 146-31. Right of appeal to Governor and Council of State.

The requesting agency, in the event of disagreement with a decision of the Department of Administration regarding the acquisition or disposition of land pursuant to the provisions of this Subchapter, shall have the right of appeal to the Governor and Council of State. (1957, c. 584, s. 6; G.S., s. 146-113; 1959, c. 683, s. 1.)

§ 146-32. Exemptions as to leases, etc.

The Governor, acting with the approval of the Council of State, may adopt rules and regulations:

(1) Exempting from any or all of the requirements of this Subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and

(2) Authorizing any State agency to enter into and/or approve those classes of transactions exempted by such rules and regulations from the requirements of this Chapter.

(3) No rule or regulation adopted under this section may exempt from the provisions of G.S. 146-25.1 any class of lease or rental which has a duration of more than 21 days, unless the class of lease or rental:

  a. Is a lease or rental necessitated by a fire, flood, or other disaster that forces the agency seeking the new lease or rental to cease use of real property;

  b. Is a lease or rental necessitated because an agency had intended to move to new or renovated real property that was not completed when planned, but a lease or rental exempted under this subparagraph may not be for a period of more than six months; or

  c. Is a lease or rental which requires a unique location or a location that adjoins or is in close proximity to an existing rental location. (1959, c. 683, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97; 1985, c. 479, s. 173; 1999-252, s. 3; 1999-456, s. 38.)

§ 146-33. State agencies to locate and mark boundaries of lands.

Every State agency shall locate and identify, and shall mark and keep marked, the boundaries of all lands allocated to that agency or under its control. The Department of Administration shall locate and identify, and mark and keep marked, the boundaries of all State lands not allocated to or under the control of any other State agency. The chief administrative officer of every State agency is authorized to contract with the State Department of Correction for the furnishing, upon such conditions as may be agreed upon from time to time between the State Department of Correction and the chief administrative officer of that agency, of prison labor for use where feasible in the performance of these duties. (1957, c. 584, s. 2; G.S., s. 143-145.1; 1959, c. 683, s. 1; 1967, c. 996, s. 13.)

§ 146-34. Agencies may establish agreed boundaries.

Every State agency may establish agreed boundaries between lands allocated to it or under its control, and the lands of any other owner, subject to the approval of the Governor and Council of State. The Department of Administration is authorized to establish agreed boundaries between State lands not allocated to or under the control of any other State agency and the lands of any other owner, subject to the approval of the Governor and Council of State. The Attorney General shall represent the State in all proceedings to establish boundaries which cannot be established by agreement. (1957, c. 584, s. 3; G.S., s. 143-145.2; 1959, c. 683, s. 1.)

§ 146-35. Severance approval delegation.

The Governor, acting with the approval of the Council of State, may adopt rules and regulations delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands. Upon such approval of severance, the buildings or timber affected shall be, for the purposes of this Chapter, treated as personal property. (1959, c. 683, s. 1.)

§ 146-36. Acquisitions for and conveyances to federal government.

The Governor and Council of State may, whenever they find that it is in the best interest of the State to do so, enter into any contract or other agreement which will be sufficient to comply with federal laws or regulations, binding the State to acquire for and to convey to the United States government land or any interest in land, and to do such other acts and things as may be necessary for such compliance.

The Governor and Council of State may authorize any conveyance to the United States government to be made upon nominal consideration whenever they deem it to be in the best interest of the State to do so. (1959, c. 683, s. 1.)

CASE NOTES

This section confers no power of eminent domain. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

SUBCHAPTER III. ENTRIES AND GRANTS.

Article 9.

General Provisions.

§ 146-37. Intent of Subchapter.

It is the purpose and intent of this Subchapter to protect vested rights, titles, and interests acquired under the laws governing entries and grants as they read immediately prior to June 2, 1959. (1959, c. 683, s. 1.)

Legal Periodicals. — For note on defining navigable waters and the application of the public trust doctrine in North Carolina, see 49 N.C.L. Rev. 888 (1971).

§ 146-38. Pending entries.

All entries which have been filed with entry-takers within one year prior to June 2, 1959, or filed more than one year prior to June 2, 1959, but still pending due to the filing of protest to the entry, shall be processed pursuant to the provisions of Chapter 146 of the General Statutes as it read immediately prior to June 2, 1959. Every such entry shall be paid for within one year from the date of entry, unless a protest be filed to the entry, in which event it shall be paid for within one year after final judgment on the protest; and all entries not thus paid for shall become null and void, and shall not be subject to renewal. It shall be the duty of both the enterer and protestant to conclude, within 12 months from June 2, 1959, all actions wherein a protest has been filed, and such cases shall be given preference on the dockets of the courts of the State. Any action not so concluded shall be deemed a lapse as to enterer and protestant. It is not the intent of this proviso to void any previous grant of the State of North Carolina, or to divest any vested right, but to terminate all rights accrued on account of an entry wherein no grant has been made. Provided that the resident judge of the superior court or the judge holding the superior courts of the district where the land lies, may, for good cause shown, extend the time within which an action in which a protest has been filed is required by this section to be concluded; but no single extension shall exceed one year in duration. A copy of this section shall be mailed by the Secretary of State to all parties to actions wherein protests have been filed as may be determined by records available in his office, and to all clerks of the superior court of the State. (1959, c. 683, s. 1.)

§ 146-39. Void grants; not color of title.

Every entry made and every grant issued for any lands not authorized by G.S. 146-1 through 146-77, as those sections read immediately prior to June 2, 1959, to be entered or granted shall be void.

Every grant of land issued since March 6, 1893, in pursuance of the statutes regulating entries and grants, shall, if such land or any portion thereof has been heretofore granted by this State, so far as relates to any such land heretofore granted, be absolutely void for all purposes whatever, shall confer no rights upon the grantee therein or those claiming under such grantee, and shall in no case and under no circumstances constitute any color of title to any person. (R.C., c. 42, s. 2; Code, s. 2755; 1893, c. 490; Rev., s. 1699; C.S., s. 7545; G.S., s. 146-13; 1959, c. 683, s. 1.)

Editor's Note. — The reference in this section to G.S. 146-1 through 146-77 is to those sections as they stood prior to the ratification of Session Laws 1959, c. 683, which revised this Chapter.

CASE NOTES

Editor's Note. — *The cases below were decided under corresponding sections of this Chapter as it stood before its revision in 1959, or under earlier statutes from which they were derived.*

Preference for Elder Title. — Where there are two or more conflicting titles derived from the State, the elder shall be preferred, upon the familiar maxim that he who is prior in time shall be prior in right and shall be adjudged to have the better title. Berry v. W. M. Ritter Lumber Co., 141 N.C. 386, 54 S.E. 278 (1906).

Subsequent Grant of Same Land Void. — Where land in controversy was previously granted to plaintiff's predecessor in title, a subsequent grant of the same land, under which defendants claimed title, was void for all purposes. Johnston v. Kramer Bros. & Co., 203 F. 733 (E.D.N.C. 1913).

State's grant of land was held not invalid where land conveyed by the grant had not been covered by any previous grant. Peterson v. Sucro, 101 F.2d 282 (4th Cir. 1939).

State Not Interested in Conflicting Grants. — Protest to entry raises the issue of title solely between the enterer and the protestant, in which matter the State is not interested, the burden being on the enterer to prove that the protestant's grant does not cover the land described in his entry. Walker v. Parker, 169 N.C. 150, 85 S.E. 306 (1915).

Title by Adverse Possession. — Where upon protest to the entry of the State's lands it is ascertained that the lands described in the entry are not contained in the former grant, the protestant may show that the lands are not vacant and unappropriated by sufficient adverse possession to take the title out of the State and vest it in himself. Walker v. Parker, 169 N.C. 150, 85 S.E. 306 (1915).

To mature a title under a junior grant, there must be shown adverse and exclusive possession of the lappage, or the law will presume possession to be in the true owner as to all that portion of the lappage not actually occupied by the junior claimant. McLean v. Smith, 106 N.C. 172, 11 S.E. 184 (1890); Boomer v. Gibbs, 114 N.C. 76, 19 S.E. 226 (1894); Currie v. Gilchrist, 147 N.C. 648, 61 S.E. 581 (1908); Blue Ridge Land Co. v. Floyd, 167 N.C. 686, 83 S.E. 687 (1914); Georgia-Carolina Land & Timber Co. v. Potter, 189 N.C. 56, 127 S.E. 343 (1925).

Application to Grants Issued Since March 6, 1893. — Statute providing that a junior grant shall not be color of title so far as it covers land previously granted applies by its terms only to grants issued since March 6, 1893. Weaver v. Love, 146 N.C. 414, 59 S.E. 1041 (1907); Jones-Onslow Land Co. v. Wooten, 177 N.C. 248, 98 S.E. 706 (1919).

ARTICLE 10.

Surveys.

§ 146-40. Record of surveys to be kept.

The county commissioners of the several counties of the State shall provide a suitable book or books for recording of surveys of entries of land, to be known as Record of Surveys, to be kept in the office of register of deeds as other records are kept. Such record shall have an alphabetical and numerical index, the numerical index to run consecutively. It shall be the duty of every county surveyor or his deputy surveyor who makes a survey to record in such book a perfect and complete record of all surveys of lands made upon any warrant issued upon any entry, and date and sign same as of the date such survey was made. (1905, c. 242; Rev., s. 1722; C.S., s. 7570; G.S., s. 146-39; 1959, c. 683, s. 1.)

CASE NOTES

Notice of Surveys. — Prior to enactment of the statute from which this section is derived, an entry of the State's vacant and unappropriated lands too vague to give notice of the boundaries of the land intended to be entered was not sufficient notice to a second enterer who had perfected his grant in ignorance of the first; and the mere running of the lines of the lands by survey or the making of a map by the first enterer, which he could keep in his possession, or the warrant to the county surveyor, necessarily no more definite than the original entry, did not remedy the defective description of the entry. However, the statute from which this section is derived provided for notice of all surveys, so that this problem should not hereafter arise. Lovin v. Carver, 150 N.C. 710, 64 S.E. 775 (1911).

§ 146-41. Former surveys recorded.

Where any ex-surveyor of a county is alive and has correct minutes or notes of surveys of land on entries made by him during his term of office, it shall be lawful for him to record and index such survey in the Record of Surveys, and the county commissioners shall pay for such services ten cents (10¢) for each survey so recorded and indexed. (1905, c. 242, s. 2; Rev., s. 1725; C.S., s. 7571; G.S., s. 146-40; 1959, c. 683, s. 1.)

§ 146-42. What record must show; received as evidence.

All surveys so recorded in such book shall show the number of the tract of land, the name of the party entering, and the name of the assignee if there be any assignee; and shall be duly indexed, both alphabetically and numerically, in such record in the name of the party making the entry and in the name of the assignee if there be any assignee. Such record of any surveyor or deputy surveyor when so made shall be read in evidence in any action or proceeding in any court: Provided that if such record differs from the original certificates of survey heretofore made or on file in the office of the Secretary of State, such original or certified copy of the certificate in the Secretary of State's office shall control. (1905, c. 242, ss. 2, 3, 6; Rev., s. 1723; C.S., s. 7572; G.S., s. 146-41; 1959, c. 683, s. 1.)

ARTICLE 11.

Grants.

§ 146-43. Cutting timber on land before obtaining a grant.

If any person shall make an entry of any lands, and before perfecting title to same shall enter upon such lands and cut therefrom any wood, trees, or timber, he shall be guilty of a Class 1 misdemeanor. Any person found guilty under the provisions of this section shall further pay to the State double the value of the wood, trees, or timber taken from the land, and it shall be the duty of the solicitor of the district in which the land lies to sue for the same. (1903, c. 272, s. 4; Rev., s. 3741; C.S., s. 7582; G.S., s. 146-51; 1959, c. 683, s. 1; 1993, c. 539, s. 1052; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 146-44. Card index system for grants.

The Secretary of State shall install in his office a card index system for grants, and every warrant, plot, and survey that can be found shall be encased in separate envelopes. Each card and envelope shall show substantially the following:

____________________ County ____________________ Acres
Name ____________________
Grant No. __________ Issued ____________________
Grant Book __________ Page ____________________
Entry No. __________ Entered ____________________
File No. ____________________
Location ____________________
Remarks ____________________

Such grant books as are old and falling to pieces shall be recopied, and whenever any part of the record of a grant is partly gone or destroyed the Secretary of State shall restore same, if he can do so with accuracy from the description in the plot and survey upon which the grant was issued and original record made. (1909, c. 505, ss. 1, 2, 3; C.S., s. 7584; G.S., s. 146-53; 1959, c. 683, s. 1.)

§ 146-45. Grant of Moore's Creek Battlefield authorized.

In conjunction with an act of Congress relating to the establishment of the Moore's Creek National Military Park (June 2, 1926, c. 448, s. 2, 44 Stat. 684;

U. S. Code, Title 16, ss. 422-422(d)), the Governor of the State of North Carolina is hereby authorized to execute to the United States government a deed vesting the title to Moore's Creek Battlefield, Pender County, in said United States government on behalf of the State of North Carolina, to preserve the same as an historical battlefield: Provided that the consent of the State of North Carolina to such acquisition by the United States is upon the express condition that the State of North Carolina shall so far retain a concurrent jurisdiction with the United States over such battlefield as that all civil and criminal processes issued from the courts of the State of North Carolina may be executed thereon in like manner as if this authority had not been given: Provided further, that the title to said battlefield so conveyed to the United States shall revert to the State of North Carolina unless said land is used for the purpose for which it is ceded. (1925, c. 40; 1927, c. 56; G.S., s. 146-54; 1959, c. 683, s. 1.)

Article 12.

Correction of Grants.

§ 146-46. When grants may issue.

In any case where, under the provisions of this Subchapter, the Secretary of State is authorized to issue a grant or a duplicate grant to correct an error in a prior grant, the grant of correction shall be authenticated by the Governor, countersigned by the Secretary of State, and recorded in the office of the Secretary of State. The date of the entry and the number of the survey from the certificate of survey upon which the grant is founded shall be inserted in every such grant, and a copy of the plot shall be attached to the grant. (1777, c. 114, s. 10, P.R.; 1783, c. 185, s. 14, P.R.; 1796, c. 455, P.R.; 1799, c. 525, s. 2, P.R.; R.C., c. 42, ss. 12, 22; Code, ss. 2769, 2779; 1889, c. 522; Rev., ss. 1729, 1734, 1735; C.S., s. 7578; G.S., s. 146-47; 1959, c. 683, s. 1.)

CASE NOTES

Editor's Note. — *The cases below were decided under corresponding sections of this Chapter as it stood before its revision in 1959, or under earlier statutes from which they were derived.*

A grant without the great seal of the State affixed does not show title under that grant, as it is mandatory that the seal be affixed to authenticate the signature of the Governor and the Secretary of State. Howell v. Hurley, 170 N.C. 798, 83 S.E. 699 (1914).

But a paper signed by the Governor and countersigned by the Secretary of State is admissible in evidence to show title, even though it does not bear the great seal of the State. Howell v. Hurley, 170 N.C. 401, 87 S.E. 107 (1915).

A grant of land is void if not signed by the Secretary of State. Den on Demise of Hunter v. Williams, 8 N.C. 221 (1820).

Place of Secretary of State's Signature Immaterial. — It is not necessary that the Secretary of State countersign at any special place on the grant to make it valid. Richards v. W.M. Ritter Lumber Co., 158 N.C. 54, 73 S.E. 485 (1911), modified on other grounds on rehearing, 159 N.C. 455, 74 S.E. 1016 (1912).

Effect of Attempt to Sign by Deputy Secretary. — It is necessary that the Secretary of State sign the grant, and if he signs such grant it is valid, no matter if there has been an attempt to sign by one of the deputies. Fowler v. Union Dev. Co., 158 N.C. 48, 73 S.E. 488 (1911).

When Secretary of State Must Issue Grant. — Where the claimant has complied with the law, and it appears from the warrant and survey that the entry-taker and surveyor have discharged their duties, the Secretary must issue the grant and has no discretion in the matter. Wool v. Saunders, 108 N.C. 729, 13 S.E. 294 (1891).

§ 146-47. Change of county line before grant issued or registered.

All grants issued on entries for lands which were entered in one county, and before the issuing of the grants therefor or the registration of the grants, by the change of former county lines or the establishment of new lines, the lands so entered were placed in a county or in counties different from that in which they were situated, and the grants were registered in the county where the entries were made, shall be good and valid, and the registration of the grant shall have the same force and effect as if they had been registered in the county where the lands were situated. All persons claiming under and by such grants may have them, or a certified copy of the same, from the office of the Secretary of State, or from the office of the register of deeds when they had been erroneously registered, recorded in the office of the register of deeds of the county or counties where the lands lie, and such registration shall have the same force and effect as if the grants had been duly registered in such county or counties. (1897, c. 37; Rev., s. 1736; C.S., s. 7585; G.S., s. 146-55; 1959, c. 683, s. 1.)

CASE NOTES

When the entry and survey are made in one county, registration of the deed in that county gives good title, even though a new county may have been organized including the land granted before the grant was registered. McMillan v. Gambill, 106 N.C. 359, 11 S.E. 273 (1890); Wyman v. Taylor, 124 N.C. 426, 32 S.E. 740 (1899), decided prior to 1959 revision of this Chapter.

§ 146-48. Entries in wrong county.

Whereas many citizens of the State, on making entries of lands near the lines of the county wherein they reside, either for want of proper knowledge of the land laws of the State or not knowing the county lines, have frequently made entries and extended their surveys on such entries into other counties than those wherein they were made, and obtained grants on the same; and whereas doubts have existed with respect to the validity of the titles to lands situated as aforesaid, so far as they extend into other counties than those where the entries were made; for remedy whereof it is hereby declared that all grants issued on entries made for lands situated as aforesaid shall be good and valid against any entries thereafter made or grants issued thereon. (1805, c. 675, P.R.; 1834, c. 17; R.C., c. 42, s. 27; Code, s. 2784; Rev., s. 1737; C.S., s. 7586; G.S., s. 146-56; 1959, c. 683, s. 1.)

CASE NOTES

For application and discussion of earlier statute, see Harris v. Norman, 96 N.C. 59, 2 S.E. 72 (1887). See also Avery v. Strother, 1 N.C. 496 (1802); Lunsford v. Bostion, 16 N.C. 483 (1830).

§ 146-49. Errors in surveys of plots corrected.

Whenever there may be an error by the surveyor in plotting or making out the certificate for the Secretary's office, or whenever the Secretary shall make a mistake in making out the courses agreeable to such returns, or misname the claimant, or make other mistake, so that such claimant shall be injured thereby, the claimant may prefer a petition to the superior court of the county in which the land lies, setting forth the injury which he might sustain in consequence of such error or mistake, with all the matters and things relative thereto. The court may hear testimony respecting the truth of the allegations set forth in the petition; and if it shall appear by the testimony, from the return of the surveyor or the error of the Secretary, that the patentee is liable to be injured thereby, the court shall direct the clerk to certify the facts to the Secretary of State, who shall file the same in his office, and correct the error in the patent, and likewise in the records of his office. The costs of such suit shall be paid by the petitioner, except when any person may have made himself a party to prevent the prayer of the petitioner being granted, in which case the costs shall be paid as the court may decree. The benefits granted by this section to the patentees of land shall be extended in all cases to persons claiming by, from, or under their grants, by descent, devise, or purchase. When any error is ordered to be rectified, and the same has been carried through from the grant into mesne conveyances, the court shall direct a copy of the order to be recorded in the register's book of the county: Provided no such petition shall be brought but within three years after the date of the patent; and if brought after that time, the court shall dismiss the same, and all proceedings had thereon shall be null and of no effect: Provided further, nothing herein shall affect the rights or interest of any person claiming under a patent issued between the period of the date of the grant alleged to be erroneous and the time of filing the petition, unless such person shall have had due notice of the filing of the petition, by service of a copy thereof, and an opportunity of defending his rights before the court according to the course of the common law. (1790, c. 326, P.R.; 1798, c. 504, P.R.; 1804, c. 655, P.R.; 1814, c. 876, P.R.; R.C., c. 42, s. 28; Code, s. 2785; Rev., s. 1738; C.S., s. 7587; G.S., s. 146-57; 1959, c. 683, s. 1.)

§ 146-50. Resurvey of lands to correct grants.

Persons who have entered vacant lands shall not be defeated in their just claims by mistakes or errors in the surveys and plots furnished by surveyors. In every case where the purchase money has been paid into the State treasury within the time prescribed by law after entry, and the survey or plot furnished shall be found to be defective or erroneous, the party having thus made entry and paid the purchase price may obtain another warrant of survey from the register of deeds of the county where the land lies, and have his entry surveyed as is directed by existing laws. On presenting a certificate of survey and two fair plots thereof to the Secretary of State within six months after the payment of the purchase money, the party making such entry and paying such purchase price shall be entitled to receive, and it shall be the duty of the Secretary of State to issue to him, the proper grant for the lands so entered. (1901, c. 734; Rev., s. 1739; C.S., s. 7588; G.S., s. 146-58; 1959, c. 683, s. 1.)

§ 146-51. Lost seal replaced.

In all cases where the seal annexed to a grant is lost or destroyed, the Governor may, on the certificate of the Secretary of State that the grant was fairly obtained, cause the seal of the State to be affixed thereto. (1807, c. 727, P.R.; R.C., c. 42, s. 24; Code, s. 2781; Rev., s. 1740; C.S., s. 7589; G.S., s. 146-59; 1959, c. 683, s. 1.)

§ 146-52. Errors in grants corrected.

If in issuing any grant the number of the grant or the name of the grantee or any material words or figures suggested by the context have been omitted or not correctly written or given, or the description in the body of the grant does not correspond with the plot and description in the surveyor's certificate attached to the grant, or if in recording the grant in his office the Secretary of State has heretofore made or may hereafter make any mistake or omission by which any part of any grant has not been correctly recorded, the Secretary of State shall, upon the application of any party interested and the payment to him of his lawful fees, correct the original grant by inserting in the proper place the words, figures, or names omitted or not correctly given or suggested by the context; or if the description in the grant does not correspond with the surveyor's plot or certificate, the Secretary of State shall make the former correspond with the latter as the true facts may require. In case the party interested shall prefer it, the Secretary of State shall issue a duplicate of the original grant, including therein the corrections made; and in those cases in which grants have not been correctly recorded, he shall make the proper corrections upon his records, or by rerecording, as he may prefer; and any grant corrected as aforesaid may be recorded in any county of the State as other grants are recorded, and have relation to the time of the entry and date of the grant as in other cases. (1889, c. 460; Rev., s. 1741; C.S., s. 7590; G.S., s. 146-60; 1959, c. 683, s. 1.)

CASE NOTES

Power to Correct Errors Ministerial and Not Judicial. — The power conferred upon the Secretary of State to correct errors in grants of State's land, by supplying omissions or correcting the names of grantees, material words or figures, etc., confers on him only a ministerial authority and not a judicial power. Herbert v. Union Dev. Co., 179 N.C. 662, 103 S.E. 380 (1920), decided prior to 1959 revision of this Chapter.

§ 146-53. Irregular entries validated.

Wherever persons have, prior to January 1, 1883, irregularly entered lands and have paid the fees required by law to the Secretary of State, and have obtained grants for such lands duly executed, the title to the lands shall not be affected by reason of such irregular entries; and the grants are hereby declared to be as valid as if such entries had been properly made. (1868-9, c. 100, s. 4; c. 173, s. 6; 1874-5, c. 48; Code, s. 2761; Rev., s. 1743; C.S., s. 7591; G.S., s. 146-61; 1959, c. 683, s. 1.)

CASE NOTES

As to curing of irregularities in receiving grants from the State under former statute from which this section is derived, see Wyman v. Taylor, 124 N.C. 426, 32 S.E. 740 (1899).

§ 146-54. Grant signed by deputy Secretary of State validated.

Where State grants have heretofore been issued and the name of the Secretary of State has been affixed thereto by his deputy or chief clerk, or by anyone purporting to act in such capacity, such grants are hereby declared valid; but nothing herein contained shall interfere with vested rights. (1905, c. 512; Rev., s. 1744; C.S., s. 7592; G.S., s. 146-62; 1959, c. 683, s. 1.)

CASE NOTES

No Interference with Vested Rights. — Statute from which this section is derived did not interfere with vested rights. Richards v. W.M. Ritter Lumber Co., 158 N.C. 54, 73 S.E. 485 (1911), modified on other grounds on rehearing, 159 N.C. 455, 74 S.E. 1016 (1912).

A grant countersigned by a clerk is not valid if it conflicts with a prior grant, but is valid as between the State and the grantee if there was no prior grant. Richards v. W.M.

Ritter Lumber Co., 158 N.C. 54, 73 S.E. 485 (1911), modified on other grounds on rehearing, 159 N.C. 455, 74 S.E. 1016 (1912).

§ 146-55. Registration of grants.

Every person obtaining a grant shall, within two years after such grant is perfected, cause the same to be registered in the county where the land lies; and any person may cause to be there registered any certified copy of a grant from the office of the Secretary of State, which shall have the same effect as if the original had been registered. (1783, c. 185, s. 14, P.R.; 1796, c. 455, P.R.; 1799, c. 525, s. 2, P.R.; R.S., c. 42, s. 24; R.C., c. 42, s. 22; Code, s. 2779; Rev., s. 1729; C.S., s. 7579; G.S., s. 146-48; 1959, c. 683, s. 1.)

CASE NOTES

Editor's Note. *— Most of the cases below were decided under corresponding sections of this Chapter as it stood before its revision in 1959, or under earlier statutes from which they were derived.*

Certificate of Secretary of State as Sufficient Evidence for Registration. — The certificate of the Secretary of State of North Carolina, attached to a grant of land and attested by the great seal of the State, is sufficient evidence of its official character to warrant its registration without further proof. Ray v. Stewart, 105 N.C. 472, 11 S.E. 182 (1890); Barcello v. Hapgood, 118 N.C. 712, 24 S.E. 124 (1896); Wyman v. Taylor, 124 N.C. 426, 32 S.E. 740 (1899).

Extension of Time for Registration. — Prior to 1885 the statutes provided that all grants, deeds, etc., be registered in the county wherein the land was situated within two years from the date thereof. With one or two omissions, the legislature uniformly extended the time for registration for two years. The Supreme Court with equal uniformity held that such instruments, when registered within two years from their date or within the extended period, were good and valid for all purposes from their date by relation. Janney v. Blackwell, 138 N.C. 437, 50 S.E. 857 (1905).

Registration is not required to pass title under a grant. VEPCO v. Tillett, 80 N.C. App. 383, 343 S.E.2d 188, cert. denied, 317 N.C. 715, 347 S.E.2d 457 (1986).

§ 146-56. Time for registering grants extended.

All grants from the State of North Carolina of lands and interests in land heretofore made, which were required or allowed to be registered within a time specified by law, or in the grants themselves, may be registered in the counties in which the lands lie respectively at any time within six years from January 1, 1918, notwithstanding the fact that such specified time has already expired, and all such grants heretofore registered after the expiration of such specified time shall be taken and treated as if they had been registered within such specified time: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1893, c. 40; 1901, c. 175; 1905, c. 6; Rev., s. 1747; 1907, c. 805; 1909, c. 167; 1911, c. 182; Ex. Sess. 1913, cc. 27, 45; 1915, c. 170; 1917, c. 84; C.S., s. 7593; Ex. Sess. 1920, c. 78; 1921, c. 153; G.S., s. 146-63; 1959, c. 683, s. 1.)

CASE NOTES

Editor's Note. *— The cases below were decided under corresponding sections of this Chapter as it stood before its revision in 1959, or under earlier statutes from which they were derived.*

It is not necessary that a grant from the

State be registered to make it valid. The retroactive statutes making grants registered after the times prescribed valid give good title against a junior grant duly recorded. Dew v. Pyke, 145 N.C. 300, 59 S.E. 76 (1907).

Where neither party has possession, the senior grant is valid against a junior grant duly recorded, no matter how long registration may have been delayed by the senior grantee. Janney v. Blackwell, 138 N.C. 437, 50 S.E. 857 (1905).

§ 146-57. Time for registering grants and other instruments extended.

The time is hereby extended until September 1, 1926, for the proving and registering of all deeds of gift, grants from the State, or other instruments of writing heretofore executed and which are permitted or required by law to be registered, and which were or are required to be proved and registered within a limited time from the date of their execution; and all such instruments which have heretofore been or may be probated and registered before the expiration of the period herein limited shall be held and deemed, from and after the date of such registration, to have been probated and registered in due time, if proved in due form, and registration thereof be in other respects valid: Provided that nothing in this section shall be held or deemed to validate or attempt to validate or give effect to any informal instrument; and provided further that this section shall not affect pending litigation: Provided further that nothing herein contained shall be held deemed to place any limitation upon the time allowed for the registration of any instrument where no such limit is now fixed by law. (Ex. Sess. 1924, c. 20; G.S., s. 146-64; 1959, c. 683, s. 1.)

CASE NOTES

Deed of Gift Void Under G.S. 47-26 Not Revivable by Later Curative Statute. — Where a mother made a deed of gift of her lands to her son, who failed to have it registered within the time required by G.S. 47-26, and it was for that reason void, a later curative statute extending the time for registration could not revive the void deed to the son. Booth v. Hairston, 193 N.C. 278, 136 S.E. 879, 57 A.L.R. 1186 (1927), petition for rehearing dismissed, 195 N.C. 8, 141 S.E. 480 (1928), decided prior to 1959 revision to this Chapter.

§ 146-58. Time for registering grants further extended.

The time for the registration of grants issued by the State of North Carolina is hereby extended for a period of two years from January 1, 1925: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1925, c. 97; G.S., s. 146-65; 1959, c. 683, s. 1.)

§ 146-59. Time for registering grants or copies extended.

The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from January 1, 1927, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1927, c. 140; G.S., s. 146-66; 1959, c. 683, s. 1.)

§ 146-60. Further extension of time for registering grants or copies for two years from January 1, 1947.

The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from January 1, 1947, next ensuing, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1947, c. 99; G.S., s. 146-66.1; 1959, c. 683, s. 1.)

CASE NOTES

Registration is not required to pass title under a grant. VEPCO v. Tillett, 80 N.C. App. 383, 343 S.E.2d 188, cert. denied, 317 N.C. 715, 347 S.E.2d 457 (1986).

§ 146-60.1. Further extension of time for registering grants or copies for four years from January 1, 1977.

The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of four years from January 1, 1977, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1977, c. 701.)

CASE NOTES

Registration is not required to pass title under a grant. VEPCO v. Tillett, 80 N.C. App. 383, 343 S.E.2d 188, cert. denied, 317 N.C. 715, 347 S.E.2d 457 (1986).

ARTICLE 13.

Grants Vacated.

§ 146-61. Civil action to vacate grant.

When any person claiming title to lands under a grant or patent from the King of Great Britain, any of the lords proprietors of North Carolina, or from the State of North Carolina, shall consider himself aggrieved by any grant or patent issued or made since July 4, 1776, to any other person, against law or obtained by false suggestions, surprise, or fraud, the person aggrieved may bring a civil action in the superior court for the county in which such land may be, together with an authenticated copy of such grant or patent, briefly stating the grounds whereon such patent should be repealed and vacated, whereupon the grantee, patentee, or the person, owner, or claimant under such grant or patent, shall be required to show cause why the same shall not be repealed and vacated. (R.C., c. 42, s. 29; Code, s. 2786; Rev., s. 1748; C.S., s. 7594; G.S., s. 146-67; 1959, c. 683, s. 1.)

Legal Periodicals. — For article, "Removing Local Elected Officials From Office in North Carolina," see 16 Wake Forest L. Rev. 547 (1980).

CASE NOTES

Editor's Note. — *The cases below were decided under corresponding sections of this Chapter as it stood before its revision in 1959, or under earlier statutes from which they were derived.*

Collateral Attack on Grant. — If land is not subject to entry, the grant is void, and may be attacked collaterally. Janney v. Blackwell, 138 N.C. 437, 50 S.E. 857 (1905).

For case holding that a grant could only be vacated by proceedings under former statute, see Crow v. Holland, 15 N.C. 417 (1834); McNamee v. Alexander, 109 N.C. 242, 13 S.E. 777 (1891); Kimsey v. Munday, 112 N.C. 816, 17 S.E. 583 (1893).

Plaintiff Must Have An Interest in Land Claimed. — An action could not be had under the statute from which this section was derived unless it was made to appear that the plaintiff had an interest in the land claimed by the defendant. State ex rel. Jones v. Riggs, 154 N.C. 281, 70 S.E. 465 (1911); Wadsworth v. Cozad, 175 N.C. 15, 94 S.E. 670 (1917).

Where the State has no interest in the land, an action to vacate a grant must be brought by the party in interest in his own name and at his own expense. State ex rel. Attorney Gen. v. Bland, 123 N.C. 739, 31 S.E. 475 (1898).

Fraud Practiced on State Not Grounds to Set Aside Grant. — A grant cannot be set aside at the suit of a junior grantee on the ground of fraud practiced on the State. Henry v. McCoy, 131 N.C. 586, 42 S.E. 955 (1902).

Action Involving Land in Two Counties. — When it appeared in an action for the cancellation of several grants, some of which were issued in a different county from that wherein the action was brought, that the allegation of fraud and false suggestion involved one and the same transaction, affecting each and all the grants, the subject of the litigation, it was unnecessary to bring a separate action in respect to the grants issued in the other county, since some of the lands which were the subject of the action were in the county wherein the action was brought. Kanawha Hardwood Co. v. Waldo, 161 N.C. 196, 76 S.E. 680 (1912).

§ 146-62. Judgment recorded in Secretary of State's office.

If, upon verdict or demurrer, the court believe that the patent or grant was made against law or obtained by fraud, surprise, or upon untrue suggestions, it may vacate the same; and a copy of such judgment, after being recorded at large, shall be filed by the petitioner in the Secretary of State's office, where it shall be recorded in a book kept for that purpose; and the Secretary shall note in the margin of the original record of the grant the entry of the judgment, with a reference to the record in his office. (R.C., c. 42, s. 30; Code, s. 2787; Rev., s. 1749; C.S., s. 7595; G.S., s. 146-68; 1959, c. 683, s. 1.)

§ 146-63. Action by State to vacate grants.

An action may be brought by the Attorney General in the name of the State for the purpose of vacating or annulling letters patent granted by the State, in the following cases:

(1) When he has reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material

fact, made by the person to whom the same were issued or made, or with his consent or knowledge; or

(2) When he has reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or

(3) When he has reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. (C. C. P., s. 367; Code, s. 2788; Rev., s. 1750; C.S., s. 7596; G.S., s. 146-69; 1959, c. 683, s. 1.)

Legal Periodicals. — For note on defining navigable waters and the application of the public trust doctrine in North Carolina, see 49 N.C.L. Rev. 888 (1971).

CASE NOTES

Editor's Note. *— The cases below were decided under corresponding sections of this Chapter as it stood before its revision in 1959, or under earlier statutes from which they were derived.*

State Must Be Interested Party. — The State could only bring an action under the statute from which this section is derived to vacate a grant when title would vest in the State upon cancellation of the grant. State ex rel. Attorney Gen. v. Bland, 123 N.C. 739, 31 S.E. 475 (1898).

Attorney General Must Bring Action. — The right to bring an action to set aside a grant because of fraud practiced on the State must be brought by the Attorney General in the name of the State, and cannot be brought by any other person. Henry v. McCoy, 131 N.C. 586, 42 S.E. 955 (1902); Jones v. Riggs, 154 N.C. 281, 70 S.E. 465 (1911).

Where a grant has been made in strict compliance with the law, rights of property have been acquired which cannot be taken away, even by the State, in the absence of an allegation of fraud or mistake, except after compensation and under the principle of eminent domain. State ex rel. Blount v. Spencer, 114 N.C. 770, 19 S.E. 93 (1894).

A license to sell liquor was not a letter patent to be vacated by quo warranto under the statute from which this section is derived. Hargett v. Bell, 134 N.C. 394, 46 S.E. 749 (1904).

Proceeding by the Attorney General to vacate the charter of a corporation could not be brought under the statute from which this section is derived, or because of any authority vested by such statute, but must be brought under Chapter 55. Attorney Gen. v. Holly Shelter R.R., 134 N.C. 481, 46 S.E. 959 (1904).

SUBCHAPTER IV. MISCELLANEOUS.

ARTICLE 14.

General Provisions.

§ 146-64. Definitions.

As used in this Chapter:

(1) "Acquired lands" means all State lands, title to which has been acquired by the State or by any State agency by purchase, devise, gift, condemnation, or adverse possession.

(2) "Escheated lands" means all State lands, title to which has been acquired by escheat.

(3) "Land" means real property, buildings, space in buildings, timber rights, mineral rights, rights-of-way, easements, options, and all other rights, estates, and interests in real property.

(4) "Navigable waters" means all waters which are navigable in fact.

(5) "State agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the

State, but does not include counties, municipal corporations, political subdivisions of the State, county or city boards of education, or other local public bodies. The term "State agency" does not include any private corporation created by act of the General Assembly. In case of doubt as to whether a particular agency, corporation, or institution is a State agency for the purposes of this Chapter, the Attorney General, upon request of the Governor and Council of State, shall make a determination of the issue. Upon a finding by the Attorney General that an agency, corporation, or institution is not a State agency for the purpose of this Chapter, the Governor and Council of State may execute a deed or other appropriate instrument releasing and quitclaiming all title and interest of the State in the lands of that agency, corporation, or institution.

(6) "State lands" means all land and interests therein, title to which is vested in the State of North Carolina, or in any State agency, or in the State to the use of any agency, and specifically includes all vacant and unappropriated lands, swamplands, submerged lands, lands acquired by the State by virtue of being sold for taxes, escheated lands, and acquired lands.

(7) "Submerged lands" means State lands which lie beneath
- a. Any navigable waters within the boundaries of this State, or
- b. The Atlantic Ocean to a distance of three geographical miles seaward from the coastline of this State.

(8) "Swamplands" means lands too wet for cultivation except by drainage, and includes
- a. All State lands which have been or are known as "swamp" or "marsh" lands, "pocosin bay," "briary bay" or "savanna," and which are a part of one swamp exceeding 2,000 acres in area, or which are a part of one swamp 2,000 acres or less in area which has been surveyed by the State; and
- b. All State lands which are covered by the waters of any state-owned lake or pond.

(9) "Vacant and unappropriated lands" means all State lands title to which is vested in the State as sovereign, and land acquired by the State by virtue of being sold for taxes, except swamplands.

(10) For purposes of this Subchapter, "deep water" means the depth reasonably necessary to provide and allow reasonable access for all vessels traditionally used in the main watercourse area as of the time of the initial easement application. (1854-5, c. 21; R.C., c. 42, s. 1; Code, s. 2751; 1891, c. 302; Rev., ss. 1693, 1695; C.S., ss. 7540, 7542; G.S., ss. 146-1, 146-4; 1959, c. 683, s. 1; 1969, c. 1164; 1995, c. 529, s. 4; 2009-484, s. 10.)

Cross References. — For requirement that all tax supervisors upon request furnish the State a report on all properties listed in the name of unknown owners in order to promote the discovery of State lands as defined by subdivision (6) of this section, see G.S. 105-302.1.

Editor's Note. — Session Laws 1995, c. 529, s. 5, provides in part that nothing in this act shall require the adoption of rules to implement the provisions therein, and further provides that authorization established under this act applies only to the Department of Administration and shall not be used by any other agency to administer or regulate activities affecting the public trust.

Effect of Amendments. — Session Laws 2009-484, s. 10, effective August 26, 2009, deleted "as hereinafter defined" following "swamplands" at the end of subdivision (9).

Legal Periodicals. — For note on defining navigable waters and the application of the public trust doctrine in North Carolina, see 49 N.C.L. Rev. 888 (1971).

For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

For article, "North Carolina Oceanfront Property and Public Waters and Beaches: The Rights of Littoral Owners in the Twenty-First Century," see 83 N.C. L. Rev. 1427 (2005).

CASE NOTES

Editor's Note. — *Most of the cases below were decided under corresponding sections of this Chapter as it stood before its revision in 1959, or under earlier statutes from which they were derived.*

Littoral rights do not include ownership of the foreshore. The littoral owner may, however, in exercise of his right of access, construct a pier in order to provide passage from the upland to the sea. But the passage under the pier must be free and substantially unobstructed over the entire width of the foreshore. This means that from low to high water mark it must be at such a height that the public will have no difficulty in walking under it when the tide is low or in going under it in boats when the tide is high. West v. Slick, 313 N.C. 33, 326 S.E.2d 601 (1985).

Ownership of Foreshore Remains in State. — There is nothing in this section or G.S. 146-3 to change the general rule that ownership of the foreshore remains in the State. On the contrary, it is noteworthy that a special class was created for the protection of the foreshore and the marginal seas. Therefore, littoral rights do not include ownership of the foreshore. Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970). See also West v. Slick, 313 N.C. 33, 326 S.E.2d 601 (1985).

Littoral rights do not include ownership of the foreshore. The littoral owner may, however, in exercise of his right of access, construct a pier in order to provide passage from the upland to the sea. But the passage under the pier must be free and substantially unobstructed over the entire width of the foreshore. This means that from low to high water mark it must be at such a height that the public will have no difficulty in walking under it when the tide is low or in going under it in boats when the tide is high. West v. Slick, 313 N.C. 33, 326 S.E.2d 601 (1985).

All watercourses are regarded as navigable in law that are navigable in fact. Swan Island Club, Inc. v. White, 114 F. Supp. 95 (E.D.N.C. 1953), aff'd, 209 F.2d 698 (4th Cir. 1954).

Grant of Land Under Navigable Waters Void in Absence of Specific Authority. — In the absence of specific authority from the legislature, the State at no time has the power to grant land under navigable waters, and all of such grants are void. Swan Island Club, Inc. v. White, 114 F. Supp. 95 (E.D.N.C. 1953), aff'd, 209 F.2d 698 (4th Cir. 1954).

No Right to Make a Grant Impeding Navigation. — In respect to navigable waters, the State has no right to grant or convey the land under such waters for any purpose which will destroy or materially impede the use of such waters for navigation. Home Real Estate Loan & Ins. Co. v. Parmele, 214 N.C. 63, 197 S.E. 714 (1938).

Governor Held Unauthorized to Agree to Boundary Line over Land Under Navigable Waters. — The Governor of North Carolina was without authority in 1927 to agree as to a private owner's boundary line over lands under navigable waters, as the statute at the time prohibited the grant of or entry upon such lands. Swan Island Club, Inc. v. White, 114 F. Supp. 95 (E.D.N.C. 1953), aff'd, 209 F.2d 698 (4th Cir. 1954).

Decree in Torrens Proceeding Adjudging Ownership in Land Under Navigable Water Held Open to Attack. — Insofar as a decree in a Torrens proceeding adjudged the plaintiff the owner in fee of shoal lands under navigable water, it transcended the power of the court under the law, and was therefore open to collateral attack. Swan Island Club, Inc. v. White, 114 F. Supp. 95 (E.D.N.C. 1953), aff'd, 209 F.2d 698 (4th Cir. 1954).

An entry made to swampland when the body contained more than 2,000 acres was void, as was a grant under such entry. State Bd. of Educ. v. Roanoke R.R. & Lumber Co., 158 N.C. 313, 73 S.E. 994 (1912). See Home Real Estate Loan & Ins. Co. v. Parmele, 214 N.C. 63, 197 S.E. 714 (1938).

Meaning of "Swamplands." — Swamplands, within the meaning of this section, are those too wet for cultivation except by drainage. Beer v. Whiteville Lumber Co., 170 N.C. 337, 86 S.E. 1024 (1915).

Swamplands of two creeks may be separate and not subject to the same application of the statute, even though it appears that sometimes during freshets and high water they are all covered with one sheet of water. Beer v. Whiteville Lumber Co., 170 N.C. 337, 86 S.E. 1024 (1915).

A tract of land within the area of "swamplands" coming within the meaning of the statute need not necessarily be free from knolls or higher and drier places. State Bd. of Educ. v. Roanoke R.R. & Lumber Co., 158 N.C. 313, 73 S.E. 994 (1912).

For case holding that tract in question

was not "swampland," see Resort Dev. Co. v. Parmele, 235 N.C. 689, 71 S.E.2d 474 (1952), overruled in part, Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

Tidelands Filled in and Reclaimed by Purchaser. — The fact that tidelands conveyed by the State Board of Education were thereafter filled in and reclaimed by the purchaser did not divest the title of the purchaser, since the conveyance was of the fee and was not an easement in the lands. Home Real Estate Loan & Ins. Co. v. Parmele, 214 N.C. 63, 197 S.E. 714 (1938).

Lands once granted by the State to individual citizens do not become "vacant lands" within the meaning of the statute where the State subsequently acquires title to them but abandons the actual use to which they were put. State v. Bevers, 86 N.C. 588 (1882).

§ 146-65. Exemptions from Chapter.

This Chapter does not apply to any of the following:

(1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation or the North Carolina Turnpike Authority.

(2) The North Carolina State Ports Authority in exercising its powers under G.S. 143B-452 through G.S. 143B-467. (1957, c. 584, s. 6; G.S., s. 146-112; 1959, c. 683, s. 1; 1973, c. 507, s. 5; 1993, c. 553, s. 52.3; 2008-225, s. 10.)

Effect of Amendments. — Session Laws 2008-225, s. 10, effective August 17, 2008, rewrote the section.

§ 146-66. Voidability of transactions contrary to Chapter.

Any sale, lease, rental, or other disposition of State lands or of any interest or right therein, made or entered into contrary to the provisions of this Chapter, shall be voidable in the discretion of the Governor and Council of State. (1957, c. 584, s. 6; G.S., s. 146-111; 1959, c. 683, s. 1.)

CASE NOTES

An agreement to lease should be governed by the same statutory provisions as a lease itself. To hold otherwise would defeat the legislative intent to protect the State and taxpayers from liability for the unauthorized and invalid agreements of the State's numerous agents. Stewart v. Graham, 72 N.C. App. 676, 325 S.E.2d 53, cert. denied, 313 N.C. 611, 330 S.E.2d 616 (1985).

§ 146-67. Governor to employ persons.

The Governor may employ persons to perform such services as may be necessary to carry out the provisions of this Chapter, and he shall fix the compensation to be paid for such services. All expenditures for such services shall be paid from the State Land Fund on order of the Director of the Budget, or the officer designated by him to issue such orders. (1959, c. 683, s. 1.)

§ 146-68. Statutes of limitation.

The provisions of G.S. 1-35, 1-36, and 1-37 are made applicable to this Chapter. (1959, c. 683, s. 1.)

Legal Periodicals. — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

§ 146-69. Service on State in land actions.

In all actions and special proceedings brought by or against the State or any State agency with respect to State land or any interest therein, service of process upon the Secretary of Administration, with delivery to him of copies for the Attorney General and for the administrative head of each State agency known by the party in whose behalf service is made to have an interest in the land which is the subject of the action or proceeding, shall constitute service upon the State for all purposes. (1959, c. 683, s. 1; 1975, c. 879, s. 46.)

§ 146-70. Institution of land actions by the State.

Every action or special proceeding in behalf of the State or any State agency with respect to State lands or any interest therein, or with respect to land being condemned by the State, shall be brought by the Attorney General in the name of the State, upon the complaint of the Secretary of Administration. (1959, c. 683, s. 1; 1975, c. 879, s. 46.)

CASE NOTES

Cited in State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

Article 15.

State Land Fund.

§ 146-71. State Land Fund created.

The State Land Fund, which is hereby created, shall consist of the moneys required by this Chapter to be paid into that fund, together with such amounts as the General Assembly may appropriate thereto. (1959, c. 683, s. 1.)

§ 146-72. Purpose.

The State Land Fund may, in accordance with rules and regulations adopted by the Governor and approved by the Council of State, be used for the following purposes:

(1) To pay any expenses incurred in carrying out the duties and responsibilities created by the provisions of this Chapter.

(2) For the acquisition of land, when appropriation is made for that purpose by the General Assembly. (1959, c. 683, s. 1.)

§ 146-73. Administration.

The State Land Fund shall be administered by the Department of Administration, in accordance with rules and regulations adopted by the Governor and approved by the Council of State. All expenditures from the fund shall be made upon order of the Director of the Budget, or of the officer designated by him to issue such orders. (1959, c. 683, s. 1.)

Article 16.

Form of Conveyances.

§ 146-74. Approval of conveyances.

Every proposed conveyance in fee, including conveyances by gift, of State lands shall be submitted to the Governor and Council of State for their approval. If the proposed conveyance is of State lands with an appraised value of at least twenty-five thousand dollars ($25,000), and it is for other than a transportation purpose, the Council of State shall consult with the Joint Legislative Commission on Governmental Operations before making a final decision on the proposed conveyance. Upon approval of the proposed conveyance in fee by the Governor and Council of State, a deed for the land being conveyed shall be executed in the manner prescribed in this Article. (1957, c. 584, s. 7; G.S., ss. 143-147; 1959, c. 683, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97; 1993, c. 561, s. 32(b).)

Editor's Note. — Session Laws 1993, c. 561, which amended this section, in s. 115 provides: "Notwithstanding the provisions of G.S. 146-74, the Division of Forest Resources, Department of Environment, Health, and Natural Resources [now the Department of Environment and Natural Resources], shall transfer in fee simple by gift the East Robeson Fire Tower and the approximately .91827 acres of land on which the tower is located approximately eight miles east of Lumberton on Highway 41 in East Howellsville Township, Robeson County, this being the property described in the deed dated March 7, 1935, and recorded in Deed Book 8-N, page 219, Robeson County Registry to the East Howellsville Volunteer Fire Department, Inc. The transfer under this section shall be evidenced by a deed executed in accordance with G.S. 146-75 and registered in accordance with G.S. 146-77."

CASE NOTES

Cited in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 146-75. Execution; signature; attestation; seal.

Each such conveyance in fee shall be in the usual form of deeds of conveyance of real property and shall be executed in the name of the State of North Carolina, signed in the name of the State by the Governor, and attested by the Secretary of State; and the great seal of the State of North Carolina shall be affixed thereto. (1929, c. 143, s. 2; G.S., s. 143-148; 1959, c. 683, s. 1.)

§ 146-76. Exclusive method of conveying State lands.

The manner and method of conveying State lands herein set out shall be the exclusive and only method of conveying State lands in fee. Any conveyance thereof by any other person or executed in any other manner or by any other method shall not be effective to convey the interest or estate of the State in such land. (1929, c. 143, s. 4; G.S., s. 143-150; 1959, c. 683, s. 1.)

§ 146-77. Admission to registration in counties.

Each such conveyance shall be admitted to registration in the several counties of the State upon the probate required by law for deeds of corporations. (1929, c. 143, s. 3; G.S., s. 143-149; 1959, c. 683, s. 1.)

§ 146-78. Validation of conveyances of state-owned lands.

All conveyances heretofore made by the Governor, attested by the Secretary of State, and authorized by the Council of State, in the manner provided by G.S. 146-74 and 146-75 of any lands, the title to which was vested in the State for the use of any State institution, department, or agency, or vested in the State for any other purpose, are hereby ratified and validated. (1917, c. 129; C.S., s. 7524; 1951, c. 18; 1957, c. 584, s. 7; G.S., s. 143-146; 1959, c. 683, s. 1.)

CASE NOTES

Cited in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975); Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

ARTICLE 17.

Title in State.

§ 146-79. Title presumed in the State; tax titles.

In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

In all controversies touching the title or the right of possession of any lands claimed by the State or by any State agency under any sale for taxes at any time heretofore made or which hereafter may be made, the deed of conveyance made by the sheriff or other officer or person making such sale, or who may have been authorized to execute such deed, shall be presumptive evidence that the lands therein mentioned were, at the time the lien for such taxes attached and at the time of the sale, the property of the person therein designated as the delinquent owner; that such lands were subject to taxation; that the taxes were duly levied and assessed; that the lands were duly listed; that the taxes were due and unpaid; that the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; that all the prerequisites of the law were duly complied with by all officers or persons who had or whose duty it was to have had any part or action in any transaction relating to or affecting the title conveyed or purported to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive; and that all things whatsoever required by law to make a good and valid sale and vest the title in the purchaser were done, and that all recitals in such deed contained are true as to each and every of the matters so recited.

In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially as above, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat such title, either that the real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of law, and that such redemption was had or made for the use or benefit of persons having the right of redemption under the laws of this State, or that there had been an entire omission to list or assess the property or to levy the taxes or to sell the property; but no person shall be permitted to question the title acquired under such sale and deed without first showing that he or the person under whom he claims title had title to the property at the time of the sale, and that all taxes due upon the property have been paid by such person or the person under whom he claims title. (1842-3, c. 36, s. 3; R.C., c. 66, s. 24; Code, s. 2527; 1889, c. 243; Rev., s. 4047; C.S., s. 7617; G.S., s. 146-90; 1959, c. 683, s. 1.)

Legal Periodicals. — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

For article, "The Pearl in the Oyster: The Public Trust Doctrine in North Carolina," see 12 Campbell L. Rev. 23 (1989).

CASE NOTES

Editor's Note. — *Some of the cases below were decided under corresponding sections of this Chapter as it stood before its revision in 1959, or under earlier statutes from which they were derived.*

This section is not affected by the Real Property Marketable Title Act, G.S. 47B-1 et seq. Taylor v. Johnston, 289 N.C. 690, 224 S.E.2d 567 (1976).

This section does not authorize a "taking" of property. State v. Chadwick, 31 N.C. App. 398, 229 S.E.2d 255 (1976).

This section applies where title to land is in dispute, not where the State has conceded that defendant owns the land, but is attempting to establish the existence of an easement over it. Concerned Citizens of Brunswick County Taxpayer's Ass'n v. State ex rel. Rhodes, 95 N.C. App. 38, 381 S.E.2d 810, rev'd on other grounds, 329 N.C. 37, 404 S.E.2d 677 (1991).

The operation of this section does not effect an uncompensated taking. State v. Taylor, 63 N.C. App. 364, 304 S.E.2d 767 (1983), cert. denied and appeal dismissed, 310 N.C. 311, 312 S.E.2d 655 (1984).

Presumption That Officials Have Done Their Duty Upheld. — It is entirely proper and competent for the State to provide that the presumption that public officials have done their duty should apply, and throw upon any adverse claimant the burden of proving the contrary. State Bd. of Educ. v. Remick, 160 N.C. 562, 76 S.E. 627 (1912), distinguishing King v. Cooper, 128 N.C. 347, 38 S.E. 924 (1901), petition for rehearing dismissed, 130 N.C. 741, 41 S.E. 1038 (1902); Matthews v. Fry, 141 N.C. 582, 54 S.E. 379 (1906); Warren v. Williford, 148 N.C. 474, 62 S.E. 697 (1908); and Rexford v. Phillips, 159 N.C. 213, 74 S.E. 337 (1912).

The statutory presumption created by this section is not unconstitutional. State v. Taylor, 60 N.C. App. 673, 300 S.E.2d 42, cert. denied and appeal dismissed, 308 N.C. 547, 303 S.E.2d 823 (1983), appeal dismissed, 465 U.S. 1075, 104 S. Ct. 1432, 79 L. Ed. 2d 756 (1984).

The presumption created by this section is reasonable since title to all lands in North Carolina, except those previously granted by the Crown, originated from the State, and the State has ultimate title to the soil. In addition, the statute does not authorize a "taking" of property. The presumption of title in the State lasts only until the rival claimant establishes valid title in himself. State v. Taylor, 60 N.C. App. 673, 300 S.E.2d 42, cert. denied and appeal dismissed, 308 N.C. 547, 303 S.E.2d 823 (1983), appeal dismissed, 465 U.S. 1075, 104 S. Ct. 1432, 79 L. Ed. 2d 756 (1984).

The State has the ultimate title to the soil. Since title to land is originally acquired from the State, it is reasonable to assume that, absent proof otherwise, title to any parcel within its boundaries reposes there. Therefore the presumption of title in the State created under this section passes constitutional muster. State v. Taylor, 63 N.C. App. 364, 304 S.E.2d 767 (1983), cert. denied and appeal dismissed, 310 N.C. 311, 312 S.E.2d 655 (1984).

Purpose of Presumption. — The presumption created by this section in favor of the State was enacted to avoid undesirable and chaotic consequences which would result if title to the subject land were in limbo. Taylor v. Johnston, 289 N.C. 690, 224 S.E.2d 567 (1976).

Title Is Taken to Be in State in Action Brought Thereby. — In an action instituted by the State to remove a cloud on title to a tract of coastal marshland, title to the lands in controversy shall be taken to be in the State, unless and until the other party shows that he has a good and valid title to such lands in himself. State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

Under former G.S. 146-90, when it was shown that land was swampland and within a swamp of more than 2,000 acres, the law presumed that the Board of Education was the owner thereof. State Bd. of Educ. v. Makely, 139 N.C. 31, 51 S.E. 784 (1905); State Bd. of Educ. v. Roanoke R.R. & Lumber Co., 158 N.C. 313, 73 S.E. 994 (1912).

But the presumption of title in the State lasts only until the rival claimant establishes valid title in himself. State v. Chadwick, 31 N.C. App. 398, 229 S.E.2d 255 (1976).

The presumption of title lasts only until good title is shown to be in another party. New Hanover Shingle Mills Co. v. John L. Roper Lumber Co., 178 N.C. 221, 100 S.E. 332 (1919).

Defendants must carry the burden of proof by showing a connected chain of title from the sovereign to them for the identical lands claimed by them. State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

In suits for land in which the State or a State agency is a party, the burden of proof is on the party seeking to prove title against the State. Taylor v. Johnston, 27 N.C. App. 186, 218 S.E.2d 500 (1975).

Title Held Vested in State on Failure of Defendants to Meet Burden. — Where defendants failed to show they had a good and valid title to the subject land in themselves, and the identity and location of the subject land was established by stipulation, as between the State of North Carolina and defendants, this section vested title in the State, and the court erred in submitting the issue to the jury, the question for decision being a matter of law for the court. State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

Description "to the high watermark" of nonnavigable arm of the sea, a broad shallow sound, restricted or limited conveyance to correctly located line of mean high water as indicated on the ground, particularly where title to marshlands was at the time lots were laid off held by the State, subject to disposition by State Board of Education, since under former G.S. 146-90 title to swamplands was presumed to be in the Board or its assignees until a valid title to such land was shown otherwise. Kelly v. King, 225 N.C. 709, 36 S.E.2d 220 (1945).

Applied in State ex rel. Rohrer v. Credle, 322 N.C. 522, 369 S.E.2d 825 (1988).

§ 146-80. Statute of limitations.

No statute of limitations shall affect the title or mar the action of the State, or of any State agency, or of its assigns, unless the same would protect the person holding and claiming adversely against the State. Neither the State nor any State agency, nor its assigns, shall commence any action for the recovery of damages for timber cut and removed from lands owned by the State or by any State agency or for any other act of trespass committed on such lands, more than 10 years after the occurrence of such cutting, removal, or other act of trespass. The provisions of this section shall not have the effect of reviving any cause of action which was, at the date of ratification of this Chapter, barred by any applicable statute of limitations. (1842, c. 36, s. 5; R.C., c. 66, s. 25; Code, s. 2528; Rev., s. 4048; 1917, c. 287; C.S., s. 7618; G.S., s. 146-91; 1959, c. 683, s. 1.)

CASE NOTES

Editor's Note. — *The cases below were decided under corresponding sections of this Chapter as it stood before its revision in 1959, or under earlier statutes from which they were derived.*

As to purpose of statute from which this section is derived, see Virginia-Carolina Tie & Wood Co. v. Dunbar, 106 F.2d 383 (4th Cir. 1939).

Board of Education Not Barred by Statute of Limitations. — In an action for land brought by the State Board of Education, the plaintiff was not barred by the statute of limitations, which does not run in such cases, unless the State would have been barred by adverse possession. State Bd. of Educ. v. Roanoke R.R. & Lumber Co., 158 N.C. 313, 73 S.E. 994 (1912).

Protection of State Assignee Against Three-Year Statute in Action for Damage to Timber. — Statute from which this section is derived, prior to its 1917 amendment, was not intended to protect an assignee of the State against the three-year statute of limitations when the action was for damage to timber. Tillery v. Whiteville Lumber Co., 172 N.C. 296, 90 S.E. 196 (1916).

In action for damages for alleged trespass in the cutting of timber on swampland, where defendants claimed adverse possession under color of title of land in dispute, and plaintiff claimed title under deeds executed by the State Board of Education to a third party, error, if any, in charging that the 7-year statute of limitations, rather than the 21-year statute, was applicable was harmless to plaintiff where, under defendants' evidence, jury could not have found that defendants and those under whom defendants claimed had been in possession for 7 years without finding that they had been in possession for more than 21 years. Virginia-Carolina Tie & Wood Co. v. Dunbar, 106 F.2d 383 (4th Cir. 1939).

§ 146-81. Title to lands sold for taxes.

The title to all land acquired by the State by virtue of being sold for taxes is hereby vested in the State of North Carolina. (1917, c. 209; C.S., s. 7615; G.S., s. 146-88; 1959, c. 683, s. 1.)

§ 146-82. Protection of interest in lands sold for taxes.

Whenever any lands in which the State of North Carolina or any State agency has an interest, by way of mortgage or otherwise, are advertised to be sold for any taxes or special assessment, or under any lien, the Department of Administration is authorized, if in its judgment it is necessary to protect the interest of the State, to appear at any sale of such lands and to buy the same as any other person would. For the purpose of paying therefor, the Director of the Budget is authorized to draw upon the State Land Fund. (1917, c. 246; C.S., s. 7616; G.S., s. 146-89; 1959, c. 683, s. 1.)

ARTICLE 18.

Miscellaneous.

§ 146-83. Vested rights protected.

No provision of this Chapter shall be applied or construed to the detriment of vested rights, interests, or estates of any private individual, firm, or corporation, acquired prior to June 2, 1959. (1959, c. 683, s. 1.)

CASE NOTES

Cited in Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

Chapter 147.
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147-54.8. Constitutional Amendments Publication Commission.
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Article 6A.

Cash Management.

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Sec.
147-86.22. Statewide accounts receivable program.
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Secretary of Revenue.

147-87. Secretary of Revenue; appointment; salary.
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147-89. To prosecute cases removed to federal courts.
147-90. Investigations of uses of deadly force.

ARTICLE 1.

Classification and General Provisions.

§ 147-1. Public State officials classified.

The public officers of the State are legislative, executive, and judicial. But this classification shall not be construed as defining the legal powers of either class. (1868-9, c. 270, ss. 1, 2; Code, s. 3317; Rev., s. 5323; C.S., s. 7624.)

Editor's Note. — Session Laws 2008-181, ss. 40.1 through 40.3, provides for the creation of a Study Commission on Compensation of the Governor's Cabinet and State Elected Officials to study and report on whether such officials are paid according to the duties of their offices. The final report, including any proposed legislation, is due by January 15, 2009, and the Commission terminates upon filing its report or on January 15, 2009, whichever is earlier.

CASE NOTES

Cited in Sansom v. Johnson, 39 N.C. App. 682, 251 S.E.2d 629 (1979).

§ 147-2. Legislative officers.

The legislative officers are:
(1) Fifty Senators;
(2) One hundred and twenty members of the House of Representatives;
(3) A Speaker of the House of Representatives;
(4) A clerk and assistants in each house;
(5) A Sergeant-at-arms and assistants in each house;
(6) As many subordinates in each house as may be deemed necessary. (1868-9, c. 270, s. 3; Code, s. 3318; Rev., s. 5324; C.S., s. 7625; 1995, c. 379, s. 13.)

Cross References. — As to assaults upon or threats against officers named in this section, see G.S. 14-16.6 et seq. As to authority of the State Bureau of Investigation to investigate assaults upon or threats against such officers, see G.S. 114-15.

§ 147-3. Executive officers.

(a) Executive officers are either:
  (1) Civil;
  (2) Military.
(b) Civil executive officers are:
  (1) General, or for the whole State;
  (2) Special, or for special duties in different parts of the State;
  (3) Local, or for a particular part of the State.
(c) The general civil executive officers of this State are as follows:
  (1) A Governor;
  (2) A Lieutenant Governor;
  (3) Private secretary for the Governor;
  (4) A Secretary of State;
  (5) An Auditor;
  (6) A Treasurer;
  (7) An Attorney General;
  (8) A Superintendent of Public Instruction;
  (9) The members of the Governor's Council;

(10) A Commissioner of Agriculture;
(11) A Commissioner of Labor;
(12) A Commissioner of Insurance. (1868-9, c. 270, ss. 24, 25, 26; Code, s. 3319; 1899, c. 54, ss. 3, 4; c. 373; 1901, c. 479, s. 4; Rev., s. 5325; C.S., s. 7626; 1931, c. 312, s. 5; 1943, c. 170.)

Cross References. — As to assaults upon or threats against officers named in this section, see G.S. 14-16.6 et seq. As to authority of the State Bureau of Investigation to investigate assaults upon or threats against such officers, see G.S. 114-15.

CASE NOTES

Cited in Sansom v. Johnson, 39 N.C. App. 682, 251 S.E.2d 629 (1979).

§ 147-4. Executive officers — election; term; induction into office.

The executive department shall consist of a Governor, a Lieutenant Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a Commissioner of Labor, who shall be elected for a term of four years, by the qualified electors of the State, at the same time and places, and in the same manner, as members of the General Assembly are elected. Their term of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified. The persons having the highest number of votes, respectively, shall be declared duly elected, but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the General Assembly. Contested elections shall be determined by a joint ballot of both houses of the General Assembly in such manner as shall be prescribed by law. (Const., art. 3, ss. 1, 3; 1897, c. 1, ss. 1, 2, 3; Rev., s. 5326; C.S., s. 7627; 1931, c. 312, s. 5; 1953, c. 2; 1981, c. 504, s. 7; 1985, c. 563, s. 12.)

Cross References. — As to election, term and induction of Superintendent of Public Instruction, see G.S. 115C-18.

Editor's Note. — An amendment to this section in Session Laws 1981, c. 504, s. 7, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1 through 3 of the 1981 act. The constitutional amendments were submitted to the people at an election held June 29, 1982, and were defeated. Therefore, the 1981 amendment to this section never went into effect.

CASE NOTES

Cited in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 147-5. Executive officers — report to Governor; reports transmitted to General Assembly.

It shall be the duty of the officers of the executive department to submit their respective reports to the Governor to be transmitted by him with his message to the General Assembly. (1813, c. 60, s. 2, P.R.; Rev., s. 5373; C.S., s. 7628.)

Article 2.

Expenses of State Officers and State Departments.

§ 147-6. Expenses paid by warrants; statements filed.

All salaries, purchases of equipment and expenses authorized by law to be paid out of the various funds herebefore mentioned shall be paid by warrant drawn on the State Treasurer. The officer of State or head of any department thereof shall file an itemized statement of the salaries, bills for purchase of equipment and other expenses of his department, and warrants shall be drawn on the State Treasurer for the payment of all salaries, purchases of equipment, and expenses as authorized by law, to be paid by the said officer of State or head of any department thereof, as evidenced by statements so approved and filed. The State Treasurer is hereby authorized and directed to pay said warrants. (1919, c. 117, s. 2; C.S., s. 7630; 1983, c. 913, s. 44.)

§ 147-7. Traveling expenses on State's business.

When, to efficiently and properly carry into effect and execute any of the duties imposed by his appointment or by the provision of any statute of this State, and provide for the expenses thereof, it is required that any officer of the State or any employee of any department thereof shall travel from place to place, such traveling and other expenses as shall be required shall be approved by said officer or head of the department whose employee incurs such expenses. (1919, c. 117, s. 3; C.S., s. 7631.)

§ 147-8. Mileage allowance to officers or employees using public or private automobiles.

Where it is provided by any law affecting the State of North Carolina, or any subdivision thereof, whereby any employee or officer of the same is allowed to charge mileage for the use of any motor vehicle when owned by the State or any subdivision thereof or by any such employee or officer of the State or any subdivision thereof, when in the discharge of any duties imposed upon him by reason of his employment or office, the same is hereby repealed to the extent that said charge shall be limited to the actual miles traveled by said motor vehicle and no mileage charge shall be allowed for but one occupant of any motor vehicle so used, and provided further that no such mileage charge shall exceed seven cents (7¢) per mile. (1931, c. 382, s. 1; 1953, c. 675, s. 20.)

Local Modification. — Guilford: 1961, c. 905; Lee: 1967, c. 58, s. 1; Mecklenburg: 1965, c. 240, s. 1; city of Greensboro: 1959, c. 1137, s. 15.

§ 147-9. Unlawful to pay more than allowance.

It shall be unlawful for any officer, auditor, bookkeeper, clerk or other employee of the State of North Carolina or any subdivision thereof to knowingly approve any claim or charge on the part of any person for mileage by reason of the use of any motor vehicle owned by the State or any subdivision thereof or by any person and used in the pursuit of his employment or office in excess of seven cents (7¢) per mile as set out in G.S. 147-8 and any officer, auditor, bookkeeper, clerk or other employee violating the provisions of this section shall be guilty of a Class 1 misdemeanor. (1931, c. 382, s. 2; 1953, c. 675, s. 21; 1993, c. 539, s. 1053; 1994, Ex. Sess., c. 24, s. 14(c).)

Local Modification. — Lee: 1967, c. 58, s. 2; Mecklenburg: 1965, c. 240, s. 2; city of Greensboro: 1959, c. 1137, s. 16.

§ 147-9.1. Municipalities and counties exempt.

Nothing in this Article shall be deemed to be applicable to counties or municipalities or to limit or restrict the amount of any automobile mileage allowance, or automobile expense allowance, or any other travel expense allowance or payment which may be paid by a county or municipality or by any board, commission, or other agency of any county or municipality. (1967, c. 941; 1969, c. 180, s. 2.)

ARTICLE 2A.

Annuities and Deferred Compensation for Teachers and State Employees.

§ 147-9.2. Definitions.

The following words when used in this Article shall have the meanings ascribed to them in this section except when the context clearly indicates a different meaning:

(1) "Board" shall mean the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan established pursuant to Chapter 433 of the 1971 Session Laws and G.S. 143B-426.24.

(1a) "Chief executive officer" shall mean the person or group of persons responsible for the administration of any employer, or an agent of such chief executive officer duly authorized to enter into the contracts with teachers or State employees referred to in G.S. 147-9.3 and 147-9.4.

(2) "Employee" shall mean a permanent employee of the State of North Carolina, or of any of its departments or agencies, or of any of its wholly owned institutions and instrumentalities.

(3) "Employer" shall mean (i) the State of North Carolina, its departments and agencies, and its wholly owned institutions and instrumentalities or (ii) a local board of education.

(4) "Plan" shall mean the North Carolina Public Employee Deferred Compensation Plan.

(5) "Teacher" shall have the meaning provided in G.S. 135-1(25). (1971, c. 433, s. 1; 1983, c. 559, s. 2; 1991, c. 389, s. 1.)

§ 147-9.3. Annuity contracts; salary deductions.

Notwithstanding the provisions of G.S. 143B-426.40A and notwithstanding any provision of law relating to salaries or salary schedules of State employees, if the employee be one described in section 403(b)(1)(A)(i) or (ii) of the United States Internal Revenue Code, the chief executive officer of such employee, on behalf of the employer, may enter into an annual contract with the employee which provides for a reduction in salary below the total established compensation or salary schedule for a term of one year. The chief executive officer shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of salary reduction in cash or in any other way except the annuity or retirement income contract.

Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective. The agreement for salary reduction referred to herein shall be effective under the necessary regulations and procedures adopted by the chief executive officer and on forms prescribed by him. Notwithstanding any other provision of law, the amount by which the salary of an employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any. (1971, c. 433, s. 2; 1991, c. 389, s. 1; 2006-66, s. 6.19(a); 2006-203, s. 112; 2006-221, s. 3A; 2006-259, s. 40(a).)

Editor's Note. — Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A, substituted G.S. 143B-426.39D for G.S. 143B-426-39A which had been substituted for "G.S. 143-3.3" by Session Laws 2006-203, s. 112. The reference to G.S. 143B-426.39D has been changed to G.S. 143B-426.40A at the direction of the Revisor of Statutes.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2006-259, s. 40(a), corrected internal references to recodified sections 143B-426.39D through 143B-426.39F, but was repealed by Session Laws 2006-259, s. 40(i), provided that SB 198, 2005 Regular Session [2006-221] becomes law, which it did.

Effect of Amendments. — Session Laws 2006-203, s. 112, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143B-426.39A" for G.S. 143-3.3," near the beginning of the section. See Editor's note.

§ 147-9.4. Deferred Compensation Plan.

Notwithstanding the provisions of G.S. 143B-426.40A and notwithstanding any provision of law relating to salaries or salary schedules of teachers or State employees, the chief executive officer of an employer, on behalf of the employer, may from time to time enter into a contract with a teacher or employee under which the teacher or employee irrevocably elects to defer receipt of a portion of his scheduled salary in the future, but only if, as a result of such contract, the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-426.24 or pursuant to some other plan established before January 1, 1983, and is not constructively received by the teacher or employee in the year in which it was earned, for State and federal income tax purposes. In addition, the income so deferred shall be invested in the manner provided in the applicable Plan; however, the teacher or employee may revoke his election to participate and may amend the amount of compensation to be deferred by signing and filing with the Board a written revocation or amendment on a form and in the manner approved by the Board. Any such revocation or amendment shall be effective prospectively only and shall cause no change in the allocation of amounts invested prior to the filing date of such revocation or amendment.

A teacher or employee who has agreed to the deferral of income pursuant to the Plan shall have the right to receive the income so deferred only in accordance with the provisions of the Plan. Funds so deferred shall not be in lieu of any amount earned by the teacher or employee before his election to defer compensation became effective. The agreement to defer income referred to herein shall be effective under such necessary regulations and procedures as are adopted by the Board, and on forms prepared or approved by it. A teacher or employee who agrees to defer income as provided in this section may authorize payroll deductions for deferral of the income. An employer shall make payroll deduction available for a teacher or employee who authorizes payroll deduction. Notwithstanding any other provisions of law, the amount by which the salary of a teacher or employee is deferred pursuant to the Plan shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any.

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a teacher or employee, who elects to defer income pursuant to the North Carolina Public Employee Deferred Compensation Plan under G.S. 143B-426.24, to benefits that have vested under the Plan, is nonforfeitable. These benefits are exempt from levy, sale, and garnishment, except as provided by this section. (1971, c. 433, s. 3; 1983, c. 559, s. 3; 1985, c. 660, s. 4; 1989, c. 792, s. 2.10; 1991, c. 389, s. 1; 2006-66, s. 6.19(a); 2006-203, s. 113; 2006-221, s. 3A; 2006-259, s. 40(a).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A, substituted G.S. 143B-426.39D for G.S. 143B-426-39A which had been substituted for "G.S. 143-3.3" by Session Laws 2006-203, s. 113. The reference to G.S. 143B-426.39D has been changed to G.S. 143B-426.40A at the direction of the Revisor of Statutes.

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2006-259, s. 40(a), which corrected the internal references to 143B-426.40A, was repealed by Session Laws 2006-259, s. 40(i), provided that Senate Bill 198, 2005 Regular Session [2006-221] becomes law, which it did.

Effect of Amendments. — Session Laws 2006-203, s. 113, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143B-426.39A" for "G.S. 143-3.3," in the first sentence of the first paragraph. See Editor's note.

ARTICLE 3.

The Governor.

§ 147-10. Governor to reside in Raleigh; mansion and accessories.

The Governor shall reside in the City of Raleigh during his continuance in office. A convenient and commodious furnished dwelling house, supplied with necessary lights, fuel, and water, shall be provided for his accommodation; and an automobile and driver shall be provided and maintained for the use of the executive mansion. (1868-69, c. 270, ss. 32, 33; Code, ss. 3325, 3326; 1885, c. 244; Rev., s. 5327; 1919, c. 307; C.S., s. 7635.)

Editor's Note. — Session Laws 2003-404, ss. 1-4, as amended by Session Laws 2004-124, s. 19.9, provide: "SECTION 1.(a) Modification of the Capital Area Master Plan to provide for the sale of certain properties. — Prior to May 1, 2004, the Department of Administration and the Capital Planning Commission shall modify the Capital Area Master Plan for State Government to provide for the sale to private or public entities of State-owned properties within and adjacent to the Blount Street Historic District, an area bordered by North Person Street, Jones Street, North Wilmington Street, and Peace Street, except for the Governor's Mansion, the Archives and History Building, the State Records Center, the Bath Building, and the

Leonidas Lafayette Polk House, which shall be excluded from the sales provisions hereof. The Department of Administration is authorized to sell any such property pursuant to Chapter 146 of the General Statutes, and such sale shall take place at the time the Department determines that a property is no longer needed for State purposes and that it is in the best interest of the State to sell that property.

"(b) Preservation or conservation agreements required on all sales. — The sale of property in this area shall be subject to preservation or conservation agreements as defined in G.S. 121-35 that ensure that the use of the property is consistent with the historic and architectural character of the district.

"(c) Procedures for the sale of properties. — Due to (i) the significant architectural, archaeological, artistic, cultural, or historical associations of these properties, (ii) the properties' relationship to other property that is significant for architectural, archaeological, artistic, cultural, or historical associations, and (iii) the requirement that a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the State, these properties shall be sold by private negotiation and sale, and all such sales shall be approved by the State Property Office.

"Property sold pursuant to this act shall be sold in accordance with the procedures set forth in G.S. 146-27 through G.S. 146-29.

"(d) Funds to implement the sales process. — Of the funds available to the Department of Administration, the Department may use up to five hundred thousand dollars ($500,000) to implement the provisions of this act."

"SECTION 2. Use of the net proceeds of sales. — The net proceeds of any sale made in accordance with this act shall be handled in the following priority order:

"(1) In accordance with the provisions of any trust or other instrument of title under which title to the real property was acquired by the State. The term "net proceeds" means the gross amount received from the sale of any such property less any expenses incurred incident to that sale, subject to regulations adopted by the Governor and approved by the Council of State.

"(2) To reimburse the Department of Administration for any funds expended pursuant to Section 1(d) of this act.

"(3) The next five million dollars ($5,000,000) of the funds shall be placed in a special trust fund in the Department of State Treasurer, hereinafter to be held in trust and used solely for the upkeep, repair, and maintenance of the Executive Mansion. The State Treasurer, as custodian of the special trust fund, shall authorize the use of interest earned by the special trust fund only for such purposes as approved by the Executive Mansion Fine Arts Committee. The duties of the Committee under this section are in addition to those provided by G.S. 143B-79. The Executive Mansion Fine Arts Committee shall report to the Joint Legislative Commission on Governmental Operations any expenditures within 30 days of approving them. The principal may not be used for any purpose.

"(4) The remainder not needed under subdivisions (1) through (3) of this section shall be placed in the General Fund.

"SECTION 3.(a) Establishment of the Blount Street Historic District Oversight Committee. — The Blount Street Historic District Oversight Committee is established in the Office of the Governor.

"(b) Membership of the Committee. — The Committee shall consist of eight members appointed as follows:

"(1) The State Historic Preservation Officer, or a person designated by that officer, ex officio.

"(2) Two members appointed by the Governor, one of whom shall be a person with experience in urban planning.

"(3) Two members appointed by the President Pro Tempore of the Senate, one of whom shall be a person with experience in historic preservation.

"(4) Two members appointed by the Speaker of the House of Representatives, one of whom shall be a resident of Historic Oakwood in Raleigh.

"(5) One member, appointed by the Mayor of the City of Raleigh.

"In making initial appointments to the Committee, the appointing officers shall designate one appointee to serve for a term of four years ending July 1, 2007, and one appointee to serve a term of six years ending July 1, 2009. Subsequent terms shall be for four years. A member shall continue to serve until the member's successor is appointed. A vacancy resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

"In making all appointments, the appointing officer shall consider the unique historic and architectural nature of the area and shall appoint people who are dedicated to preserving it.

"The Governor may remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16.

"A majority of the Committee shall constitute a quorum for the transaction of business. The Governor shall appoint the chair and vice-chair from among the Committee's membership. The State Historic Preservation Officer shall serve as secretary of the Committee. The members of the Committee shall serve without pay and without expense allowance.

"(c) Purpose of the Committee. — The purpose of the Committee shall be to monitor the implementation of this act.

"SECTION 4. Implementation plan for this act. — Prior to September 1, 2004, the Department of Administration shall submit to the Blount Street Historic District Oversight Committee a plan for the implementation of this act and a schedule for implementation of the plan. The plan may provide for the sale of property in separate parcels or in its entirety."

Session Laws 2003-404, s. 5, makes the act effective August 7, 2003.

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

(a) The salary of the Governor shall be one hundred thirty-nine thousand five hundred ninety dollars ($139,590) annually, payable monthly.

(b) He shall be paid annually the sum of eleven thousand five hundred dollars ($11,500) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly.

(c) In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by a warrant drawn on the State Treasurer. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C.S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600; 1977, 2nd Sess., c. 1136, s. 39; c. 1249, s. 5; 1979, 2nd Sess., c. 1137, s. 31; 1981, c. 1127, s. 7; 1983, c. 761, ss. 194, 195; c. 913, s. 45; 1983 (Reg. Sess., 1984), c. 1034, s. 217; 1985, c. 479, s. 215; 1985 (Reg. Sess., 1986), c. 1014, s. 20; 1987, c. 738, s. 11; 1987 (Reg. Sess., 1988), c. 1086, ss. 6, 172; 1989, c. 752, ss. 23(a), (b), 167; 1991 (Reg. Sess., 1992), c. 900, ss. 32(a), (b), 182; 1993, c. 321, s. 48; 1993 (Reg. Sess., 1994), c. 769, s. 7.1; 1995, c. 507, s. 7.1(a); 1996, 2nd Ex. Sess., c. 18, s. 28(a); 1997-443, s. 33(a); 1998-153, s. 3(a); 1999-237, s. 28(a); 2000-67, s. 26(a); 2004-124, s. 31.1(b); 2005-276, s. 29.1(a); 2006-66, s. 22.1(a); 2007-323, s. 28.1(a); 2008-107, s. 26.1(a).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-323, s. 28.1.(a), effective July 1, 2007, substituted "one hundred thirty-five thousand eight hundred fifty-four dollars ($135,854)" for "one hundred thirty thousand six hundred twenty nine dollars ($130,629)" in the middle of subsection (a).

Session Laws 2008-107, s. 26.1(a), effective July 1, 2008, substituted "one hundred thirty-nine thousand five hundred ninety dollars ($139,590)" for "one hundred thirty-five thousand eight hundred fifty-four dollars ($135,854)" in subsection (a).

§ 147-11.1. Succession to office of Governor; Acting Governor.

(a) Lieutenant Governor. —

(1) The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(b) President of Senate, Speaker of the House and Other Officers. —

(1) If, by reason of failure to qualify, death, resignation, or removal from office, there is neither a Governor nor a Lieutenant Governor to discharge the powers and duties of the office of Governor, then the President of the Senate shall, upon his resignation as President of the Senate and as Senator, become Governor.

(2) If, at the time when under subdivision (1) of this subsection the President of the Senate is to become Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Governor, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative, become Governor.

(3) If, at the time when under subdivision (2) of this subsection the Speaker of the House of Representatives is to become Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Governor, shall, upon his resignation of the office which places him in the order of succession, become Governor: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(c) Acting Governor Generally. —

(1) If, by reason of absence from the State or physical or mental incapacity, there is neither a Governor nor a Lieutenant Governor qualified to discharge the powers and duties of the office of Governor, then the President of the Senate shall become Acting Governor.

(2) If, at the time when under subdivision (1) of this subsection the President of the Senate is to become Acting Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Acting Governor, then the Speaker of the House of Representatives shall become Acting Governor.

(3) If, at the time when under subdivision (2) of this subsection the Speaker of the House of Representatives is to become Acting Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Acting Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Acting Governor, shall become Acting Governor: Secretary of State,

Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(d) Governor Serving under Subsection (c). — An individual serving as Acting Governor under subsection (c) of this section shall continue to act for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified, except that:

(1) If his tenure as Acting Governor is founded in whole or in part upon the absence of both the Governor and Lieutenant Governor from the State, then he shall act only until the Governor or Lieutenant Governor returns to the State; and

(2) If his tenure as Acting Governor is founded in whole or in part upon the physical or mental incapacity of the Governor or Lieutenant Governor, then he shall act only until the removal of the incapacity of the Governor or Lieutenant Governor.

(e) Officers to Which Subsections (b), (c) and (d) Applicable. — Subsections (b), (c), and (d) of this section shall apply only to such officers as are eligible to the office of Governor under the Constitution of North Carolina, and only to officers who are not under impeachment by the House of Representatives at the time they are to become Governor or Acting Governor.

(f) Compensation of Acting Governor. — During the period that any individual serves as Acting Governor under subsection (c) of this section, his compensation shall be at the rate then provided by law in the case of the Governor. (1961, c. 992, s. 1.)

Cross References. — As to succession to the office of Governor, see also N.C. Const., Art. III, § 3.

§ 147-12. Powers and duties of Governor.

(a) In addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections:

(1) To supervise the official conduct of all executive and ministerial officers; and when the Governor deems it advisable to visit all State institutions for the purpose of inquiring into the management and needs of the same.

(2) To see that all offices are filled, and the duties thereof performed, or in default thereof apply such remedy as the law allows, and if the remedy is imperfect, acquaint the General Assembly therewith.

(3) To make the appointments and fill the vacancies not otherwise provided for in all departments.

In every case where the Governor is authorized by statute to make an appointment to fill a State office, the Governor may also appoint to fill any vacancy occurring in that office, and the person the Governor appoints shall serve for the unexpired term of the office and until the person's successor is appointed and qualified.

In every case where the Governor is authorized by statute to appoint to fill a vacancy in an office in the executive branch of State government, the Governor may appoint an acting officer to serve

a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of the office,

b. During the continued absence of the regular holder of the office, or

c. During a vacancy in an office and pending the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

An acting officer appointed in accordance with this subsection may perform any act and exercise any power which a regularly appointed holder of such office could lawfully perform and exercise. All powers granted to an acting officer under this subsection shall expire immediately

a. Upon the termination of the incapacity of the officer in whose stead the person acts,
b. Upon the return of the officer in whose stead the person acts, or
c. Upon the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

The Governor may determine (after such inquiry as the Governor deems appropriate) that any of the officers referred to in this paragraph is physically or mentally incapable of performing the duties of the office. The Governor may also determine that such incapacity has terminated.

The compensation of an acting officer appointed pursuant to the provisions of this subdivision shall be fixed by the Governor.

(3a) To make appointments to fill vacancies in offices subject to appointment by the General Assembly as provided in G.S. 120-122.

(3b) Whenever a statute calls for the Governor to appoint one person from each congressional district to a board or commission, and at the time of enactment of that statute, the gubernatorial appointments do not cover all of the congressional districts, then the Governor, in filling vacancies on that board or commission as they occur, shall make appointments to satisfy that requirement, but shall not be required to remove any person from office to satisfy the requirement.

(3c) Notwithstanding any other provision of law, whenever a statute calls for the Governor to appoint a person to an office subject to confirmation by the General Assembly, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives by May 15 of the year in which the appointment is to be made of the name of the person the Governor is submitting to the General Assembly for confirmation.

(3d) Notwithstanding any other provision of law, whenever a statute calls for the Governor to appoint a person to an office subject to confirmation by the Senate, the Governor shall notify the President of the Senate by May 15 of the year in which the appointment is to be made of the name of the person the Governor is submitting to the General Assembly for confirmation.

(4) To be the sole official organ between the government of this State and other states, or the government of the United States.

(5) To have the custody of the great seal of the State.

(6) If the Governor is apprised by the affidavits of two responsible citizens of the State that there is imminent danger that the statute of this State forbidding prizefighting is about to be violated, the Governor shall use, as far as necessary, the civil and military power of the State to prevent it, and to have the offenders arrested and bound to keep the peace.

(7) Repealed by Session Laws 1997-443, s. 32.30(j), effective July 1, 1999.

(8) In carrying out ex officio duties, to designate the Governor's personal representative to attend meetings and to act in the Governor's behalf as the Governor directs.

(9) To appoint such personal staff as the Governor deems necessary to carry out effectively the responsibilities of the Governor's office.

(10) To contract in behalf of the State with the government of the United States to the extent allowed by the laws of North Carolina for the

purpose of securing the benefits available to this State under the Federal Highway Safety Act of 1966. To that end, the Governor shall coordinate the activities of any and all departments and agencies of this State and its subdivisions relating thereto.

(11) Upon being furnished information from law-enforcement officers that public roads or highways or other public vehicular areas, as defined in G.S. 20-4.01, are being blocked by privately owned and operated vehicles or by any other means, thereby impeding the free flow of goods and merchandise in North Carolina, if such information warrants, to declare that a state of emergency exists in the affected area, and to order that the Highway Patrol and/or National Guard remove the offending vehicles or other causes of the blockade from the emergency area.

(12) To name and locate State government buildings, monuments, memorials, and improvements, as provided by G.S. 143B-373(1).

(13) To oversee and approve all memoranda of understanding and agreements between the State and foreign governments, as defined in G.S. 66-280(c), and international organizations. Any memoranda of understanding or agreements under this subsection to be signed on behalf of the State must first be approved by the Governor after review by the Attorney General, and after execution filed with the Secretary of State in accordance with G.S. 66-280.

(14) To negotiate and enter into Class III Tribal-State gaming compacts, and amendments thereto, on behalf of the State consistent with State law and the Indian Gaming Regulatory Act, Public Law 100-497, as necessary to allow a federally recognized Indian tribe to operate gaming activities in this State as permitted under federal law. The Governor shall report any gaming compact, or amendment thereto, to the Joint Legislative Commission on Governmental Operations.

(b) The Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, and the Division of Marine Fisheries in the Department of Environment and Natural Resources shall deliver to the Governor by February 1 of each year detailed information on the agency's litter enforcement, litter prevention, and litter removal efforts. The Administrative Office of the Courts shall deliver to the Governor by February 1 of each year detailed information on the enforcement of the littering laws of the State, including the number of charges and convictions under the littering laws of the State. The Governor shall gather the information submitted by the respective agencies and deliver a consolidated annual report on or before March 1 of each year to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources. (1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C.S., s. 7636; 1955, c. 910, s. 3; 1959, c. 285; 1967, c. 1253; 1973, c. 1148; 1981 (Reg. Sess., 1982), c. 1191, ss. 3, 4, 68; 1983, c. 913, s. 46; 1985, c. 122, s. 5; c. 757, s. 181(a); 1985 (Reg. Sess., 1986), c. 955, ss. 106, 107; 1997-14, s. 3; 1997-443, s. 32.30(j); 1999-260, s. 4; 2001-487, s. 92; 2001-512, s. 9; 2001-513, s. 29(a); 2006-6, s. 6; 2006-79, s. 15; 2006-203, s. 114; 2006-259, s. 33(a); 2009-281, s. 1.)

Cross References. — As to the Governor's power to appoint, see N.C. Const., Art. III, § 5 and 7, and N.C. Const., Art. IV, § 19. For provisions placing the Governor and Council of State in charge of the State's interest in railroads, canals and other works of internal improvements, see G.S. 124-1 through 124-7. As to investment of surplus State funds, see G.S. 147-69.1.

Editor's Note. — Session Laws 2001-512, s.

15, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency."

Session Laws 2005-1, s. 1, provides that 2005-1 shall be known as "The Hurricane Recovery Act of 2005."

For Session Laws 2005-1, ss. 2.1 and 4, containing provisions for legislative findings regarding critical hurricane recovery needs not met by existing state and federal programs and funds, and establishment of the Disaster Relief Reserve Fund, see note at G.S. 143-1.

Session Laws 2006-6, s. 12, provides: "Prosecutions for offenses committed before the effective dates in this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. If a final order by a court of competent jurisdiction prohibits possession or operation of video gaming machines by a federally recognized Indian tribe because that activity is not allowed elsewhere in this State, this act is void."

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 114, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the last sentence in the last paragraph of subdivision (a)(3), which read: "Prior to taking any action under this paragraph, the Governor may consult with the Advisory Budget Commission."

Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" in subdivision (a)(11).

CASE NOTES

The Governor has the duty to supervise the official conduct of all executive officers. The constitutional independence of the executive offices, and their differing functions and duties, create clear potential for conflict between their respective holders. In the event of such conflict, power in the Attorney General to resolve, without their consent, controversies involving agencies or departments under the supervision of the Governor, could be abused by exercise in a manner effectively derogative of the Governor's constitutional duties to exercise executive power and to supervise the official conduct of all executive officers. The General Assembly, in the enactment of G.S. 114-2(2), did not intend to create such potential. Tice v. DOT, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

Mandamus to Compel Performance of State Auditor's Duties. — Under subdivisions (1) and (2) of this section, the Governor has the right to bring mandamus proceedings against the State Auditor to compel his performance of ministerial duties prescribed by statute which do not involve any official discretion. Russell v. Ayer, 120 N.C. 180, 27 S.E. 133 (1897).

Right of the Governor to appoint officers is limited to constitutional officers, and then only when the Constitution expressly provides for such appointment. State ex rel. Salisbury v. Croom, 167 N.C. 223, 83 S.E. 354 (1914).

As to appointments under subdivision (3) of this section prior to 1959 amendment, see State ex rel. Salisbury v. Croom, 167 N.C. 223, 83 S.E. 354 (1914).

OPINIONS OF ATTORNEY GENERAL

Delegation of Power to Attend Meetings. — Those members of the Council of State who have statutory authority to delegate duties may, in conformity with such statutes, attend and vote at meetings of Boards of which they are *ex officio* members through delegates or designated subordinates. The remaining members of the Council of State may make similar delegations or designations where, in the member's judgment, other duties necessitate his absence and the statute creating his *ex officio* membership does not express or clearly imply an intent of the General Assembly that the powers of such membership be exercised personally. See opinion of Attorney General to the honorable James E. Long, Commissioner of Insurance, 55 N.C.A.G. 116 (1986).

§ 147-13. May convene Council of State; quorum; journal.

(a) The Governor may convene the Council for consultation whenever he may deem it proper. In all meetings of the Council of State, five members exclusive of the Governor shall constitute a quorum.

(b) The advice and proceedings of the Council of State shall be entered in a journal, to be kept for this purpose exclusively and signed by all members present. Any member of the Council may have entered in the journal his dissent to any part of the journal. The journal shall be maintained by the Governor and shall be placed before the General Assembly when called for by either house. (1868-9, c. 270, s. 40; Code, s. 3335; Rev., s. 5329; C.S., s. 7637; 1971, cc. 32, 151.)

§ 147-13.1. Governor's power to consolidate State agencies.

(a) The Governor is hereby authorized to direct the inauguration of studies to determine which agencies of the State conduct operations which are so nearly related to the operations of one or more other agencies that a consolidation would produce the same or a more efficient operational result at a reduction in cost, and to prepare recommendations to be presented to the 1971 General Assembly to effect such consolidations.

(b) For purposes of conducting the study, the Governor is authorized to utilize funds available to him from private sources, or from federal or other governmental grants, to be matched, as may be required, by funds available within the existing Department of Administration budget.

(c) The Governor shall direct that agencies which should be consolidated with or absorbed into other agencies having similar responsibilities and duties, as determined by the outcome of the study, shall be so consolidated or absorbed when, in his opinion, efficiency in State governmental operations will be increased thereby, or when such consolidation will result in a reduction in the cost of administering State activities without a reduction in the effectiveness of such operations; provided, however, that the Governor shall not direct such consolidation or combination as would diminish the duty or authority of any State agency or institution created by act of the General Assembly. (1969, c. 1209, ss. 1-3.)

§ 147-14. Appointment of private secretary; official correspondence preserved; books produced before General Assembly.

The Governor shall appoint a private secretary, who shall enter in books kept for that purpose all such letters, written by and to the Governor, as are official and important, and such other letters as the Governor shall think necessary. Such books shall be deposited in the office of the executive by the private secretary, and there carefully preserved, and the Governor shall produce the same before the General Assembly whenever requested. (1868-9, c. 270, ss. 33, 34; Code, ss. 3326, 3327; Rev., s. 5330; C.S., s. 7638.)

§ 147-15. Salary of private secretary.

The salary of the private secretary to the Governor shall be fixed by the Governor. (R.C., c. 102, s. 12; 1856-7, p. 71, res.; 1881, c. 346; Code, ss. 1689, 3721; P.R. 1901, c. 405; 1903, c. 729; Rev., s. 2737; 1907, c. 830; 1911, c. 95; 1913, c. 1; 1915, c. 50; 1917, c. 214; C.S., s. 3859; 1921, c. 227; 1929, c. 322, ss.

1, 2; 1945, c. 45; 1953, c. 675, s. 22; 1955, c. 910, s. 4; c. 1313, s. 8; 1961, c. 738, s. 1; 1983, c. 717, s. 88.)

§ 147-15.1: Repealed by Session Laws 1995, c. 379, s. 11.

§ 147-16. Records kept; certain original applications preserved; notice of commutations.

(a) The Governor shall cause to be kept the following records:

(1) A register of all applications for pardon, or for commutation of any sentence, with a list of the official signatures and recommendations in favor of such application.

(2) An account of all his official expenses and disbursements, including the incidental expenses of his department, and the rewards offered by him for the apprehension of criminals.

These records and the originals of all applications, petitions, and recommendations and reports therein mentioned shall be preserved in the office of the Governor, but when applications for offices are refused he may, in his discretion, return the papers referring to the application.

(b) The Governor shall, unless otherwise requested by any person listed in subdivisions (1) through (4) of this subsection, provide notice of the commutation of any sentence within 20 days after the commutation by first-class mail to the following at the last known address:

(1) The victim or victims of the crime for which the sentence was imposed;

(2) The victims' spouse, children, and parents;

(3) Any other members of the victims' family who request in writing to be notified; and

(4) The Chairs of the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. (1868-9, c. 270, ss. 29, 30; 1870-1, c. 111; Code, ss. 3322, 3323; Rev., s. 5331; C.S., s. 7639; 1983, c. 913, s. 47; 1995, c. 507, s. 19.3(a); 1997-443, s. 21.4(b); 2001-138, s. 2.)

CASE NOTES

Applicability of Public Records Law. — In resolving a dispute as to whether certain records pertaining to clemency were subject to the North Carolina Public Records Law, the court noted that neither G.S. 147-16(a)(1) nor G.S. 147-21 included any provision specifying whether the records involved in the statutes were considered public records; thus, the court was unable to determine that the General Assembly, in exercising its constitutional authority under N.C. Const., Art. III, § 5(6), intended to provide that the application process for pardons was subject to the Public Records Law. News & Observer Publ'g Co. v. Easley, 182 N.C. App. 14, 641 S.E.2d 698, 2007 N.C. App. LEXIS 490 (2007).

§ 147-16.1. Publication of executive orders.

The Governor must submit Executive Orders to the Secretary of State, who must compile, index, and publish the Executive Orders. The Governor's office shall also send a copy of each executive order to the President of the Senate, to the Speaker of the House of Representatives, to the Principal Clerk of the House of Representatives and to the Principal Clerk of the Senate. (1971, c. 1196; 1985, c. 479, ss. 150-152; c. 746, s. 8; 1991, c. 103, s. 1; 418, s. 14.)

§ 147-16.2. Duration of boards and councils created by executive officials; extensions.

(a) Any executive order of the Governor that creates a board, committee, council, or commission expires two years after the effective date of the executive order, unless the Governor specifies an expiration date in the order; provided, however, that any such executive order that was in effect on July 1, 1983, expires on June 30, 1985, unless the Governor specified a different expiration date in any such order. The Governor may extend any such executive order before it expires for additional periods of up to two years by doing so in writing; copies of the writing shall be filed by the Governor with the Secretary of State and the Legislative Library.

(b) Any other State board, committee, council, or commission created by the Governor or by any other State elective officer specified in Article III of the North Carolina Constitution expires two years after it was created; provided, however, that any such board, committee, council, or commission existing as of July 1, 1984, expires on June 30, 1985, unless it was due to expire on an earlier date. The elective officer creating any such board, committee, council, or commission may extend the board, committee, council, or commission before it expires for additional periods of up to two years by doing so in writing; copies of the writing shall be filed by the elective officer with the Secretary of State and the Legislative Library.

(c) Any State board, committee, council, or commission created by any official in the executive branch of State government, other than by those officials specified in subsections (a) and (b) of this section, expires two years after it was created; provided, however, that any board, committee, council, or commission existing as of July 1, 1984, expires on June 30, 1985, unless it was due to expire on an earlier date. The Governor may extend any such board, committee, council, or commission before it expires for additional periods of up to two years by executive order; copies of the executive order shall be filed by the Governor with the Secretary of State and the Legislative Library.

The words, "official in the executive branch of State government," as used in this section, do not include officials of counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivision, or local boards of education, other local public districts, units or bodies of any kind, or community colleges as defined in G.S. 115D-2(2), or private corporations created by act of the General Assembly.

(d) Any elective officer specified in subsection (b) of this section and any other official in the executive branch of State government who creates a board, committee, council, or commission shall do so in writing and shall file copies of the writing with the Secretary of State and the Legislative Library. (1983, c. 733, s. 1; 1983 (Reg. Sess., 1984), c. 1053; 2004-203, s. 50(b).)

§ 147-16.3. Timely nominations if legislative body must confirm.

Notwithstanding any other provision of law, whenever:

(1) A statute specifies that an office shall be filled by nomination by the Governor and confirmation by the General Assembly or by one house thereof, and

(2) The statute specifies that the nominee shall take office without legislative action if the General Assembly adjourns without action being taken or fails to take action within a specified time, and

(3) The Governor fails to nominate a person for the office by May 15 of a regular session of the General Assembly during an odd-numbered year or by June 7 of a regular session of the General Assembly during an even-numbered year, and

(4) The appropriate legislative body does not act on the nomination before it next adjourns for more than 10 days or sine die,

the nominee shall serve only on an interim basis until 60 days after the convening of the next regular session of the General Assembly, subject to rejection or approval by the appropriate legislative body before that time. (1987, c. 867, s. 4.)

§ 147-17. May employ counsel in cases wherein State is interested.

(a) No department, officer, agency, institution, commission, bureau or other organized activity of the State which receives support in whole or in part from the State shall employ any counsel, except with the approval of the Governor. The Governor shall give his approval only if the Attorney General has advised him, as provided in subsection (b) of this section, that it is impracticable for the Attorney General to render the legal services. In any case or proceeding, civil or criminal, in or before any court or agency of this State or any other state or the United States, or in any other matter in which the State of North Carolina is interested, the Governor may employ such special counsel as he may deem proper or necessary to represent the interest of the State, and may fix the compensation for their services.

(b) The Attorney General shall be counsel for all departments, officers, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State. Whenever the Attorney General shall advise the Governor that it is impracticable for him to render legal services to any State agency, officer, institution, commission, bureau or other organized activity, or to defend a State employee or former employee as authorized by Article 31A of Chapter 143 of the General Statutes, the Governor may authorize the employment of such counsel, as in his judgment, should be employed to render such services, and may fix the compensation for their services.

(c) The Governor may direct that the compensation fixed under this section for special counsel shall be paid out of appropriations or other funds credited to the appropriate department, agency, institution, commission, bureau, or other organized activity of the State or out of the Contingency and Emergency Fund. (1868-9, c. 270, s. 6; 1870-1, c. 111; 1873-4, c. 160, s. 2; 1883, c. 71; Code, ss. 3320, 3324; 1901, c. 744; Rev., s. 5332; C.S., s. 7640; 1925, c. 207, s. 3; 1961, c. 1007; 1963, c. 1009; 1967, c. 1092, s. 2; 1985, c. 479, s. 136.)

Cross References. — As to defense of State employees, see §§ 143-300.2 through 143-300.5.

Legal Periodicals. — For article, "Student Legal Services at the University of North Carolina at Chapel Hill," see 7 N.C. Cent. L.J. 286 (1976).

For article, "The Common Law Powers of the Attorney General of North Carolina," see 9 N.C. Cent. L.J. 1 (1977).

For survey of 1984 administrative law, "A Declining Role for the Attorney General," see 63 N.C.L. Rev. 1051 (1985).

CASE NOTES

Governor May Employ Special Counsel Without First Being Advised of Impracticability of Representation by Attorney General. — The Governor, pursuant to subsection (a), may employ special counsel in a proceeding in which the State is interested without first being advised by the Attorney General that it is impracticable for the latter to represent the interest of the State. Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

District Attorneys. — As state officers under Chapter 147, district attorneys are required to comply with the prohibition against hiring counsel absent the Governor's approval. Whitfield v. Gilchrist, 126 N.C. App. 241, 485 S.E.2d 61 (1997), rev'd on other grounds, 348 N.C. 39, 497 S.E.2d 412 (1998).

Waiver of Sovereign Immunity. — The State's sovereign immunity will be waived by implication only once all of the requirements of this section are met and a valid contract has been entered. Whitfield v. Gilchrist, 348 N.C. 39, 497 S.E.2d 412 (1998).

Applied in Nash County Bd. of Educ. v. Biltmore Co., 464 F. Supp. 1027 (E.D.N.C. 1978); Tice v. DOT, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

§ 147-18. To designate "Indian Day."

The Governor of North Carolina is hereby empowered to set aside some day which shall be called "Indian Day" on which Indian lore shall receive emphasis in the public schools of the State and among the citizens of North Carolina. (Resolutions 54, 1937, p. 957.)

§ 147-19. To appoint a day of thanksgiving.

The Governor is directed to set apart a day in every year, and by proclamation give notice thereof, as a day of solemn and public thanksgiving to Almighty God for past blessings and of supplication for His continued kindness and care over us as a State and a nation. (1868-9, c. 270, s. 39; Code, s. 3334; Rev., s. 5333; C.S., s. 7641.)

§ 147-20: Repealed by Session Laws 1955, c. 867, s. 13.

§ 147-21. Form and contents of applications for pardon.

Every application for pardon must be made to the Governor in writing, signed by the party convicted, or by some person in his behalf. And every such application shall contain the grounds and reasons upon which the executive pardon is asked, and shall be in every case accompanied by a certified copy of the indictment, and the verdict and judgment of the court thereon. (1869-70, c. 171; 1870-1, c. 61; Code, s. 3336; Rev., s. 5334; C.S., s. 7642.)

Cross References. — As to the Governor's power to pardon, see N.C. Const., Art. III, § 5.

CASE NOTES

Applicability of Public Records Law. — In resolving a dispute as to whether certain records pertaining to clemency were subject to the North Carolina Public Records Law, the court noted that neither G.S. 147-16(a)(1) nor G.S. 147-21 included any provision specifying whether the records involved in the statutes were considered public records; thus, the court was unable to determine that the General Assembly, in exercising its constitutional authority under N.C. Const., Art. III, § 5(6), intended to provide that the application process for pardons was subject to the Public Records Law. News & Observer Publ'g Co. v. Easley, 182 N.C. App. 14, 641 S.E.2d 698, 2007 N.C. App. LEXIS 490 (2007).

Cited in Bacon v. Lee, 353 N.C. 696, 549 S.E.2d 840, 2001 N.C. LEXIS 831 (2001).

§ 147-22: Repealed by Session Laws 1981, c. 309.

§ 147-23. Conditional pardons may be granted.

In any case in which the Governor is authorized by the Constitution to grant a pardon he may, upon the petition of the prisoner, grant it, subject to such conditions, restrictions, and limitations as he considers proper and necessary, and he may issue his warrant to all proper officers to carry such pardon into effect in such manner as he thinks proper. (1905, c. 356; Rev., s. 5335; C.S., s. 7643.)

§ 147-24. Governor's duties when conditions of pardon violated.

If a prisoner who has been pardoned upon conditions to be observed and performed by him violates such conditions, or any of them, the Governor, upon receiving information of such violation, shall forthwith cause him to be arrested and detained until the case can be examined by him. The Governor shall examine the case of such prisoner, and if it appears by his own admission or by such evidence as the Governor may require that he has violated the conditions of his pardon, the Governor shall order him remanded and confined for the unexpired term of his sentence; said confinement, if the prisoner is under any other sentence of imprisonment at the time of said order, to begin upon expiration of such sentence. In computing the period of his confinement the time between the conditional pardon and subsequent arrest shall not be taken to be a part of the time of his sentence. If it appears to the Governor that he has not broken the conditions of his conditional pardon he shall be released and his conditional pardon shall remain in force. (1905, c. 356, ss. 2, 3; Rev., s. 5336; C.S., s. 7644.)

Cross References. — As to the Governor's power to pardon, see N.C. Const., Art. III, § 5.

Legal Periodicals. — For review of this section, see 1 N.C.L. Rev. 47 (1923).

CASE NOTES

Right to Grant Conditional Pardon. — The Governor may grant a pardon upon a condition precedent that the prisoner pay the costs of trial, and upon condition subsequent, that he remain of good character and be sober and industrious. Ex parte Williams, 149 N.C. 436, 63 S.E. 108 (1908).

Conditions Must Not Be Illegal, Immoral or Impossible. — Power of the Governor to grant a conditional pardon is generally subject to the limitation that the conditions imposed must not be illegal, immoral or impossible of performance, which limitation does not apply to cases wherein the prisoner is only required not to violate the statute law and to remain of good conduct. State v. Yates, 183 N.C. 753, 111 S.E. 337 (1922).

Conditional Pardon Irrevocable Unless Conditions Are Violated. — A pardon with conditions precedent and subsequent is irrevocable after delivery and acceptance, upon compliance by the prisoner with the condition precedent, unless he violates the conditions subsequent by his conduct after release. Ex parte Williams, 149 N.C. 436, 63 S.E. 108 (1908).

Pardon Voided by Breach of Conditions. — Where prisoner has accepted his freedom upon the terms of a conditional pardon from the Governor, his breach of such conditions voids the pardon and cancels his right to further immunity from punishment. State v. Yates, 183 N.C. 753, 111 S.E. 337 (1922).

Rearrest for Violation of Conditions. — Under the provisions of the State Constitution and statutes, a "parole" granted by the Governor to a prisoner imports a conditional pardon, and the Governor may cause his rearrest either upon his own admissions, or on such evidence as he may require, for violating the conditions which the prisoner has accepted under the terms of the parole. State v. Yates, 183 N.C. 753, 111 S.E. 337 (1922).

The essential part of a sentence for a violation of the criminal law is punishment for the offense committed, and not the time the sentence shall begin and end; and where a prisoner has accepted a conditional pardon from the Governor and has obtained his freedom, the breaking of the condition after the term would have otherwise expired affords no legal excuse why he should not be recommitted to serve out the balance of his sentence. State v. Yates, 183 N.C. 753, 111 S.E. 337 (1922).

A pardoned prior conviction may not be considered as an aggravating factor during sentencing absent revocation of the pardon by the governor. State v. Clifton, 125 N.C. App. 471, 481 S.E.2d 393 (1997), cert. granted, 346 N.C. 182, 486 S.E.2d 200 (1997), discretionary review improvidently allowed, 347 N.C. 391, 493 S.E.2d 56 (1997).

The reasoning that an increased punishment for a current offense due to a prior pardoned conviction is not punishment for the prior pardoned offense is a legal fiction that conflicts with logic and the administrative duties of the governor; thus, trial court infringed upon the prerogatives of the governor by finding that defendant's prior conviction constituted an ag-

gravating factor. State v. Clifton, 125 N.C. App. 471, 481 S.E.2d 393 (1997), cert. granted, 346 N.C. 182, 486 S.E.2d 200 (1997), discretionary review improvidently allowed, 347 N.C. 391, 493 S.E.2d 56 (1997).

§ 147-25. Duty of sheriff and clerk on pardon granted.

If a prisoner is pardoned conditionally or unconditionally, or his punishment is commuted, the officer to whom the warrant for such purpose is issued shall, as soon as may be after executing it, make return thereof, signed by him, with his doing thereon, to the Governor's office, and shall file in the office of the clerk of the court in which the offender was convicted an attested copy of the warrant and return, and the clerk shall file the same in his office and subjoin a brief abstract thereof to the record of the conviction and sentence, and at the next regular term of said court said warrant shall be entered upon the minutes of the court. (1905, c. 356, s. 4; Rev., s. 5337; C.S., s. 7645.)

CASE NOTES

Sheriff, by returning a pardon after its delivery and acceptance by the prisoner, cannot defeat or impair its legal results. Ex parte Williams, 149 N.C. 436, 63 S.E. 108 (1908).

Recovery of Fine Paid Before Pardon. — Where one convicted of a crime has paid the fine imposed by the court and has then obtained a pardon from the Governor, it is the duty of the court to return the fine upon his application and presenting of the pardon, so long as the money remains in its possession and the rights of third persons have not intervened; but where the fine collected has reached its final destination, it is beyond the reach of executive clemency, and may not be recovered. Byrum v. Turner, 171 N.C. 86, 87 S.E. 975 (1916).

§ 147-26. To procure great seal of State; its description.

The Governor shall procure for the State a seal, which shall be called the great seal of the State of North Carolina, and shall be two and one-quarter inches in diameter, and its design shall be a representation of the figures of Liberty and Plenty, looking toward each other, but not more than half-fronting each other and otherwise disposed as follows: Liberty, the first figure, standing, her pole with cap on it in her left hand and a scroll with the word "Constitution" inscribed thereon in her right hand. Plenty, the second figure, sitting down, her right arm half extended towards Liberty, three heads of grain in her right hand, and in her left, the small end of her horn, the mouth of which is resting at her feet, and the contents of the horn rolling out.

The background on the seal shall contain a depiction of mountains running from left to right to the middle of the seal and an ocean running from right to left to the middle of the seal. A side view of a three-masted ship shall be located on the ocean and to the right of Plenty. The date "May 20, 1775" shall appear within the seal and across the top of the seal. The date "April 12, 1776" shall appear within the seal and across the bottom of the seal. The words "esse quam videri" shall appear at the bottom around the perimeter. The words "THE GREAT SEAL of the STATE of NORTH CAROLINA" shall appear around the perimeter. No other words, figures or other embellishments shall appear on the seal.

It shall be the duty of the Governor to file in the office of Secretary of State an impression of the great seal, certified to under his hand and attested by the Secretary of State, which impression so certified the Secretary of State shall carefully preserve among the records of his office. (1868-9, c. 270, s. 35; 1883, c. 392; Code, ss. 3328, 3329; 1893, c. 145; Rev., s. 5339; C.S., s. 7646; 1971, c. 167, s. 1; 1983, c. 257, s. 1.)

OPINIONS OF ATTORNEY GENERAL

As to the great seal of the State of North Carolina, see opinion of Attorney General to Dr. H.G. Jones, Department of Archives and History, 41 N.C.A.G. 214 (1971).

§ 147-27. Affixing great seal a second time to public papers.

In all cases where any person may find it necessary to have the great seal of the State put again to any public paper, other than a grant for lands, he may prefer his petition to the Governor and Council, who shall, if they deem the same proper, direct the seal to be put thereto. (1868-9, c. 270, s. 38; Code, s. 3333; Rev., s. 5338; C.S., s. 7647.)

§ 147-28. To procure seals for departments and courts.

The Governor shall also procure a seal for each department of the State government to be used for attesting and authenticating grants, proclamations, commissions, and other public acts, in such manner as may be directed by law and the usage established in the public offices; also a seal for every court of record in the State, for the purpose of authenticating the papers and records of such court. All such seals shall be delivered to the proper officers, who shall give a receipt therefor and be accountable for their safekeeping. (1868-9, c. 270, ss. 35, 37; 1883, c. 71; Code, ss. 3328, 3332; Rev., s. 5340; C.S., s. 7648.)

§ 147-29. Seal of Department of State described.

The seal of the Department of State shall be two inches in diameter and shall be of the same design as the great seal of the State, with the words "State of North Carolina, Department of State," surrounding the figures. (1883, c. 238; Code, s. 3330; Rev., s. 5341; C.S., s. 7649.)

§ 147-30. To provide new seals when necessary.

Whenever the great seal of the State shall be lost or so worn or defaced as to render it unfit for use, the Governor shall provide a new one and when such new one is provided the former one, if it can be found, shall be destroyed in the presence of the Governor. Whenever the seal of any department of the State shall be lost or so worn or defaced as to render it unfit for use, a new seal shall be provided by the head of the department and the former one, if it can be found, shall be destroyed in the presence of the head of the department. Whenever the seal of any court of record shall be lost or so worn or defaced as to render it unfit for use, the board of county commissioners of the county in which such court is situate shall provide a new one and the old one, if it can be found, shall be destroyed in the presence of the chairman of the board of county commissioners of such county. (1868-9, c. 270, s. 36; Code, s. 3331; Rev., s. 5342; C.S., s. 7650; 1943, c. 632.)

§ 147-31: Repealed by Session Laws 1983, c. 913, s. 48.

§ 147-31.1. Office space and expenses for Governor-elect and Lieutenant Governor-elect; and other Council of State members-elect.

(a) The Department of Administration, upon request of the Governor-elect and Lieutenant Governor-elect, made after the general election for these respective offices, is empowered and directed to provide suitable office space and office staff for each such official for the period between the general election and inauguration.

The Department of Administration shall provide, for the fiscal years in which general election and inauguration of the Governor and Lieutenant Governor shall occur, such sums, not in excess of eighty thousand dollars ($80,000) for the Governor-elect, and not in excess of ten thousand dollars ($10,000) for the Lieutenant Governor-elect, as may be necessary for the salary of the staffs and the payment of office expenses of each such official during such interim.

(b) The Department of Administration, upon request of any other member-elect of the Council of State who is not an incumbent in that office, shall provide for such persons suitable office space and office staff for each such official for the period between the general election and inauguration.

The Department of Administration shall provide, for the fiscal years in which general election and inauguration of such persons occurs, ten thousand dollars ($10,000) for the salary of the staffs and the payment of office expenses of each such official during such interim. If there are more than two such persons, such services and payments shall be made from the Contingency and Emergency Fund upon approval of the Council of State. (1965, c. 407; 1987 (Reg. Sess., 1988), c. 1086, s. 48.)

§ 147-32. Compensation for surviving spouses of Governors.

All surviving spouses of Governors of the State of North Carolina, who make written request to the Director of the Budget, shall be paid the sum of twelve thousand dollars ($12,000) a year in equal monthly installments, out of the State Treasury upon warrants duly drawn thereon. This compensation shall terminate upon the subsequent remarriage of the surviving spouse. (1937, c. 416; 1947, c. 897, ss. 1, 2; 1955, c. 1314; 1977, c. 554; 1981 (Reg. Sess., 1982), c. 1282, s. 63; 1987, c. 738, s. 40.)

§ 147-33. Compensation and expenses of Lieutenant Governor.

The salary of the Lieutenant Governor shall be set by the General Assembly in the Current Operations Appropriations Act. In addition to this salary, the Lieutenant Governor shall be paid an annual expense allowance in the sum of eleven thousand five hundred dollars ($11,500). In addition to the salary set by the General Assembly in the Current Operations Appropriations Act, longevity pay shall be paid on the same basis as is provided to employees of the State who are subject to the State Personnel Act. (1911, c. 103; C.S., s. 3862; 1945, c. 1; 1953, c. 1, s. 1; 1963, c. 1050; 1967, c. 1170, s. 1; 1971, c. 913; 1977, c. 802, s. 42.6; 1977, 2nd Sess., c. 1136, s. 40; 1979, 2nd Sess., c. 1137, s. 32; 1983, c. 761, s. 211; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 738, s. 32(b).)

Article 3A.

Emergency War Powers of Governor.

§ 147-33.1. Short title.

This Article may be cited as the "North Carolina Emergency War Powers Act." (1943, c. 706, s. 1; 1959, c. 337, s. 6.)

§ 147-33.2. Emergency war powers of the Governor.

Upon his own initiative, or on the request or recommendation of the President of the United States, the army, navy or any other branch of the armed forces of the United States, the federal Director of Civilian Defense, or any other federal officer, department or agency having duties and responsibilities related to the prosecution of the war or the health, welfare, safety and protection of the civilian population, whenever in his judgment any such action is in the public interest and is necessary for the protection of the lives or property of the people of the State, or for the defense and security of the State or nation, or for the proper conduct of the war and the successful prosecution thereof, the Governor may, with the approval of the Council of State, at any time and from time to time during the existing state of war:

(1) Formulate and execute plans for:
   a. The inventory, mobilization, conservation, distribution or use of food, fuel, clothing and other necessaries of life and health, and of land, labor, materials, industries, facilities and other resources of the State necessary or useful in the prosecution of the war;
   b. Organization and coordination of civilian defense in the State in reasonable conformity with the program of civilian defense as promulgated from time to time by the Office of Civilian Defense of the federal government; and, further, to effectuate such plans for civilian defense in such manner as to promote and assure the security, protection and mobilization of the civilian population of the State for the duration of the war and in the interest of State and national defense.

(2) Order and carry out blackouts, radio silences, evacuations and all other precautionary measures against air raids or other forms of enemy action, and suppress or otherwise control any activity which may aid or assist the enemy.

(3) Mobilize, coordinate and direct the activities of the police, fire fighting, health, street and highway repair, public utility, medical and welfare forces and services of the State, of the political subdivisions of the State, and of private agencies and corporations, and formulate and execute plans for the interchange and use of such forces and services for the mutual aid of the people of the State in cases of air raid, sabotage or other enemy action, fire, flood, famine, violence, riot, insurrection, or other catastrophe or emergency.

(4) Prohibit, restrict, or otherwise regulate and control the flow of vehicular and pedestrian traffic, and congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities.

(5) Accept, or authorize any officer or department of the State to accept, from the federal government or any federal agency or instrumentality, or from any other source, grants of funds and grants or loans of equipment, materials, supplies or other property for war or defense purposes, subject to the terms and conditions appertaining to such grants and loans.

(6) Authorize any department or agency of the State to lease or lend to the army, navy or any other branch of the armed forces of the United States, any real or personal property of the State upon such terms and conditions as he may impose, or, on behalf of the State, to make a contract directly therefor.

(7) Authorize the temporary transfer of personnel of the State for employment by the army, navy or any other branch of the armed forces of the United States and fix the terms and conditions of such transfers.

(8) At any time when the General Assembly is not in session, suspend, or modify, in whole or in part, generally or in its application to certain classes of persons, firms, corporations or circumstances, any law, rule or regulation with reference to the subjects hereinafter enumerated, when he shall find and proclaim after such study, investigation or hearings as he may direct, make or conduct, that the operation, enforcement or application of such law, or any part thereof, materially hinders, impedes, delays or interferes with the proper conduct of the war; said subjects being as follows:
  a. The use of the roads, streets, and highways of the State, with particular reference to speed limits, weights and sizes of motor vehicles, regulations of automobile lights and signals, transportation of munitions or explosives and parking or assembling of automobiles on highways or any other public place within the State; provided that any changes in the laws referred to in this subdivision shall be first approved by the Board of Transportation and the Commissioner of Motor Vehicles of the State;
  b. Public health, insofar as suspension or modification of the laws in reference thereto may be stipulated by the United States Public Health Service or other authoritative agency of the United States government as being essential in the interest of national safety and in the successful prosecution of the war effort; provided that such suspension or modification of public health laws shall first be submitted to and approved by the Commission for Public Health;
  c. Labor and industry; provided, however, that any suspension or modification of laws regulating labor and industry shall be only such as are certified by the Commissioner of Labor of the State as being necessary in the interest of national safety and in the furtherance of the war program; and provided further that any such changes as may result in an increase in the hours of employment over and above the limits of the existing statutory provisions shall carry provision for adequate additional compensation; and provided, further, that no changes in such laws or regulations shall be made as affecting existing contracts between labor and management in this State except with the approval of the contracting parties;
  d. Whenever it should be certified by the Adjutant General of the State that emergency conditions require such procedure, the Governor, with the approval of the Council of State, shall have the power to call up and mobilize State militia; to provide transportation and facilities for mobilization and full utilization of the State militia, in such emergency; and to allocate from the Contingency and Emergency Fund such amounts as may be necessary for such purposes during the period of such emergency;
  e. Manufacture, sale, transportation, possession and use of explosives or fireworks, or articles in simulation thereof, and the sale, use and handling of firearms;

(9) Cooperate with agencies established by or pursuant to the laws of the United States and the several states for civilian protection and the promotion of the war effort, and coordinate and direct the work of the offices and agencies of the State having duties and responsibilities directly connected with the war effort and the protection of the civilian population.

(10) Aid in the administration and enforcement in this State of any rationing, freezing, price-fixing or similar order or regulation duly

promulgated by any federal officer or agency under or pursuant to the authority of any act of Congress or of any order or proclamation of the President of the United States, by making temporarily available personnel and facilities of the State to assist in the administration thereof and/or by adopting and promulgating in this State an order or regulation substantially embodying the provisions of such federal order or regulation, filing the same in the office of the Secretary of State, prescribing the penalties for the violation thereof, and specifying the State and local officers and agencies to be charged with the enforcement thereof.

(11) Formulate and execute plans and adopt rules for:
   a. The organization, recruiting, training, maintenance and operation of aircraft warning services, observation and listening posts, information and control centers and such other services and facilities as may be necessary for the prompt and accurate reception and transmission of air-raid warnings and signals;
   b. The organization, recruiting, training, equipment, identification, conduct, powers, duties, rights, privileges and immunities of air-raid wardens, auxiliary police, auxiliary firemen and of the members of all other auxiliary defense and civilian protection forces and agencies.

(12) Adopt, promulgate, publicize and enforce such orders, rules and regulations as may be necessary for the proper and effective exercise of the powers granted by this Article, and amend or rescind the same.

(13) Hold and conduct hearings, administer oaths and take testimony, issue subpoenas to compel the attendance of witnesses and the production of relevant books, papers, records or documents, in connection with any investigation made by him under the authority of this Article. (1943, c. 706, s. 2; 1959, c. 337, s. 6; 1973, c. 476, s. 128; c. 507, s. 5; 1999-456, s. 33(f); 2007-182, s. 2.)

§ 147-33.3. Orders, rules and regulations.

All orders, rules and regulations promulgated by the Governor pursuant to this Article shall have the full force and effect of law from and after the date of the filing of a duly authenticated copy thereof in the office of the Secretary of State. All laws, ordinances, rules and regulations, insofar as they are inconsistent with the provisions of this Article or of any rule, order or regulation made pursuant to this Article, shall be suspended during the period of time and to the extent that such conflict exists. A violation of any such order, rule or regulation, unless otherwise provided therein, shall be deemed a Class 1 misdemeanor. (1943, c. 706, s. 3; 1959, c. 337, s. 6; 1993, c. 539, s. 1054; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 147-33.4. Immunity.

Neither the State nor any political subdivision thereof, nor the agents or representatives of the State or any political subdivision thereof, under any circumstances, nor any individual, firm, partnership, corporation or other entity, or any agent thereof, in good faith complying with or attempting to comply with any order, rule or regulation made pursuant to this Article, shall be liable for the death or any injury to persons or for any damage to property as the result of any air raid, invasion, act of sabotage, or other form of enemy action, or of any action taken under this Article or such order, rule or regulation. This section shall not be construed to impair or affect the right of any person to receive any benefits or compensation to which he may otherwise be entitled under Workers' Compensation Law, any pension law, or any other law, or any act of Congress, or any contract of insurance or indemnification. (1943, c. 706, s. 4; 1959, c. 337, s. 6; 1991, c. 636, s. 3.)

§ 147-33.5. Federal action controlling.

All action taken under this Article and all orders, rules and regulations made pursuant thereto in any field or with respect to any subject matter over which the army or navy or any other department or agency of the United States government has duly taken jurisdiction shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations and requests of such department or agency and shall be consistent therewith. Blackouts, radio silences and evacuations shall be carried out only in such areas, at such times, and for such periods as shall be designated by air-raid warnings or orders with respect thereto issued by the United States army, or its duly designated agency, and only under such conditions and in such manner as shall be consistent with such warning or order, and practice blackouts shall be held only when and as authorized by the United States army or its duly designated agency. (1943, c. 706, s. 5; 1959, c. 337, s. 6.)

§ 147-33.6. Construction of Article.

This Article shall be construed liberally to effectuate its purposes. (1943, c. 706, s. 6; 1959, c. 337, s. 6.)

§§ 147-33.7 through 147-33.11: Reserved for future codification purposes.

Article 3B.

North Carolina Housing Commission.

§§ 147-33.12 through 147-33.21: Repealed by Session Laws 1987, c. 841, s. 5.

Cross References. — For the North Carolina Housing Trust and Oil Overcharge Act, see section 122E-1 et seq.

Article 3C.

Office of Juvenile Justice.

§§ 147-33.30 through 147-33.71: Repealed by Session Laws 2000-137, s. 1(a), effective July 20, 2000.

Cross References. — For the Department of Juvenile Justice and Delinquency Prevention, see G.S. 143B-511 et seq.

Editor's Note. — Repealed G.S. 147-33.33, 147-33.34, 147-33.40, 147-33.48, 147-33.49, 147-33.52 to 147-33.54, 147-33.56 to 147-33.59, 147-33.68, and 147-33.69 had been reserved for future codification purposes.

§ 147-33.72: Reserved for future codification purposes.

ARTICLE 3D.

State Information Technology Services.

Part 1. State Information Technology Management.

§ 147-33.72A. Purpose.

The purposes of this Article are to:

(1) Establish a systematic process for planning and financing the State's information technology resources.

(2) Develop standards and accountability measures for information technology projects, including criteria for adequate project management.

(3) Implement procurement procedures that will result in cost savings on information technology purchases.

(4) Create an Information Technology Advisory Board.

(5) Create the Information Technology Fund for statewide information technology efforts. (2004-129, s. 2.)

Editor's Note. — Session Laws 2004-129, s. 1, redesignated G.S. 147-33.75 through 147-33.79 as Part 1A of Article 3D of Chapter 147.

Session Laws 2004-129, s. 48, provides: "Nothing in this act shall be construed to require a State agency that has issued a request for proposals for an information technology project approved by the Information Resources Management Commission to seek approval of the information technology project by the State Chief Information Officer under G.S. 147-33.72C or otherwise revise the request for proposals."

Session Laws 2009-451, s. 6.7(d), provides: "State agencies developing and implementing information technology projects shall use the State infrastructure to host their projects. The State Chief Information Officer may grant an exception if the State agency can demonstrate any of the following:

"(1) Using an outside contractor would be more cost-effective for the State.

"(2) The Office of Information Technology Services does not have the technical capabilities required to host the application.

"(3) Valid security requirements preclude the use of State infrastructure, and a contractor can provide a more secure environment."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 147-33.72B. Planning and financing State information technology resources.

(a) In order to provide a systematic process for meeting the State's technology needs, the State Chief Information Officer shall develop a biennial State Information Technology Plan (Plan). The Plan shall be transmitted to the General Assembly by February 1 of each regular session.

(b) The Plan shall include the following elements:

(1) An inventory of current information technology assets and major projects currently in progress. As used in this subdivision, the term "major project" includes projects subject to review and approval under G.S. 147-33.72C, or that cost more than five hundred thousand dollars ($500,000) to implement.

(2) An evaluation and estimation of the significant unmet needs for information technology resources over a five-year time period. The Plan shall rank the unmet needs in priority order according to their urgency.

(3) A statement of the financial requirements posed by the significant unmet needs, together with a recommended funding schedule for each major project currently in progress or recommended for initiation during the upcoming fiscal biennium.

(4) An analysis of opportunities for statewide initiatives that would yield significant efficiencies or improve effectiveness in State programs.

(c) Each executive agency shall biennially develop an agency information technology plan that includes the information required under subsection (b) of this section. The Office of Information Technology Services shall consult with and assist agencies in the preparation of these plans. Each agency shall submit its plan to the State Chief Information Officer by October 1 of each even-numbered year. (2004-129, s. 2.)

§ 147-33.72C. Project approval standards.

(a) Project Review and Approval. — The State Chief Information Officer shall:

(1) Review all State agency information technology projects that cost or are expected to cost more than five hundred thousand dollars ($500,000), whether the project is undertaken in a single phase or component or in multiple phases or components. If the State Chief Information Officer determines a project meets the quality assurance requirements established under this Article, the State Chief Information Officer shall approve the project.

(2) Establish thresholds for determining which information technology projects costing or expected to cost five hundred thousand dollars ($500,000) or less shall be subject to review and approval under subdivision (a)(1) of this section. When establishing the thresholds, the State Chief Information Officer shall consider factors such as project cost, potential project risk, agency size, and projected budget.

(b) Project Implementation. — No State agency shall proceed with an information technology project that is subject to review and approval under subsection (a) of this section until the State CIO approves the project. If a project is not approved, the State CIO shall specify in writing to the agency the grounds for denying the approval. The State CIO shall provide this information to the agency within five business days of the denial.

(c) Suspension of Approval. — The State Chief Information Officer may suspend the approval of any information technology project that does not continue to meet the applicable quality assurance standards. This authority extends to any information technology project that costs more than five hundred thousand dollars ($500,000) to implement regardless of whether the project was originally subject to review and approval under subsection (a) of this section. If the State CIO suspends approval of a project, the State CIO shall specify in writing to the agency the grounds for suspending the approval. The State CIO shall provide this information to the agency within five business days of the suspension.

The Office of Information Technology Services shall report any suspension immediately to the Office of the State Controller and the Office of State Budget and Management. The Office of State Budget and Management shall not allow any additional expenditure of funds for a project that is no longer approved by the State Chief Information Officer.

(d) General Quality Assurance. — Information technology projects that are not subject to review and approval under subsection (a) of this section shall meet all other standards established under this Article.

(e) Performance Contracting. — All contracts between a State agency and a private party for information technology projects shall include provisions for vendor performance review and accountability. The State CIO may require that these contract provisions include monetary penalties for projects that are not completed within the specified time period or that involve costs in excess of those specified in the contract. The State CIO may require contract provisions requiring a vendor to provide a performance bond. (2004-129, s. 2.)

Editor's Note. — Session Laws 2004-129, s. 48, provides: "Nothing in this act shall be construed to require a State agency that has issued a request for proposals for an information technology project approved by the Information Resources Management Commission to seek approval of the information technology project by the State Chief Information Officer under G.S. 147-33.72C or otherwise revise the request for proposals."

§ 147-33.72D. Agency/State CIO Dispute Resolution.

(a) Agency Request for Review. — In any instance where the State CIO has denied or suspended the approval of an information technology project, or has denied an agency's request for deviation pursuant to G.S. 147-33.84, the agency may request a committee review of the State CIO's decision. The agency shall submit a written request for review to the State Controller within 15 working days following the agency's receipt of the State CIO's written grounds for denial or suspension. The agency's request for review shall specify the grounds for its disagreement with the State CIO's determination. The agency shall include with its request for review a copy of the State CIO's written grounds for denial or suspension.

(b) Review Process. — The review committee shall consist of the State Controller, the State Budget Officer, and the Secretary of Administration. The State Controller shall serve as the chair of the review committee. If the chair or one of the members of the review committee is an official of the agency that has requested the review, that person is deemed to have a conflict of interest and is ineligible to participate in the consideration of the matter, and the two remaining members of the review committee shall select an alternate official to serve as a member of the review committee for that specific matter. Within 10 business days following receipt of an agency's request for review, the committee shall meet to consider the matter. The committee shall review the information provided, and may request additional information from either the agency or the State CIO. The committee may affirm, reverse, or modify the decision of the State CIO, or may remand the matter back to the State CIO for additional findings. Within 30 days after initial receipt of the agency's request for review, the committee shall notify the agency and the State CIO of its decision in the matter. The notification shall be in writing, and shall specify the grounds for the committee's decision. The committee may reverse or modify a decision of the State CIO when the committee finds at least one of the following:

(1) The decision of the State CIO is unsupported by substantial evidence that the agency project fails to meet one or more standards of efficiency and quality of State government information technology as required under this Article.

(2) The State CIO did not have the requisite statutory authority or jurisdiction to render the decision.

(3) The decision of the State CIO was rendered in a manner that was arbitrary, capricious, or indicative of an abuse of discretion. (2004-129, s. 2; 2007-282, s. 1.)

§ 147-33.72E. Project management standards.

(a) Agency Responsibilities. — Each agency shall provide for one or more project managers who meet the applicable quality assurance standards for each information technology project that is subject to approval under G.S. 143-33.72C(a). Each project manager shall be subject to the review and approval of the State Chief Information Officer.

Each agency project manager shall provide periodic reports to the project management assistant assigned to the project by the State CIO under subsection (b) of this section. The reports shall include information regarding project costs, issues related to hardware, software, or training, projected and actual completion dates, and any other information related to the implementation of the information technology project.

(b) State Chief Information Officer Responsibilities. — The State Chief Information Officer shall designate a project management assistant from the Office of Information Technology Services for any project that receives approval under. G.S. 147-33.72C(a) if the project costs or is expected to cost more than one million dollars ($1,000,000), whether the project is undertaken in single or multiple phases or components. The State Chief Information Officer may designate a project management assistant for any other information technology project.

The project management assistant shall advise the agency with the initial planning of a project, the content and design of any request for proposals, contract development, procurement, and architectural and other technical reviews. The project management assistant shall also monitor agency progress in the development and implementation of the project and shall provide status reports to the State Chief Information Officer, including recommendations regarding continued approval of the project. (2004-129, s. 2; 2007-281, s. 1.)

§ 147-33.72F. Procurement procedures; cost savings.

Pursuant to Part 4 of this Article, the Office of Information Technology Services shall establish procedures for the procurement of information technology. The procedures may include aggregation of hardware purchases, the use of formal bid procedures, restrictions on supplemental staffing, enterprise software licensing, hosting, and multiyear maintenance agreements. The procedures may require agencies to submit information technology procurement requests to the Office of Information Technology Services on October 1, January 1, and June 1 of each fiscal year in order to allow for bulk purchasing. (2004-129, s. 2; 2006-264, s. 71.)

§ 147-33.72G. Information Technology Advisory Board.

(a) Creation; Membership. — The Information Technology Advisory Board is established and shall be located within the Office of Information Technology Services for organizational, budgetary, and administrative purposes. The Board shall consist of 9 members, two appointed by the Governor, two appointed by the President Pro Tempore of the Senate, and two appointed by the Speaker of the House of Representatives, two appointed by the chair, and the State Controller ex officio. The Governor shall designate a chair from among the membership.

(a1) Of the initial appointments, one person each appointed by the Governor, the president Pro Tempore of the Senate, the Speaker of the House of Representatives and the chair shall serve a term of one year beginning October 1, 2007, and one person appointed by each shall serve a term of two years beginning October 1, 2007. All succeeding appointments shall be for terms of two years. Members shall not serve for more than two successive terms.

(a2) Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur.

(a3) The members appointed by the Governor shall be heads of State agencies or managers whose primary responsibilities do not include information technology.

(a4) The members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be persons with experience in the deployment, use, maintenance, and replacement of information technology. Of the members appointed by the President Pro Tempore of the Senate, one member shall be from local government, and one member shall be from the private sector. Of the members appointed by the Speaker of the House of Representatives, one member shall be from primary or secondary education, and one member shall be from the private sector.

(a5) The two members appointed by the chair shall be chief information officers of State agencies or managers whose primary responsibilities include information technology.

(b) Conflicts of Interest. — Members of the Advisory Board shall not serve on the board of directors or other governing body of, be employed by, or receive any remuneration of any kind from any information systems, computer hardware, computer software, or telecommunications vendor of goods and services to the State of North Carolina.

No member of the Advisory Board shall vote on an action affecting solely that person's State agency.

(c) Powers and Duties. — The Board shall:

(1) Review and comment on the State Information Technology Plan developed by the State Chief Information Officer under G.S. 147-33.72B(b).
(2) Review and comment on the information technology plans of the executive agencies prepared under G.S. 147-33.72B(c).
(3) Review and comment on the statewide technology initiatives developed by the State Chief Information Officer.
(4) Advise the State Chief Information Officer on the development of statewide information technology programs and services.

(d) Meetings. — The Information Technology Advisory Board shall adopt bylaws containing rules governing its meeting procedures. The Board shall meet at least quarterly. The Office of Information Technology Services shall provide administrative staff and facilities for Advisory Board meetings. The expenses of the Board shall be paid from receipts available to the Office of Information Technology Services as requested by the Board. Advisory Board members shall receive per diem, subsistence, and travel allowances as follows:

(1) Commission members who are officials or employees of the State or of local government agencies, at the rate established in G.S. 138-6; and
(2) All other commission members, at the rate established in G.S. 138-5. (2004-129, s. 2; 2007-189, s. 4.)

§ 147-33.72H. Information Technology Fund.

There is established a special revenue fund to be known as the Information Technology Fund, which may receive transfers or other credits as authorized by the General Assembly. Money may be appropriated from the Information Technology Fund to meet statewide requirements, including planning, project management, security, electronic mail, State portal operations, and the administration of systemwide procurement procedures. Expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund shall be made by the State CIO in consultation with the Information Technology Advisory Board. By October 1 of each year, the State CIO shall submit to the Joint Legislative Oversight Committee on Information Technology a report on all expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund for the preceding fiscal year. Interest earnings on the Information Technology Fund balance shall be credited to the Information Technology Fund. (2004-129, s. 2.)

Part 1A. Organization of Office of Information Technology Services.

§ 147-33.75. Office located in the Office of the Governor.

(a) The Office of Information Technology Services ("Office") shall be housed in the Office of the Governor.

(b) The Governor has the authority, powers, and duties over the Office that are assigned to the Governor and the head of department pursuant to Article 1 of Chapter 143B of the General Statutes, G.S. 143A-6(b), and the Constitution and other laws of this State. (1999-434, s. 9; 2000-174, s. 2; 2004-129, ss. 1, 9.)

Editor's Note. — Session Laws 2000-174, s. 1 repealed Part 16 of Article 10 of Chapter 143B, G.S. 143B-472.40 et seq. Session Laws 2000-174, s. 1(b) enacted a new Article 3D of Chapter 147. Historical citations to the sections in the former Part 16 of Article 10 of Chapter 143B have been added to the corresponding sections in new Article 3D.

The sections in Article 3D have been numbered at the direction of the Revisor of Statutes, the section numbers in Session Laws 2000-174, s. 1(b) having been G.S. 147-33.75 to 147-33.99.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 15.4(c), provides: "The Office of State Personnel, in conjunction with the Office of Information Technology Services, shall devise a mechanism for identifying, by specific industry-relevant categories, State information technology positions across all relevant classifications in State government employment. The Office of State Personnel shall identify the results of market analyses comparing State information technology workers with private sector information technology workers. By January 1, 2002, the Office of State Personnel shall report on the results of the market analyses and its identification of State information technology personnel to the Joint Select Committee on Information Technology and to the Chairs of the House of Representatives Appropriations Subcommittee on Information Technology and the Senate Appropriations Committee on Information Technology."

Session Laws 2001-424, s. 15.4(d), provides: "The Office of Information Technology Services shall accurately identify and present State agencies with detailed information on the cost of the ITS services for telecommunications data and video services. The bill should clearly indicate the usage and the rate for the service."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2004-129, s. 1, effective July 1, 2004, provides that Part 1 of Article 3D of Chapter 147 of the General Statutes is redesignated as Part 1A.

Session Laws 2004-129, s. 6, provides: "All (i) records, (ii) personnel positions and salaries, (iii) property, and (iv) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Information Resources Management Commission are transferred to and vested in the Office of Information Technology Services authorized by Article 3D of Chapter 147 of the General Statutes."

Session Laws 2004-129, s. 8, effective July 1, 2004, substituted "Organization of Office of Information Technology Services" for "Transfer and Organization of Office" as the heading for Part 1A of Article 3D of Chapter 147.

§ 147-33.76. Qualification, appointment, and duties of the State Chief Information Officer.

(a) The Office of Information Technology Services shall be managed and administered by the State Chief Information Officer ("State CIO"). The State Chief Information Officer shall be qualified by education and experience for the office and shall be appointed by and serve at the pleasure of the Governor.

(b) Repealed by Session Laws 2004-129, s. 3.

(b1) The State CIO shall be responsible for developing and administering a comprehensive long-range plan to ensure the proper management of the

State's information technology resources. The State CIO shall set technical standards for information technology, review and approve major information technology projects, review and approve State agency information technology budget requests, establish information technology security standards, provide for the procurement of information technology resources, and develop a schedule for the replacement or modification of major systems. The State CIO is authorized to adopt rules to implement this Article.

(c) The salary of the State Chief Information Officer shall be set by the General Assembly in the Current Operations Appropriations Act. The State Chief Information Officer shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act. (1999-434, s. 10; 2000-174, s. 2; 2004-129, ss. 1, 3.)

Editor's Note. — Session Laws 2004-129, s. 1, effective July 1, 2004, redesignated G.S. 147-33.75 through 147-33.79 as Part 1A of Article 3D of Chapter 147.

Session Laws 2009-451, s. 6.8(a)-(h), as amended by Session Laws 2009-575, s. 3C, provides: "(a) Findings. — The General Assembly finds that there is a critical need for consolidating the investments made in geographic information systems and developing common infrastructures in order for the State to reap all the potential benefits of geographic information systems at the lowest cost.

"(b) Implementation Plan. — The recommendations outlined in the 2008 legislative report prepared by the State Chief Information Officer, the Geographic Information Coordinating Council, and the Office of State Budget and Management, made pursuant to Section 6.13 of S.L. 2008-107, entitled 'State Geographic Information Consolidation Implementation Plan,' shall be implemented in four distinct work streams, as follows:

"(1) Transferring the Center for Geographic Information and Analysis to the Office of the State Chief Information Officer and establishing appropriated funding for staff activities supporting the Geographic Information Coordinating Council, statewide standards, and the coordination of data acquisition.

"(2) Reestablishing the professional services component and refocusing that effort toward current needs of the community while reducing those overhead costs.

"(3) Revitalizing the NC OneMap project by leveraging new technology in the market to reduce costs while increasing utility of the service.

"(c) Transfers of Agencies, Powers, Duties. — The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the State agencies and subunits listed in this subsection are transferred from those entities to the State Chief Information Officer, Office of Information Technology Services, with all of the elements of a Type II transfer as defined by G.S. 143A-6:

"(1) The North Carolina Geographic Information Coordinating Council.

"(2) The Center for Geographic Information and Analysis.

"The Center for Geographic Information and Analysis shall remain in its current office space unless the State Chief Information Officer determines otherwise.

"(d) Center for Geographic Information and Analysis Coordination. — The State Chief Information Officer shall coordinate a professional services component for geographic information systems coordination with the Center for Geographic Information and Analysis that is refocused toward current community needs.

"(e) North Carolina Geographic Information Coordinating Council Coordination. — The State Chief Information Officer, in cooperation with the North Carolina Geographic Information Coordinating Council, shall coordinate the refocusing of the NC OneMap geographic information systems infrastructure project to leverage new technology, to increase the utility of geographic information systems services, and to reduce geographic information systems data layer costs through singly managed contracts.

"(f) Information Technology Fund. — The Information Technology Fund shall be used for the purpose of acquiring and managing, at the lowest cost, data layers useful to multiple State and local organizations, according to the priorities set by the North Carolina Geographic Information Coordinating Council. The Information Technology Fund may receive private grants and may include State, federal, local, and matching funds. Any funding received for GIS may be used only for that purpose.

"(g) Geographic Information Systems Funding. — Of the funds appropriated in this act to the Information Technology Fund, the sum of seven hundred forty thousand dollars ($740,000) for the 2009-2010 fiscal year and the sum of seven hundred forty thousand dollars ($740,000) for the 2010-2011 fiscal year shall be used to effectuate the transfer of the Center for Geographic Information and Analysis, including the cost of moving personnel positions, as provided by this act.

"(h) ESRI License Funding. — The State Chief Information Officer (i) shall use up to the sum of six hundred thousand dollars ($600,000) from funding appropriated to the Information Technology Fund during the 2009-2010 fiscal year to support ESRI licenses for State agencies and (ii) may use anticipated carryforward from fiscal year 2009-2010 to provide the funding for those licensing fees. The State Chief Information Officer shall not charge subscription fees to fund ESRI licenses."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 147-33.77. Office of Information Technology Services; organization and operation.

(a) The State Chief Information Officer may appoint a Chief Deputy Information Officer. The salary of the Chief Deputy Information Officer shall be set by the State Chief Information Officer. The State Chief Information Officer may appoint all employees, including legal counsel, necessary to carry out the powers and duties of the office. These employees shall be subject to the State Personnel Act.

(b) All employees of the office shall be under the supervision, direction, and control of the State Chief Information Officer. Except as otherwise provided by this Article, the State Chief Information Officer may assign any function vested in the State Chief Information Officer or the Office of Information Technology Services to any subordinate officer or employee of the office.

(c) The State Chief Information Officer may, subject to the provisions of G.S. 147-64.7(b)(2), obtain the services of independent public accountants, qualified management consultants, and other professional persons or experts to carry out powers and duties of the office.

(d) The State Chief Information Officer shall have legal custody of all books, papers, documents, and other records of the office.

(e) The State Chief Information Officer shall be responsible for the preparation of and the presentation of the office budget request, including all funds requested and all receipts expected for all elements of the budget.

(f) The State Chief Information Officer may adopt regulations for the administration of the office, the conduct of employees of the office, the distribution and performance of business, the performance of the functions assigned to the State Chief Information Officer and the Office of Information Technology Services, and the custody, use, and preservation of the records, documents, and property pertaining to the business of the office.

(g) The State Chief Information Officer may require background investigations of any employee or prospective employee, including a criminal history record check, which may include a search of the State and National Repositories of Criminal Histories based on the person's fingerprints. A criminal history record check shall be conducted by the State Bureau of Investigation upon receiving fingerprints and other information provided by the employee or prospective employee. If the employee or prospective employee has been a resident of the State for less than five years, the background report shall include a review of criminal information from both the State and National Repositories of Criminal Histories. The criminal background report shall be provided to the State Chief Information Officer and is not a public record under Chapter 132 of the General Statutes. (1989, c. 239, s. 5; c. 770, s. 60; 1989 (Reg. Sess., 1990), c. 1024, s. 36; 1991 (Reg. Sess., 1992), c. 900, s. 14(g); c. 1030, s. 51.14; ; 1997-148, ss. 5, 6; 1999-347, s. 2; 1999-434, s. 27; 2000-174, s. 2; 2004-129, s. 1; 2007-155, s. 1; 2007-189, ss. 1, 5.1.)

Editor's Note. — Session Laws 2004-129, s. 1, effective July 1, 2004, redesignated G.S. 147-33.75 through 147-33.79 as Part 1A of Article 3D of Chapter 147.

Session Laws 2007-189, s. 1, which made identical changes to those made by Session Laws 2007-155, s. 1, was repealed, pursuant to the terms of Session Laws 2007-189, s. 5.1, upon Senate Bill 878, 2007 Regular Session [S.L. 2007-155] becoming law.

§§ 147-33.78, 147-33.79: Repealed by Session Laws 2004-129, ss. 4, 5.

§§ 147-33.73, 147-33.74: Reserved for future codification purposes.

Part 2. General Powers and Duties.

§ 147-33.80. Exempt agencies.

Except as otherwise specifically provided by law, this Article shall not apply to the General Assembly, the Judicial Department, or The University of North Carolina and its constituent institutions. These agencies may elect to participate in the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.81. Definitions.

As used in this Article:

(1) "Distributed information technology assets" means hardware, software, and communications equipment not classified as traditional mainframe-based items, including personal computers, local area networks (LANs), servers, mobile computers, peripheral equipment, and other related hardware and software items.

(2) "Information technology" means electronic data processing goods and services, telecommunications goods and services, security goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes.

(3) "Information technology enterprise management" means a method for managing distributed information technology assets from acquisition through retirement so that total ownership costs (purchase, operation, maintenance, disposal, etc.) are minimized while maximum benefits are realized.

(4) "Information technology portfolio management" means a business-based approach for analyzing and ranking potential technology investments and selecting those investments that are the most cost-effective in supporting the strategic business and program objectives of the agency.

(5) "Office" means the Office of Information Technology Services as established in this Article.

(6) "State agency" means any department, institution, commission, committee, board, division, bureau, office, officer, or official of the State. The term does not include any State entity excluded from coverage under this Article by G.S. 147-33.80, unless otherwise expressly provided. (1999-434, s. 9; 2000-174, s. 2; 2001-424, s. 15.2(a).)

§ 147-33.82. Functions of the Office of Information Technology Services.

(a) In addition to any other functions required by this Article, the Office of Information Technology Services shall:

(1) Procure all information technology for State agencies, as provided in Part 4 of this Article.
(2) Submit for approval of the Office of State Budget and Management all rates and fees for common, shared State government-wide technology services provided by the Office on a fee-for-service basis and not covered by another fund.
(3) Conduct an annual assessment of State agencies for compliance with statewide policies for information technology and submit for review of the Information Technology Advisory Board recommended statewide policies for information technology.
(4) Develop standards, procedures, and processes to implement policies approved by the State CIO.
(5) Review State agency management of State information technology resources for compliance with this Article.
(6) Review State agency implementation of statewide information technology management efforts of State government for compliance with this Article.
(7) Repealed by Session Laws 2004-129, s. 13, effective July 1, 2004.
(8) Develop a project management, quality assurance, and architectural review process for projects that require review and approval under G.S. 147-33.72C(a).
(9) Repealed by Session Laws 2004-129, s. 13, effective July 1, 2004.

(b) Notwithstanding any other provision of law, local governmental entities may use the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office. For purposes of this subsection, "local governmental entities" includes local school administrative units, as defined in G.S. 115C-5, and community colleges. Local governmental entities are not required to comply with otherwise applicable competitive bidding requirements when using contracts established by the Office. Any other State entities may also use the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office.

(c) Recodified as G.S. 147-33.110 by Session Laws 2004-129, s. 12, effective July 1, 2004.

(d) Recodified as G.S. 147-33.111 by Session Laws 2004-129, s. 12, effective July 1, 2004.

(e) Repealed by Session Laws 2004-129, s. 11, effective July 1, 2004.

(e1) Recodified as G.S. 147-33.112 by Session Laws 2004-129, s. 12, effective July 1, 2004.

(f) Recodified as G.S. 147-33.113 by Session Laws 2004-129, s. 12, effective July 1, 2004. (1999-434, s. 10; 2000-174, s. 2; 2001-424, s. 15.2(b); 2002-126, s. 27.2(a); 2003-153, ss. 1(a), 1(b); 2004-129, ss. 10, 11, 12, 13.)

Editor's Note. — Session Laws 2009-451, s. 6.13(a)-(d), as amended by Session Laws 2009-575, s. 3A, provides: "(a) The State Chief Information Officer shall negotiate and coordinate with MCNC to identify efficiencies that might be achieved through increased cooperation and elimination of duplicative efforts in management of the State's network infrastructure operated by the Office of Information Technology Services and by the North Carolina Research and Education Network operated by MCNC. Potential efficiencies include, but are not limited to, shared infrastructure, personnel, contracted services, and support.

"(b) Based on guidance provided by the Program Evaluation Division and the Fiscal Research Division, the Office of Information Technology Services and the Office of State Budget and Management, in conjunction with MCNC, shall conduct a study to determine the feasibility of coordinating the operation of the North Carolina Research and Education Network and the State network infrastructure. The feasibility study shall define the capabilities and limitations of the Office of Information Technology Services and MCNC and document services currently provided by the Office of Information Technology Services and MCNC. Further, the feasibility study shall identify:

"(1) Current and potential State agency network requirements.

"(2) The organization currently supporting each network requirement.

"(3) Requirements that are currently unsupported by either organization.

"(4) Costs associated with each requirement.

"(5) Potential cost savings resulting from network integration.

"(6) Policy and operational issues associated with the coordination.

"The study shall be reviewed by the Program Evaluation Division and the Fiscal Research Division, both of which shall verify the identified efficiencies and cost savings. The Office of Information Technology Services and MCNC shall complete the feasibility study and present it to the Joint Legislative Oversight Committee on Information Technology by January 1, 2010.

"(c) Following completion of the feasibility study by the Office of Information and Technology Services and the Office of State Budget and Management, and if the Program Evaluation Division and the Fiscal Research Division can verify that the efficiencies and savings identified in the study are valid, accurate, and substantial enough to justify increased coordination, then the Office of Information Technology Services and MCNC shall develop a plan to coordinate their operations. The coordination plan shall include at least the following:

"(1) Definition of requirements to achieve statewide integration.

"(2) Detailed information on the allocation of responsibility for each requirement and component.

"(3) An estimate of the associated costs with each requirement or component, including what the costs to each agency would be without coordination.

"(4) Priorities for integration.

"(5) A schedule for implementation.

"(6) Detailed cost information for the development and integration of a single network.

"(7) A governance structure for management and oversight of the network.

"(8) A means for resolution of any issues identified during the feasibility study.

"The coordination plan shall be completed by May 1, 2010, and shall be presented to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology.

"(d) Prior to implementation of the plan, the Office of Information Technology Services and MCNC shall complete a memorandum of agreement that specifies their respective roles and responsibilities and defines payment schedules. By January 1 each year, the Office of State Budget and Management shall report to the Joint Legislative Oversight Committee on Information Technology regarding the status of the coordination plan and the cost savings realized during the previous fiscal year."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 147-33.83. Information resources centers and services.

(a) With respect to all executive departments and agencies of State government, except the Department of Justice if they do not elect at their option to participate, the Office of Information Technology Services shall have all of the following powers and duties:

(1) To establish and operate information resource centers and services to serve two or more departments on a cost-sharing basis, if the State CIO, after consultation with the Office of State Budget and Management, decides it is advisable from the standpoint of efficiency and economy to establish these centers and services.

(2) With the approval of the Office of State Budget and Management, to charge each department for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services.

(3) To require any department served to transfer to the Office ownership, custody, or control of information processing equipment, supplies, and positions required by the shared centers and services.

(4) To adopt reasonable rules for the efficient and economical management and operation of the shared centers, services, and the integrated State telecommunications network.

(5) To adopt plans, policies, procedures, and rules for the acquisition, management, and use of information technology resources in the departments affected by this section to facilitate more efficient and economic use of information technology in these departments.

(6) To develop and promote training programs to efficiently implement, use, and manage information technology resources.

(7) To provide cities, counties, and other local governmental units with access to the Office of Information Technology Services, information resource centers and services as authorized in this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information resource center or network established under this section until safeguards for the data's security satisfactory to the department head and the State Chief Information Officer have been designed and installed and are fully operational. Nothing in this section may be construed to prescribe what programs to satisfy a department's objectives are to be undertaken, nor to remove from the control and administration of the departments the responsibility for program efforts, regardless whether these efforts are specifically required by statute or are administered under the general program authority and responsibility of the department. This section does not affect the provisions of G.S. 147-64.6, 147-64.7, or 147-33.91.

(c) Notwithstanding any other provision of law, the Office of Information Technology Services shall provide information technology services on a cost-sharing basis to the General Assembly and its agencies as requested by the Legislative Services Commission. (1989, c. 239, s. 5; c. 770, s. 60; 1989 (Reg. Sess., 1990), c. 1024, s. 36; 1991 (Reg. Sess., 1992), c. 900, s. 14(g); c. 1030, s. 51.14; 1997-148, ss. 5, 6; 1999-347, s. 2; 1999-434, s. 27; 2000-174, s. 2; 2004-129, s. 15.)

Editor's Note. — Session Laws 2009-451, s. 6.19, provides for the continuation of efforts to consolidate State government's information technology infrastructure excluding The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly, and provides for reporting requirements.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 147-33.84. Deviations authorized for Department of Revenue; agency requests for deviations.

(a) The Department of Revenue is authorized to deviate from any provision in G.S. 147-33.83(a) that requires departments or agencies to consolidate information processing functions on equipment owned, controlled, or under custody of the Office of Information Technology Services. All deviations by the Department of Revenue pursuant to this section shall be reported in writing within 15 days by the Department of Revenue to the State CIO and shall be consistent with available funding. Any State agency may apply in writing to the State CIO for authority to deviate. If granted, any deviation shall be consistent with available funding and shall be subject to such terms and conditions as may be specified by the State CIO. If the agency's request for deviation is denied by the State CIO, the agency may request a review of the decision pursuant to G.S. 147-33.72D.

(b) The Department of Revenue is authorized to adopt and shall adopt plans, policies, procedures, requirements, and rules for the acquisition, management, and use of information processing equipment, information processing programs, data communications capabilities, and information systems personnel in the Department of Revenue. If the plans, policies, procedures, requirements, rules, or standards adopted by the Department of Revenue deviate from the policies, procedures, or guidelines adopted by the Office of Information Technology Services, those deviations shall be allowed and shall be reported in writing within 15 days by the Department of Revenue to the State CIO. The Department of Revenue and the Office of Information Technology Services shall develop data communications capabilities between the two computer centers utilizing the North Carolina Integrated Network, subject to a security review by the Secretary of Revenue.

(c) The Department of Revenue shall prepare a plan to allow for substantial recovery and operation of major, critical computer applications. The plan shall include the names of the computer programs, databases, and data communications capabilities, identify the maximum amount of outage that can occur prior to the initiation of the plan and resumption of operation. The plan shall be consistent with commonly accepted practices for disaster recovery in the information processing industry. The plan shall be tested as soon as practical, but not later than six months, after the establishment of the Department of Revenue information processing capability.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, the Department of Revenue shall review and evaluate any deviations and shall, in consultation with the Office of Information Technology Services, adopt a plan to phase out any deviations that are not determined to be necessary in carrying out functions and responsibilities unique to the Department. The plan adopted by the Department shall include a strategy to coordinate its general information processing functions with the Office of Information Technology Services in the manner prescribed by G.S. 147-33.83(a) and provide for its compliance with policies, procedures, and guidelines adopted by the Office of Information Technology Services. The Department of Revenue shall submit its plan to the Office of State Budget and Management by January 15, 2005. (1989, c. 239, s. 5; c. 770, s. 60; 1989 (Reg. Sess., 1990), c. 1024, s. 36; 1991 (Reg. Sess., 1992), c. 900, s. 14(g); c. 1030, s. 51.14; 1997-148, ss. 5, 6; 1999-347, s. 2; 1999-434, s. 27; 2000-174, s. 2; 2004-129, s. 16.)

§§ **147-33.85, 147-33.86:** Repealed by Session Laws 2004-129, ss. 17, 18, effective July 1, 2004.

§ 147-33.87. Financial reporting and accountability for information technology investments and expenditures.

The Office of Information Technology Services, the Office of State Budget and Management, and the Office of the State Controller shall jointly develop a system for budgeting and accounting of expenditures for information technology operations, services, projects, infrastructure, and assets. The system shall include hardware, software, personnel, training, contractual services, and other items relevant to information technology, and the sources of funding for each. Annual reports regarding information technology shall be coordinated by the Office with the Office of State Budget and Management and the Office of the State Controller, and submitted to the Governor and the General Assembly on or before October 1 of each year. (1999-434, s. 10; 2000-140, s. 93.1(i); 2000-174, s. 2; 2001-424, s. 12.2(b); 2004-129, s. 19.)

§ 147-33.88. Information technology reports.

(a) The Office shall develop an annual budget for review and approval by the Office of State Budget and Management prior to April 1 of each year.

(b) The Office shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on the Office's Internal Service Fund on a quarterly basis, no later than the first day of the second month following the end of the quarter. The report shall include current cash balances, line-item detail on expenditures from the previous quarter, and anticipated expenditures and revenues. The Office shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on expenditures for the upcoming quarter, projected year-end balance, and the status report on personnel position changes including new positions created and existing positions eliminated. The Office spending reports shall comply with the State Accounting System object codes. (1999-434, s. 10; 2000-174, s. 2; 2004-129, s. 20.)

Editor's Note. — Session Laws 2004-129, ss. 47(a) and (b) provide: "(a) Each State agency, with the exception of The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly shall conduct a thorough, agencywide examination and analysis of its Information Technology (IT) infrastructure, including IT expenditures and management functions. The purpose of the examination is to enable the General Assembly, the State CIO, the Office of State Budget and Management, and the State Controller to readily determine the amount of State funds being expended annually on each and all IT functions. As part of this examination, each agency shall review IT contracts with outside vendors, including the adequacy of contract management, and shall consider the implementation of performance measures in the development of future IT contracts. Each agency shall also identify IT functions that could be performed more economically through statewide approach across all agencies. Each agency shall report its plan in a format developed and approved by the State CIO and the Office of State Budget and Management. Reports shall be submitted to the Office of State Budget and Management and the State CIO on or before March 1, 2005."

"(b) The Office of State Budget and Management, in conjunction with the State CIO, the Information Technology Advisory Board, and the State Controller, shall develop a plan to consolidate information technology infrastructure, staffing, and expenditures where a statewide approach would be more economical. The plan shall not include The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly. The plan shall consider agency-specific program needs. The plan shall include specific recommendations to convert contractor FTE to State positions for recurring activities where the contractor positions have been filled for 12 months, beginning July 1, 2003. In developing the recommendations for converting contractor positions, the OSBM shall consider the nature of the work being performed by the contractors, the level of technical expertise required for the work, and whether the use of State positions would be more economical. The plan also shall identify agencies that lack the budgetary and technical resources to operate modern, secure information technology systems, and propose a method of consolidating those information technology systems under a centralized authority, with the approval of the agency. The OSBM shall use reports compiled by each State agency, as required by subsection (a) of this section, in the development of the plan. The office shall report the plan to the Joint Legislative Commission on Governmental Operations on or before January 1, 2006."

Session Laws 2007-323, s. 6.11, provides: "(a) Notwithstanding G.S. 147-33.88, the Office of Information Technology Services (ITS) shall develop an annual budget for review and approval by the Office of State Budget and Management in accordance with the schedule prescribed by the Director. The approved ITS budget shall be included in the Governor's budget recommendations to the General Assembly.

"(b) The Office of State Budget and Management shall ensure that State agencies have an opportunity to adjust their budgets based on any rate changes proposed by the Office of Information Technology Services."

Session Laws 2007-323, s. 1.2, provides:

"This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 6.7(a), provides: "Office of Information Technology Services Budget. — Notwithstanding G.S. 147-33.88, the Office of Information Technology Services shall develop an annual budget for review and approval by the Office of State Budget and Management in accordance with a schedule prescribed by the Director of the Office of State Budget and Management. The approved Office of Information Technology Services budget shall be included in the Governor's budget recommendations to the General Assembly.

"The Office of State Budget and Management shall ensure that State agencies have an opportunity to adjust their budgets based on any rate changes proposed by the Office of Information Technology Services."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 147-33.89. Business continuity planning.

(a) Each State agency shall develop and continually review and update as necessary a business and disaster recovery plan with respect to information technology. Each agency shall establish a disaster recovery planning team to develop the disaster recovery plan and to administer implementation of the plan. In developing the plan, the disaster recovery planning team shall do all of the following:

(1) Consider the organizational, managerial, and technical environments in which the disaster recovery plan must be implemented.
(2) Assess the types and likely parameters of disasters most likely to occur and the resultant impacts on the agency's ability to perform its mission.
(3) List protective measures to be implemented in anticipation of a natural or man-made disaster.

(b) Each State agency shall submit its disaster recovery plan on an annual basis to the State Chief Information Officer. (2003-153, s. 2; 2004-129, s. 21.)

§ 147-33.90. Analysis of State agency legacy systems.

(a) The Office of Information Technology Services shall analyze the State's legacy information technology systems and develop a plan to ascertain the needs, costs, and time frame required for State agencies to progress to more modern information technology systems.

(b) In conducting the legacy system assessment phase of the analysis, the Office shall:

(1) Examine the hierarchical structure and interrelated relationships within and between State agency legacy systems.
(2) Catalog and analyze the portfolio of legacy applications in use in State agencies and consider the extent to which new applications could be used concurrently with, or should replace, legacy systems.
(3) Consider issues related to migration from legacy environments to Internet-based and client/server environments, and related to the availability of programmers and other information technology professionals with the skills to migrate legacy applications to other environments.

(4) Study any other issue relative to the assessment of legacy information technology systems in State agencies.

(c) Upon completion of the legacy system assessment phase of the analysis, the Office shall ascertain the needs, costs, and time frame required to modernize State agency information technology. The Office shall complete this phase of the assessment by January 31, 2005, and shall report its findings and recommendations to the 2005 General Assembly. The findings and recommendations shall include a cost estimate and time line for modernization of legacy information technology systems in State agencies. The Office shall submit an ongoing, updated report on modernization needs, costs, and time lines to the General Assembly on the opening day of each biennial session. (2003-172, s. 1; 2004-129, s. 22.)

Editor's Note. — This section was enacted as G.S. 147-33.89 and was redesignated as G.S. 147-33.90 at the direction of the Revisor of Statutes.

Part 3. Telecommunications Services.

§ 147-33.91. Telecommunications services; duties of State Chief Information Officer with respect to State agencies.

(a) With respect to State agencies, the State Chief Information Officer shall exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of those agencies. In discharging that responsibility, the State Chief Information Officer, in cooperation with affected State agency heads, may:

(1) Provide for the establishment, management, and operation, through either State ownership, contract, or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:
  a. Central telephone systems and telephone networks.
  b. Repealed by Session Laws 2004-129, s. 23, effective July 1, 2004.
  c. Repealed by Session Laws 2004-129, s. 23, effective July 1, 2004.
  d. Satellite services.
  e. Closed-circuit TV systems.
  f. Two-way radio systems.
  g. Microwave systems.
  h. Related systems based on telecommunication technologies.
  i. The "State Network", managed by the Office, which means any connectivity designed for the purpose of providing Internet Protocol transport of information to any building.

(2) Coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in subdivision (1) of this subsection.

(3) Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

(4) Perform traffic analysis and engineering for all telecommunications services and systems listed in subdivision (1) of this subsection.

(5) Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.

(6) Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

(7) Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

(8) Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.

(9) Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including, but not limited to, the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

(10) Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

(11) Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the Office of Information Technology Services training to users within State agencies in telecommunications technology and systems.

(12) Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems, and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

(13) Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this section.

(b) The provisions of this section shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1987, c. 738, s. 59(a)(2); 1989, c. 239, s. 4; 1989 (Reg. Sess., 1990), c. 1024, s. 37; 1991, c. 542, s. 14; 1993, c. 512, s. 2; 1993 (Reg. Sess., 1994), c. 777, s. 1(a); 1997-148, ss. 3, 6; 1999-347, s. 4; 1999-434, s. 29; 2000-174, s. 2; 2004-129, s. 23.)

Editor's Note. — Session Laws 2004-129, ss. 47(a) and (b) provide: "(a) Each State agency, with the exception of The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly shall conduct a thorough, agencywide examination and analysis of its Information Technology (IT) infrastructure, including IT expenditures and management functions. The purpose of the examination is to enable the General Assembly, the State CIO, the Office of State Budget and Management, and the State Controller to readily determine the amount of State funds being expended annually on each and all IT functions. As part of this examination, each agency shall review IT contracts with outside vendors, including the adequacy of contract management, and shall consider the implementation of performance measures in the development of future IT contracts. Each agency shall also identify IT functions that could be performed more economically through statewide approach across all agencies. Each agency shall report its plan in a format developed and approved by the State CIO and the Office of State Budget and Management. Reports shall be submitted to the Office of State Budget and Management and the State CIO on or before March 1, 2005."

"(b) The Office of State Budget and Management, in conjunction with the State CIO, the Information Technology Advisory Board, and the State Controller, shall develop a plan to consolidate information technology infrastructure, staffing, and expenditures where a statewide approach would be more economical. The plan shall not include The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly. The plan shall consider agency-specific program needs. The plan shall include specific recommendations to convert contractor FTE to State positions for recurring activities where the contractor positions have been filled for 12 months, beginning July 1, 2003. In developing the recommendations for converting contractor positions, the OSBM shall consider the nature of the work being performed by the contractors, the level of technical expertise required for the work, and whether the use of State positions would be more economical. The plan also shall identify agencies that lack the budgetary and technical resources to operate modern, secure information technology systems, and propose a method of consolidating those information technology systems under a centralized authority, with the approval of the agency. The OSBM shall use reports compiled by each State agency, as required by subsection (a) of this section, in the development of the plan. The office shall report the plan to the Joint Legislative Commission on Governmental Operations on or before January 1, 2006."

Session Laws 2009-451, s. 6.19, provides for the continuation of efforts to consolidate State government's information technology infrastructure excluding The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly, and provides for reporting requirements.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 147-33.92. Telecommunications services for local governmental entities and other entities.

(a) The State Chief Information Officer shall provide cities, counties, and other local governmental entities with access to a central telecommunications system or service established under G.S. 147-33.91 for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) The State Chief Information Officer shall establish switched broadband telecommunications services and permit, in addition to State agencies, cities, counties, and other local government entities, the following organizations and entities to share on a not-for-profit basis:

(1) Nonprofit educational institutions.
(2) MCNC.
(3) Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina.
(4) Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina.
(5) Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth in this subsection shall not cause the State, the Office of Information Technology Services, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23) a.6. Nor shall the State, the Office of Information Technology Services, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the Communications Act of 1934, 47 U.S.C. § 153(10). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth in subdivisions (1) through (5) of this subsection shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1987, c. 738, s. 59(a)(2); 1989, c. 239, s. 4; 1989 (Reg. Sess., 1990), c. 1024, s. 37; 1991, c. 542, s. 14; 1993, c. 512, s. 2; 1993 (Reg. Sess., 1994), c. 777, s. 1(a); 1997-148, ss. 3, 6; 1999-347, s. 4; 1999-434, s. 29; 2000-174, s. 2; 2004-203, s. 37(b).)

§ 147-33.93. Fees; dispute resolution panel.

In addition to the powers granted pursuant to Article 6B of this Chapter or by any other provision of law, the Office of Information Technology Services may go before a panel consisting of the State Treasurer, the State Controller, and the State Budget Officer, or their designees, to resolve disputes concerning services, fees, and charges incurred by State government agencies receiving information technology services from the Office. The State Treasurer shall adopt rules for the dispute resolution process. The decisions of the panel shall be final in the settlement of all fee disputes that come before it. (2001-142, s. 1; 2009-136, s. 1.)

Effect of Amendments. — Session Laws 2009-136, s. 1, effective June 19, 2009, substituted "State Treasurer" for "State Auditor" twice, and deleted "pursuant to G.S. 147-64.9" following "process" at the end of the second sentence.

§ **147-33.94:** Reserved for future codification purposes.

Part 4. Procurement of Information Technology.

§ 147-33.95. Procurement of information technology.

(a) Notwithstanding any other provision of law, the Office of Information Technology Services shall procure all information technology for State agencies. The Office shall integrate technological review, cost analysis, and procurement for all information technology needs of those State agencies in order to make procurement and implementation of technology more responsive, efficient, and cost-effective. All contract information shall be made a matter of public record after the award of contract. Trade secrets, test data, similar proprietary information, and security information protected under G.S. 132-6.1(c) may remain confidential.

(b) The Office shall have the authority and responsibility, subject to the provisions of this Part, to:

(1) Purchase or contract for all information technology in the State government, or any of its departments, institutions, or agencies covered by this Part. The Office may authorize any State agency covered by this Part to purchase or contract for information technology. The Office or a State agency may use any authorized means, including negotiations, reverse auctions, and the solicitation, offer, and acceptance of electronic bids. G.S. 143-135.9 shall apply to these procedures.

(2) Establish processes, specifications, and standards that shall apply to all information technology to be purchased, licensed, or leased in the State government or any of its departments, institutions, or agencies covered by this Part.

(2a) Establish procedures to permit State agencies and local government agencies to use the General Services Administration (GSA) Cooperative Purchasing Program to purchase information technology (i) awarded under General Services Administration Supply Schedule 70 Information Technology and (ii) from contracts under the GSA's Consolidated Schedule containing information technology special item numbers.

(3) Comply with the State government-wide technical architecture, as required by the State CIO.

(c) For purposes of this section, "reverse auction" means a real-time purchasing process in which vendors compete to provide goods or services at the lowest selling price in an open and interactive electronic environment. The vendor's price may be revealed during the reverse auction. The Office may contract with a third-party vendor to conduct the reverse auction.

(d) For purposes of this section, "electronic bidding" means the electronic solicitation and receipt of offers to contract. Offers may be accepted and contracts may be entered by use of electronic bidding.

(e) The Office may use the electronic procurement system established by G.S. 143-48.3 to conduct reverse auctions and electronic bidding. All requirements relating to formal and competitive bids, including advertisement, seal, and signature, are satisfied when a procurement is conducted or a contract is entered in compliance with the reverse auction or electronic bidding requirements established by the Office.

(f) The Office shall adopt rules consistent with this section. (1999-434, s. 10; 2000-174, s. 2; 2002-107, s. 4; 2002-159, s. 64(a); 2004-129, s. 24; 2009-451, s. 6.14A(a).)

Cross References. — As to purchase of information technology goods and services, see G.S. 143-129.8.

Editor's Note. — Session Laws 2009-451, s. 6.14A(b), provides: "By October 1, 2009, the Office of Information Technology Services shall report to the Joint Legislative Oversight Committee on Information Technology and Fiscal Research Division on its plan for implementing GSA Schedules for information technology procurement."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 6.14A(a), effective July 1, 2009, added subdivision (b)(2a).

§ 147-33.96. Restriction on State agency contractual authority with regard to information technology; local governments.

(a) All State agencies covered by this Part shall use contracts for information technology acquired by the Office for any information technology required by the State agency that is provided by these contracts. Notwithstanding any other statute, the authority of State agencies to procure or obtain information technology shall be subject to compliance with the provisions of this Part. The Office shall have the authority to exercise the authority of State agencies to procure or obtain information technology as otherwise provided by statute.

(b) Local governmental entities are not required to comply with otherwise applicable competitive bidding requirements when using contracts offered by the Office. (1999-434, s. 10; 2000-174, s. 210-241.)

§ 147-33.97. Information technology procurement policy; reporting requirements.

(a) Policy. — In order to further the policy of the State to encourage and promote the use of small, minority, physically handicapped, and women contractors in State purchasing of goods and services, all State agencies covered by this Part shall cooperate with the Office in efforts to encourage the use of small, minority, physically handicapped, and women contractors in achieving the purpose of this Part, which is to provide for the effective and economical acquisition, management, and disposition of information technology.

(a1) A vendor submitting a bid shall disclose in a statement, provided contemporaneously with the bid, where services will be performed under the contract sought, including any subcontracts and whether any services under that contract, including any subcontracts, are anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States.

(a2) The State Chief Information Officer shall retain the statements required by subsection (a1) of this section regardless of the State entity that awards the contract and shall report annually to the Secretary of Administration on the number of contracts which are anticipated to be performed outside the United States.

(b) Reporting. — Every State agency that makes a direct purchase of information technology using the services of the Office shall report directly to the Department of Administration all information required by G.S. 143-48(b).

(c) The Department of Administration shall collect and compile the data described in this section and report it annually to the Office. (1999-434, s. 10; 2000-174, s. 2; 2006-264, s. 72(a).)

§ 147-33.98. Unauthorized use of public purchase or contract procedures for private benefit prohibited.

(a) It shall be unlawful for any person, by the use of the powers, policies, or procedures described in this Part or established hereunder, to purchase, attempt to purchase, procure, or attempt to procure any property or services for private use or benefit.

(b) This prohibition shall not apply if:

(1) The department, institution, or agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual benefit of such persons and the department, institution, or agency involved, or the public benefit or convenience; and

(2) Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures described in this Part or established thereunder.

(c) Any violation of this section is a Class 1 misdemeanor. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.99. Financial interest of officers in sources of supply; acceptance of bribes.

Neither the State Chief Information Officer nor the Chief Deputy State Information Officer shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any information technology, nor in any firm, corporation, partnership, or association furnishing any information technology to the State government, or any of its departments, institutions, or agencies, nor shall either of these persons or any other Office employee accept or receive, directly or indirectly, from any person, firm, or corporation to whom any contract may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation, or contract for future reward or compensation. Violation of this section is a Class F felony, and any person found guilty of a violation of this section shall, upon conviction, be removed from State office or employment. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.100. Certification that information technology bid submitted without collusion.

The Office shall require bidders to certify that each bid on information technology contracts overseen by the Office is submitted competitively and without collusion. False certification is a Class I felony. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.101. Board of Awards review.

(a) When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by the State Chief Information Officer, the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.

(b) Prior to submission of any contract for review by the Board of Awards pursuant to this section for any contract for information technology being acquired for the benefit of the Office and not on behalf of any other State agency, the Director of the Budget shall review and approve the procurement to ensure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State government, including established procurement processes, and compliance with the State government-wide technical architecture as established by the State CIO. (1999-434, s. 10; 2000-174, s. 2; 2004-129, s. 25; 2007-484, s. 20.)

§ 147-33.102. Penalty for violations; costs.

Any employee or official of the State who violates this Part shall be liable to the State to repay any amount expended in violation of this Part, together with any court costs. (1999-434, s. 10; 2000-174, s. 2.)

§ 147-33.103. Attorney General contract assistance; rule-making authority.

(a) At the request of the State Chief Information Officer, the Attorney General shall provide legal advice and services necessary to implement this Part.

(b) Repealed by Session Laws 2004-129, s. 26, effective July 1, 2004. (1999-434, s. 10; 2000-174, s. 2; 2004-129, s. 26.)

§ 147-33.104. (Effective July 1, 2010) Purchase by State agencies and governmental entities of certain computer equipment prohibited.

(a) The exemptions set out in G.S. 147-33.80 do not apply to this section.

(b) No State agency, political subdivision of the State, or other public body shall purchase computer equipment or televisions, as defined in G.S. 130A-309.91, from any manufacturer that the Secretary determines is not in compliance with the requirements of G.S. 130A-309.93 or G.S. 130A-309.93A as determined from the list provided by the Department of Environment and Natural Resources pursuant to G.S. 130A-309.95(1). The Secretary shall issue written findings upon a determination of noncompliance. A determination of noncompliance by the Secretary is reviewable under Article 3 of Chapter 150B of the General Statutes.

(c) The Office of Information Technology Services shall make the list available to political subdivisions of the State and other public bodies. A manufacturer that is not in compliance with the requirements of G.S. 130A-309.93 shall not sell or offer for sale computer equipment or televisions to the State, a political subdivision of the State, or other public body. (2007-550, s. 16.5; 2008-198, s. 11.4; 2008-208, ss. 5, 7; 2009-484, s. 16(b); 2009-550, ss. 10(a), (b).)

Editor's Note. — Session Laws 2007-550, s. 16.6(b), as amended by Session Laws 2008-208, s. 7, Session Laws 2008-198, s. 11.4, Session Laws 2009-484, s. 16(a), and Session Laws 2009-550, s. 10(a), made this section effective July 1, 2010.

Laws 2008-198, s. 11.4 provides: "If House Bill 819 becomes law, the prefatory language to Section 7 of that act is amended by deleting 'Section 16' and substituting 'Section 16.6.'" House Bill 819 is Session Laws 2008-208, which became effective August 9, 2008.

Session Laws 2009-484, s. 16(b) and Session Laws 2009-550, s. 10(b), amended Session Laws 2008-208, s. 8, making the amendment to this section by Session Laws 2008-208, s. 5, effective July 1, 2010, rather than January 1, 2011.

Effect of Amendments. — Session Laws 2008-208, s. 5, effective January 1, 2011, in subsection (b), inserted "or televisions," substituted "that the Secretary determines is not" for "determined not to be," inserted "or G.S. 130A-309.93A," and added the last two sentences; and in subsection (c), inserted "or televisions."

§§ 147-33.105 through 147-33.109: Reserved for future codification purposes.

Part 5. Security for Information Technology Services.

§ 147-33.110. Statewide security standards.

The State Chief Information Officer shall establish a statewide set of standards for information technology security to maximize the functionality, security, and interoperability of the State's distributed information technology assets, including communications and encryption technologies. The State CIO shall review and revise the security standards annually. As part of this function, the State Chief Information Officer shall review periodically existing security standards and practices in place among the various State agencies to determine whether those standards and practices meet statewide security and encryption requirements. The State Chief Information Officer may assume the direct responsibility of providing for the information technology security of any State agency that fails to adhere to security standards adopted under this Article. Any actions taken by the State Chief Information Officer under this section shall be reported to the Information Technology Advisory Board at its next scheduled meeting. (2001-424, s. 15.2(b); 2004-129, ss. 12, 14.)

Editor's Note. — This section was originally enacted by Session Laws 2001-424, s. 15.2(b), as G.S. 147-33.82(c). It was recodified as G.S. 147-33.110 by Session Laws 2004-129, s. 12, effective July 1, 2004.

§ 147-33.111. State CIO approval of security standards and security assessments.

(a) Notwithstanding G.S. 143-48.3 or any other provision of law, and except as otherwise provided by this section, all information technology security purchased using State funds, or for use by a State agency or in a State facility, shall be subject to approval by the State Chief Information Officer in accordance with security standards adopted under this Article.

(b) If the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units as defined by G.S. 115C-5, or the North Carolina Community Colleges System develop their own security standards, taking into consideration the mission and functions of that entity, that are comparable to or exceed those set by the State Chief Information Officer under this section, then these entities may elect to be governed by their own respective security standards, and approval of the State Chief Information Officer shall not be required before the purchase of information technology security. The State Chief Information Officer shall consult with the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units, and the North Carolina Community Colleges System in reviewing the security standards adopted by those entities.

(c) Before a State agency may enter into any contract with another party for an assessment of network vulnerability, including network penetration or any similar procedure, the State agency shall notify the State Chief Information Officer and obtain approval of the request. The State Chief Information Officer shall refer the request to the State Auditor for a determination of whether the Auditor's office can perform the assessment and testing. If the State Auditor determines that the Auditor's office can perform the assessment and testing, then the State Chief Information Officer shall authorize the assessment and testing by the Auditor. If the State Auditor determines that the Auditor's office cannot perform the assessment and testing, then with the approval of the State Chief Information Officer and State Auditor, the State agency may enter into a contract with another party for the assessment and testing. If the State agency enters into a contract with another party for assessment and testing, the State agency shall issue public reports on the general results of the reviews. The contractor shall provide the State agency with detailed reports of the security issues identified that shall not be disclosed as provided in G.S. 132-6.1(c). The State agency shall provide the State Chief Information Officer and the State Auditor with copies of the detailed reports that shall not be disclosed as provided in G.S. 132-6.1(c). (2001-424, s. 15.2(b); 2004-129, ss. 10, 12, 14.)

Editor's Note. — This section was originally enacted by Session Laws 2001-424, s. 15.2(b), as G.S. 147-33.82(d). It was recodified as G.S. 147-33.111 by Session Laws 2004-129, s. 12, effective July 1, 2004.

§ 147-33.112. Assessment of agency compliance with security standards.

The State Chief Information Officer shall assess the ability of each agency to comply with the current security enterprise-wide set of standards established pursuant to this section. The assessment shall include, at a minimum, the rate of compliance with the standards in each agency and an assessment of each agency's security organization, network security architecture, and current expenditures for information technology security. The assessment shall also estimate the cost to implement the security measures needed for agencies to fully comply with the standards. Each agency subject to the standards shall submit information required by the State Chief Information Officer for purposes of this assessment. The State Chief Information Officer shall include the information obtained from the assessment in the State Information Technology Plan required under G.S. 147-33.72B. (2003-153, s. 1(a); 2004-129, ss. 12, 14.)

Editor's Note. — This section was originally enacted by Session Laws 2003-153, s. 1(a), as G.S. 147-33.82(e1). It was recodified as G.S. 147-33.112 by Session Laws 2004-129, s. 12, effective July 1, 2004.

§ 147-33.113. State agency cooperation.

(a) The head of each State agency shall cooperate with the State Chief Information Officer in the discharge of his or her duties by:

(1) Providing the full details of the agency's information technology and operational requirements and of all the agency's information technology security incidents within 24 hours of confirmation.

(2) Providing comprehensive information concerning the information technology security employed to protect the agency's information technology.

(3) Forecasting the parameters of the agency's projected future information technology security needs and capabilities.

(4) Designating an agency liaison in the information technology area to coordinate with the State Chief Information Officer. The liaison shall be subject to a criminal background report from the State Repository of Criminal Histories, which shall be provided by the State Bureau of Investigation upon its receiving fingerprints from the liaison. If the liaison has been a resident of this State for less than five years, the background report shall include a review of criminal information from both the State and National Repositories of Criminal Histories. The criminal background report shall be provided to the State Chief Information Officer and the head of the agency. In addition, all personnel in the Office of State Auditor who are responsible for information technology security reviews pursuant to G.S. 147-64.6(c)(18) shall be subject to a criminal background report from the State Repository of Criminal Histories, which shall be provided by the State Bureau of Investigation upon receiving fingerprints from the personnel designated by the State Auditor. For designated personnel who have been residents of this State for less than five years, the background report shall include a review of criminal information from both the State and National Repositories of Criminal Histories. The criminal background reports shall be provided to the State Auditor. Criminal histories provided pursuant to this subdivision are not public records under Chapter 132 of the General Statutes.

(b) The information provided by State agencies to the State Chief Information Officer under this section is protected from public disclosure pursuant to G.S. 132-6.1(c). (2001-424, s. 15.2(b); 2003-153, s. 1(a); 2004-129, ss. 12, 14; 2007-155, s. 2; 2007-189, ss. 2, 5.1.)

Editor's Note. — This section was originally enacted by Session Laws 2001-424, s. 15.2(b), as G.S. 147-33.82(f). It was recodified as G.S. 147-33.113 by Session Laws 2004-129, s. 12, effective July 1, 2004.

Session Laws 2007-189, s. 2, which made identical changes to those made by Session Laws 2007-155, s. 2, was repealed, pursuant to the terms of Session Laws 2007-189, s. 5.1, upon Senate Bill 878, 2007 Regular Session [S.L. 2007-155] becoming law.

Article 4.

Secretary of State.

§ 147-34. Office and office hours.

The Secretary of State shall attend at his office, in the City of Raleigh, between the hours of 10 o'clock A.M. and three o'clock P.M., on every day of the year, Sundays and legal holidays excepted. (1868-9, c. 270, s. 44; 1870-1, c. 111; Code, s. 3339; Rev., s. 5344; C.S., s. 7652.)

§ 147-35. Salary of Secretary of State.

The salary of the Secretary of State shall be set by the General Assembly in the Current Operations Appropriations Act. In addition to the salary set by the General Assembly in the Current Operations Appropriations Act, longevity pay shall be paid on the same basis as is provided to employees of the State who are subject to the State Personnel Act. (1879, c. 240, s. 6; 1881, p. 632, res.; Code, s. 3724; Rev., s. 2741; 1907, c. 994; 1919, c. 247, s. 2; C.S., s. 3863; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 14; 1977, c. 802, s. 42.7; 1983, c. 761, s. 212; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 738, s. 32(b).)

§ 147-36. Duties of Secretary of State.

It is the duty of the Secretary of State:

(1) To perform such duties as may then be devolved upon the Secretary by resolution of the two houses of the General Assembly or either of them;

(2) To attend the Governor, whenever required by the Governor, for the purpose of receiving documents which have passed the great seal;

(3) To receive and keep all conveyances and mortgages belonging to the State;

(4) To distribute annually the statutes and the legislative journals;

(5) To distribute the acts of Congress received at the Secretary's office in the manner prescribed for the statutes of the State;

(6) To keep a receipt book, in which the Secretary shall take from every person to whom a grant shall be delivered, a receipt for the same; but may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book;

(7) To issue charters and all necessary certificates for the incorporation, domestication, suspension, reinstatement, cancellation and dissolution of corporations as may be required by the corporation laws of the State and maintain a record thereof;

(8) To issue certificates of registration of trademarks, labels and designs as may be required by law and maintain a record thereof;

(9) To maintain a Division of Publications to compile data on the State's several governmental agencies and for legislative reference;

(10) To receive, enroll and safely preserve the Constitution of the State and all amendments thereto;

(11) To serve as a member of such boards and commissions as the Constitution and laws of the State may designate;

(12) To administer the Securities Law of the State, regulating the issuance and sale of securities, as is now or may be directed;

(13) To receive and keep all oaths of public officials required by law to be filed in the Secretary's office, and as Secretary of State, is fully empowered to administer official oaths to any public official of whom an oath is required;

(14) To receive and maintain a journal of all appointments made to any State board, agency, commission, council or authority which is filed in the office of the Secretary of State;

(15) To regulate the solicitation of contributions pursuant to Chapter 131F of the General Statutes; and

(16) To apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual in order to effectuate the purposes of the Nonprofit Corporation Act, Chapter 55A of the General Statutes, and to further aid in the operation and development of nonprofit corporations. The Secretary shall comply with the terms, conditions, and limitations of grants applied for and accepted and shall expend grant funds pursuant to Chapter 143C of the General Statutes, The State Budget Act. (1868-9, c. 270, s. 45; 1881, c. 63; Code, s. 3340; Rev., s. 5345; C.S., s. 7654; 1941, c. 379, s. 6; 1943, cc. 480, 543; 1967, c. 691, s. 53; 1973, c. 1379, s. 1; 1995, c. 20, s. 9; 1998-212, s. 12.14(c); 1999-316, s. 1; 2006-203, s. 115.)

Editor's Note. — Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Those constitutional amendments were approved by the voters at the November 1996 election, and certification of the approval was provided to the Secretary of State on November 26, 1996.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 115, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "Chapter 143C of the General Statutes, The State Budget Act" for "Article 1 of Chapter 143 of the General Statutes, The Executive Budget Act" at the end of subdivision (16).

§ 147-36.1. Deputy Secretary of State.

The duly classified Deputy Secretary of State as reflected by the records of the State Department of Personnel, appointed by the Secretary of State to aid him in the discharge of his duties, shall have the authority to perform all acts and duties of the office in the absence of his chief, or in the case of his inability to act, or under his direction. In exercising such authority, certificates relating to documents and other filings, shall be issued in the name of the Secretary of State, printed, typed, stamped or facsimile signature, and signed by the Deputy Secretary of State.

Employees in the office of the Secretary of State designated as deputy or director of specific divisions in the Department, are empowered to issue certificates relating to documents and other filings within the scope of their division. In exercising such authority the certificates shall be issued in the name of the Secretary of State, printed, typed, stamped or facsimile signature, and signed by the deputy or director indicating his approved title. Provided, however, that if the volume of documents or certificates to be issued makes an embossed seal and the autograph signature of the deputy or director impractical, the documents may be certified and certificates issued under the facsimile signature and seal of the Secretary of State only. (1967, c. 1265; 1987, c. 349.)

OPINIONS OF ATTORNEY GENERAL

Delegation of Power to Attend Meetings. — Those members of the Council of State who have statutory authority to delegate duties may, in conformity with such statutes, attend and vote at meetings of Boards of which they are *ex officio* members through delegates or designated subordinates. The remaining members of the Council of State may make similar delegations or designations where, in the member's judgment, other duties necessitate his absence and the statute creating his *ex officio* membership does not express or clearly imply an intent of the General Assembly that the powers of such membership be exercised personally. See opinion of Attorney General to the honorable James E. Long, Commissioner of Insurance, 55 N.C.A.G. 116 (1986).

§ 147-37. Secretary of State; fees to be collected.

When no other charge is provided by law, the Secretary of State shall collect such fees for copying any document or record on file in his office which in his discretion bears a reasonable relation to the quantity of copies supplied and the cost of purchasing or leasing and maintaining copying equipment. These fees may be changed from time to time, but a schedule of fees shall be available on request at all times. In addition to copying charges, the Secretary of State shall collect a fee of ten dollars ($10.00) for certifying any document or record on file in his office or for issuing any certificate as to the facts shown by the records on file in his office, except that if two or more certificates for foreign adoption are requested concurrently, the fee for the second and subsequent certificates is five dollars ($5.00). (R.C., c. 102, s. 13; 1870-1, c. 81, s. 3; 1881, c. 79; Code, s. 3725; Rev., s. 2742; C.S., s. 3864; 1979, c. 85, s. 2; 1991, c. 429, s. 1; 1998-212, s. 29A.9(e); 2002-126, s. 29A.32.)

§ 147-38: Repealed by Session Laws 1979, c. 85, s. 3.

§ 147-39. Custodian of statutes, records, deeds, etc.

The Secretary of State is charged with the custody of all statutes and joint resolutions of the legislature, all documents which pass under the great seal, and of all the books, records, deeds, parchments, maps, and papers now deposited in his office or which may hereafter be there deposited pursuant to law, and he shall from time to time make all necessary provisions for their arrangement and preservation. Every deed, conveyance, or other instrument whereby the State or any State agency or institution has acquired title to any real property and which is deposited with the Secretary of State shall be filed by him, and indexed according to the county or counties wherein the real property is situated and the name or names of the grantor or grantors and of the grantee; and the real property shall be briefly described in the index. (R.C., c. 104, s. 105; 1868-9, c. 270, s. 41; 1873-4, c. 129; Code, s. 3337; Rev., s. 5347; C.S., s. 7656; 1957, c. 584, s. 5.)

§ 147-40: Repealed by Session Laws 1969, c. 1184, s. 8.

§ 147-41. To keep records of oyster grants.

The Secretary of State shall keep books of records in which shall be recorded a full description of all grounds granted for oyster beds under the provisions of

Chapter 119 of the Laws of 1887, and laws amendatory thereof, and shall keep a map or maps showing the position and limits of all public and private grounds. (1887, c. 119, s. 14; Rev., s. 2381; C.S., s. 7657.)

§ 147-42. Binding original statutes, resolutions, and documents.

The original statutes and joint resolutions passed at each session of the General Assembly the Secretary of State shall immediately thereafter cause to be bound in volumes of convenient size. Each such volume shall be lettered on the back with its title and the date of its session. (1866-7, c. 71; 1868-9, c. 270, s. 46; Code, s. 3343; Rev., s. 5348; C.S., s. 7658.)

§ 147-43. Reports of State officers.

The Secretary of State shall file and keep in his office one copy of each of the reports of State officers in the best binding in which any such report is issued, and the State Librarian shall likewise keep five similarly bound copies of each such report. (Rev., s. 5101; 1911, c. 211, s. 7; C.S., s. 7300.)

§§ 147-43.1 through 147-43.3: Repealed by Session Laws 1969, c. 1184, s. 8.

Cross References. — For present provisions as to printing of Session Laws, see G.S. 120-34.

§ 147-44: Repealed by Session Laws 1943, c. 48, s. 2.

Editor's Note. — The repeal line above is set out to correct its omission from the main volume.

§ 147-45. Distribution of copies of State publications.

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is determined by the Legislative Services Commission in consultation with the Principal Clerks of the House of Representatives and the Senate. These publications shall be made available in hardbound and electronic format. Each agency or institution entitled to more than one copy shall receive only one of the copies in hardbound format with the remainder in electronic format, unless that agency or institution requests additional hardbound copies from the Secretary of State by August 1 of the calendar year. The Legislative Services Commission, in consultation with the Principal Clerks of the House of Representatives and the Senate, shall determine each year the total number of bound volumes of each publication to be printed and the total number of the electronic copies of each publication to be produced.

Any State agency, department, institution, commission, committee, board, division, bureau, officer, or official that does not receive a copy of the Session Laws may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled. (1941,

c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1953, cc. 245, 266; 1955, c. 505, s. 6; cc. 989, 990; 1957, c. 269, s. 1; cc. 1061, 1400; 1959, c. 215; c. 1028, s. 3; 1965, c. 503; 1967, c. 691, s. 54; cc. 695, 777, 1038, 1073, 1200; 1969, c. 355; c. 608, s. 1; c. 801, s. 2; c. 852, ss. 1, 2; c. 1190, s. 54; c. 1285; 1973, c. 476, ss. 48, 84, 128, 138, 143, 193; c. 507, s. 5; c. 731, s. 1; c. 762; c. 798, ss. 1, 2; c. 1262, ss. 10, 38; 1975, c. 19, s. 59; c. 879, s. 46; 1975, 2nd Sess., c. 983, s. 115; 1977, c. 379, s. 1; c. 679, s. 8; c. 771, s. 4; 1979, c. 358, s. 27; 1981, c. 412, ss. 4, 5; 1981 (Reg. Sess., 1982), c. 1348, s. 2; 1983, c. 842; 1987, c. 827, s. 59; 1989, c. 727, s. 223(b); c. 751, s. 9(b); 1991 (Reg. Sess., 1992), c. 959, s. 74; 1993, c. 522, s. 18; c. 553, s. 53; 1995, c. 166, s. 2; c. 509, s. 100; 1995 (Reg. Sess., 1996), c. 603, s. 5; c. 743, s. 22; 1997-443, ss. 11A.118(a), 11A.119(a); 1998-202, s. 4(bb); 2000-137, s. 4(ff); 2001-513, s. 16(a).)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

OPINIONS OF ATTORNEY GENERAL

Publications Distributed Pursuant to This Statute Belong to the Office and Not to the Individual Who Holds the Office. — See opinion of Attorney General to Honorable J. Russell Nipper, Clerk of Superior Court, Wake County, 41 N.C.A.G. 176 (1970).

Advance Sheets of Appellate Division Reports Are Required to Be Distributed to the University of North Carolina at Greensboro at No Cost. — See opinion of Attorney General to Mr. Robert Grey Cole, Walter Clinton Jackson Library, University of North Carolina at Greensboro, 43 N.C.A.G. 93 (1973).

§ **147-46:** Repealed by Session Laws 1955, c. 987.

§ 147-46.1. Publications furnished State departments, bureaus, institutions and agencies.

Upon request of any State department, bureau, institution or agency, and upon authorization by the Governor and Council of State, the Secretary of State shall supply to such department, bureau, institution or agency copies of any State publications then available to replace worn, damaged or lost copies and such additional sets or parts of sets as may be requested to meet the reasonable needs of such departments, bureaus, institutions or agencies, disclosed by the request.

This section shall not authorize the reprinting of any State publications which would not be ordered without reference to the provisions hereof. (1947, c. 639.)

§ **147-47:** Repealed by Session Laws 1955, c. 748.

§ 147-48. Sale of Laws and Journals.

Such Laws and Journals as may be printed in excess of the number directed to be distributed, the Secretary of State may sell at such price as he deems reasonable, not exceeding cost plus ten percent (10%). All proceeds received from sales made pursuant to this section shall be paid into the State treasury. (1941, c. 379, s. 4; 1943, c. 48, s. 4; 1955, c. 978, s. 2; 1967, c. 691, s. 55; 1977, c. 802, s. 50.30.)

§ 147-49. Disposition of damaged and unsaleable publications.

The Secretary of State is hereby authorized and empowered to dispose of damaged and unsaleable House and Senate Journals and Session Laws of various years at a price to be determined by the Secretary of State. (1939, c. 345; 1967, c. 691, s. 56; 2001-487, s. 93.)

§ 147-50. Publications of State officials and department heads furnished to certain institutions, agencies, etc.

Every State official and every head of a State department, institution or agency issuing any printed report, bulletin, map, or other publication shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill	25 copies;
University of North Carolina at Charlotte	2 copies;
University of North Carolina at Greensboro	2 copies;
North Carolina State University at Raleigh	2 copies;
East Carolina University at Greenville	2 copies;
Duke University	25 copies;
Wake Forest College	2 copies;
Davidson College	2 copies;
North Carolina Supreme Court Library	2 copies;
North Carolina Central University	5 copies;
Western Carolina University	2 copies;
Appalachian State University	2 copies;
University of North Carolina at Wilmington	2 copies;
North Carolina Agricultural and Technical State University	2 copies;
Legislative Library	2 copies;

and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina Central University. The provisions in this section shall not be interpreted to include any of the appellate division reports or advance sheets distributed by the Administrative Office of the Courts. Except for reports, bulletins, and other publications issued for free distribution, this section shall not apply to the North Carolina State Museum of Natural Sciences. (1941, c. 379, s. 5; 1955, c. 505, s. 7; 1967, cc. 1038, 1065; 1969, c. 608, s. 1; c. 852, s. 3; 1973, c. 476, s. 84; c. 598; c. 731, s. 2; c. 776; 1977, c. 377; 1979, c. 591, s. 1; 1981, c. 435; 1993, c. 561, s. 116(j).)

OPINIONS OF ATTORNEY GENERAL

Distribution of S.B.I. Investigative "Bulletin". — This section does not require the distribution of the S.B.I. Investigative "Bulletin," because information contained in it is not of public record, but instead is information used by law-enforcement officers to collect and compile evidence for the trial of cases. See opinion of Attorney General to Mr. Charles Dunn, 45 N.C.A.G. 92 (1975).

As to free distribution of certain statutory publications on request to certain institutions, see opinion of Attorney General to Mr. James H. Thompson, Director, University of North Carolina at Greensboro, 42 N.C.A.G. 94 (1972).

§ 147-50.1: Repealed by Session Laws 1987, c. 771, s. 1.

Cross References. — As to the State Depository Library System, see G.S. 125-11.5 et seq.

§ 147-51. Clerks of superior courts responsible for Appellate Division Reports; lending prohibited.

From and after March 9, 1927, the clerks of the superior courts of the State of North Carolina are held officially responsible for the volumes of the North Carolina Appellate Division Reports furnished and to be furnished them by the State.

The said clerks of the various courts shall not lend or permit to be taken from their custody the said Reports, nor shall any person with or without the permission of the said clerks take them from their possession. (1927, c. 259; 1969, c. 1190, s. 55.)

§ 147-52: Transferred to § 7A-14 by Session Laws 1975, c. 328.

§ 147-53: Superseded by Session Laws 1943, c. 716.

§ 147-54. Printing, distribution and sale of the North Carolina Manual.

The Secretary of State shall have printed biennially for distribution and sale, two thousand three hundred fifty (2,350) copies of the North Carolina Manual, and shall make distribution to the State agencies, individuals, institutions and others as herein set forth.

NORTH CAROLINA STATE GOVERNMENT:	
Members of the General Assembly	1 ea.
Officers of the General Assembly	1 ea.
Offices of the Clerk of each House of the General Assembly	1 ea.
Legislative Services Officer	1
Legislative Library	6
Members of the Council of State	2 ea.
Appointed Secretaries of Executive Departments	2 ea.
Personnel of the Department of the Secretary of State	1 ea.
State Board of Elections	2
Divisions of Archives and History, Director	1
Search Room	3
Publications Section	2
State Library	10
Libraries within State Agencies	1 ea.
Justices of the North Carolina Supreme Court	1 ea.
Judges of the North Carolina Court of Appeals	1 ea.
Judges of the North Carolina Superior Court	1 ea.
Supreme Court Library	12
Court of Appeals Library	2
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Reporter of the Supreme Court and Court of Appeals	1
Administrative Office of the Courts	5
NORTH CAROLINA EDUCATIONAL INSTITUTIONS:	
University of North Carolina System	

General Administration Offices	12
Chancellors of the Constituent Institutions	1 ea.
University of North Carolina — Chapel Hill Library	15
North Carolina State University Library	5
East Carolina University Library	5
North Carolina Central University Library	5
Appalachian State University Library	4
University of North Carolina — Charlotte Library	4
University of North Carolina — Greensboro Library	4
Western Carolina University Library	4
Other Constituent Institutions Libraries	3 ea.
North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts"	2
University of North Carolina Chapel Hill School of Government	2
Community Colleges and Technical Institutes	2 ea.
Private Colleges and Universities	
Duke University Library	6
Wake Forest University	6
Campbell University Library	5
Davidson College Library	4
All other Libraries of Senior and Junior Colleges	2 ea.
Public and Private Schools containing grades 8-12	1 ea.
COUNTY GOVERNMENT:	
Clerks of Court	1 ea.
Registers of Deeds	1 ea.
Public Libraries of North Carolina	1 ea.
FEDERAL GOVERNMENT:	
President of the United States	1
North Carolina Members of the Presidential Cabinet	1 ea.
North Carolina Members of the United States Congress	2 ea.
Library of Congress	3
Resident Judges of the Federal Judiciary and United States Attorneys in North Carolina	1 ea.
Secretaries of State of the United States and Territories	1 ea.

After making the above distribution, the remainder shall be sold at the cost of publication plus tax and postage and the proceeds from such sales deposited with the State Treasurer for use by the Publications Division of the Secretary of State's Office to defray the expense of publishing the North Carolina Manual. Libraries and educational institutions not covered in the above distribution shall be entitled to a twenty percent (20%) discount on the cost of any purchase(s). (1933, c. 115, s. 2; 1977, c. 378; 1995, c. 509, s. 101; 2001-424, s. 14F.1; 2006-264, s. 29(p); 2008-192, s. 10.)

Report on Distribution and Sale of the North Carolina Manual. — Session Laws 2003-284, s. 24.2, provides: "The Department of the Secretary of State shall report on the distribution and sale of the North Carolina Manual as provided in G.S. 147-54. The report shall include: (i) the number of copies that were distributed and the agencies and institutions to which they were distributed; (ii) the cost of distributing the manual; (iii) the number of copies that were sold and whether they were purchased by the general public, agencies, or institutions; and (iv) the amount of revenue realized from the sale of the manual.

"The Department shall also study and report on the feasibility of making the manual available via the Internet.

"The Department shall submit its report to the Appropriations Subcommittees on General Government of the Senate and House of Representatives and to the Fiscal Research Division by April 1, 2004."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provi-

sions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-192, s. 10, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" following "North Carolina School of the Arts" on the list of state agencies, individuals, institutions eligible to receive the "North Carolina Manual."

§ 147-54.1. Division of Publications; duties.

The Secretary of State is authorized to set up a division to be designated as the Division of Publications and to appoint a director thereof who shall be known as the Director of Publications. This Division shall publish the North Carolina Manual, Directory, Index of Local Legislation and such other publications as may be useful to the members and committees of the General Assembly and other officials of the State and of the various counties and cities. Unless otherwise required by law, the Secretary may publish electronically information permitted or required by this section. The Secretary may sell these publications at such prices as the Secretary deems reasonable; the proceeds of sale shall be paid into the State treasury.

The Division shall also perform all such other duties as may be assigned by the Secretary of State. (1915, c. 202, ss. 1, 2; C.S., ss. 6147, 6148; 1939, c. 316; 1971, c. 685, s. 3; 1977, c. 802, s. 50.31; 1999-260, s. 2.)

§ 147-54.2: Repealed by Session Laws 1979, c. 477, s. 2.

§ 147-54.3. Land records management program.

(a) The Secretary of State shall administer a land records management program for the purposes (i) of advising registers of deeds, local tax officials, and local planning officials about sound management practices, and (ii) of establishing greater uniformity in local land records systems. The management program shall consist of the activities provided for in subsections (b) through (e) of this section, and other related activities essential to the effective conduct of the management program.

(b) The Secretary of State, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall establish minimum standards and provide advice and technical assistance to local governments in implementing and maintaining minimum standards with regard to the following aspects of land records management:

(1) Uniform indexing of land records;

(2) Uniform recording and indexing procedures for maps, plats and condominiums; and

(3) Security and reproduction of land records.

(b1) The Department of Secretary of State, in cooperation with the North Carolina Association of Registers of Deeds, Inc., and the Real Property Section of the North Carolina Bar Association, shall adopt, pursuant to Chapter 150B of the General Statutes, rules specifying the minimum indexing standards established pursuant to subsection (b) of this section and procedures for complying with those minimum standards in land records management. A copy of the standards adopted shall be posted in the office of the register of deeds in each county of the State.

(c) The Secretary of State shall conduct a program for the preparation of county base maps pursuant to standards prepared by the Secretary.

(c1) The Secretary of State, shall, in cooperation with the Secretary of Revenue, conduct a program for the preparation of county cadastral maps pursuant to standards prepared by the Secretary of State.

(d) Upon the joint request of any board of county commissioners and the register of deeds and subject to available resources of personnel and funds, the Secretary shall make a management study of the office of register of deeds, using assistance from the Office of State Personnel. At the conclusion of the study, the Secretary shall make nonbinding recommendations to the board, the register of deeds, and to the General Assembly.

(d1) The Secretary of State shall make comparative salary studies periodically of all registers of deeds offices and at the conclusion of each study the Secretary of State shall present his written findings and shall make recommendations to the board of county commissioners and register of deeds of each county.

(e) The Secretary of State, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall undertake research and provide advice and technical assistance to local governments on the following aspects of land records management:

(1) Centralized recording systems;
(2) Filming, filing, and recording techniques and equipment;
(3) Computerized land records systems; and
(4) Storage and retrieval of land records.

(f) An advisory committee on land records is created to assist the Secretary in administering the land records management program. The Secretary of State shall appoint 12 members to the committee; one member shall be appointed from each of the organizations listed below from persons nominated by the organization:

(1) The North Carolina Association of Assessing Officers;
(2) The North Carolina Section of the American Society of Photogrammetry;
(3) The North Carolina Chapter of the American Institute of Planners;
(4) The North Carolina Section of the American Society of Civil Engineers;
(5) The North Carolina Property Mappers' Association;
(6) The North Carolina Association of Registers of Deeds;
(7) The North Carolina Bar Association;
(8) The North Carolina Society of Land Surveyors; and
(9) The North Carolina Association of County Commissioners.

In addition, three members from the public at large shall be appointed. The members of the committee shall be appointed for four-year terms, except that the initial terms for members listed in positions (1) through (4) above and for two of the members-at-large shall be two years; thereafter all appointments shall be for four years. The Secretary of State shall appoint the chairman, and the committee shall meet at the call of the chairman. The Secretary of State in making the appointments shall try to achieve geographical and population balance on the advisory committee; one third of the appointments shall be persons from the most populous counties in the State containing approximately one third of the State's population, one third from the least populous counties containing approximately one third of the State's population, and one third shall be from the remaining moderately populous counties containing approximately one third of the State's population. Each organization shall nominate one nominee each from the more populous, moderately populous, and less populous counties of the State. The members of the committee shall receive per diem and subsistence and travel allowances as provided in G.S. 138-5. (1977, c. 771, s. 4; c. 932, s. 1; 1985, c. 479, s. 165(d), (e); 1987, c. 738, s. 158(a); 1989, c. 523, s. 8; c. 727, ss. 169, 218(116a); c. 751, s. 14; 1991, c. 689, ss. 181(b), 181(c); c. 697, s. 1; 1993, c. 258, s. 1.)

Editor's Note. — This section was formerly G.S. 143-345.6. It was recodified as G.S. 147-54.3 by Session Laws 1991, c. 689, s. 181(b).

§ 147-54.4. Certification of local government property mappers.

(a) Definitions. — The following definitions apply in this section:

(1) Department. — The Department of the Secretary of State.

(2) Large-scale. — A scale that uses an inch to represent no more than 400 feet.

(3) Local government. — A county as defined in G.S. 153A-10 and a city as defined in G.S. 160A-1.

(4) Property mapper. — A person who is employed by a local government and is responsible for creating and maintaining large-scale cadastral maps.

(b) Certification. — The Department shall establish a certification program for property mappers. The purpose of the program is to protect and enhance the State's investment in local government large-scale cadastral maps. To be certified as a property mapper, an applicant must meet the following minimum requirements and the additional requirements set by the Department:

(1) Be at least 18 years old.

(2) Hold a high school diploma or certificate of equivalency.

(3) Achieve a passing score in courses of instruction approved by the Department covering the following topics:

a. The principles and techniques of property mapping.

b. The laws of North Carolina governing the listing, appraisal, and assessment of real property for taxation.

The Department shall establish requirements for certification as a property mapper that are in addition to these minimum requirements. The additional requirements shall ensure that an applicant who is certified as a property mapper has the minimum skills necessary to create and maintain large-scale cadastral maps. In establishing these additional requirements, the Department may consult with the advisory committee on land records created by G.S. 147-54.3(f), the North Carolina Property Mappers' Association, and other relevant professional groups. The additional requirements may include mapping experience and a passing score on an examination administered by the Department.

(c) Renewal. — A certification as a property mapper must be renewed every two years. Attendance of 24 hours of continuing education approved by the Department is a condition of renewal of a certification. The Department shall publish a list of courses acceptable for meeting this continuing education requirement.

(d) Application and Fees. — An applicant for certification as a property mapper or renewal of certification as a property mapper must file an application with the Department. The applicant must submit a fee of twenty dollars ($20.00) with the application. Fees collected under this section shall be credited to the General Fund.

(e) Rules. — The Department may adopt rules to implement this section. Chapter 150B of the General Statutes governs the adoption of rules by the Department. (1993, c. 326, s. 1.)

§ 147-54.5. Investor Protection and Education Trust Fund; administration; limitations on use of the Fund.

(a) The Investor Protection and Education Trust Fund created in the Department of the Secretary of State as an expendable trust account to be used by the Secretary of State only for the purposes set forth in this section.

(b) The proceeds of the Investor Protection and Education Trust Fund shall be used by the Secretary of State to provide investor protection and education to the general public and to potential securities investors in the State through:

(1) The use of the media, including television and radio public service announcements and printed materials; and

(2) The sponsorship of educational seminars, whether live, recorded, or through other electronic means.

(c) The proceeds of the Investor Protection and Education Trust Fund shall not be used for:

(1) Travel expenses of the Secretary of State or staff of the Department of the Secretary of State, unless those expenses are directly related to specific investor protection and education activities performed in accordance with this section.

(2) General operating expenses of the Department of the Secretary of State, or to supplement General Fund appropriations to the Department of the Secretary of State for other than investor education and protection activities.

(3) Promoting the Secretary of State or the Department of the Secretary of State.

(d) Expenditures from the Investor Protection and Education Trust Fund shall be made in compliance with State purchasing and contracting requirements for competitive bidding in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes.

(e) Revenues derived from consent orders resulting from negotiated settlements of securities investigations by the Secretary of State shall be credited to the Fund. The State Treasurer shall invest the assets of the Fund according to law. Any interest or other investment income earned by the Investor Protection and Education Trust Fund shall remain in the Fund. The balance of the Investor Protection and Education Trust Fund at the end of each fiscal year shall not revert to the General Fund.

(f) Beginning January 1, 1997, the Department of the Secretary of State shall report annually to the General Assembly's Fiscal Research Division and to the Joint Legislative Commission on Governmental Operations on the expenditures from the Investor Protection and Education Trust Fund and on the effectiveness of investor awareness education efforts of the Department of the Secretary of State. (1996, 2nd Ex. Sess., c. 18, s. 13.)

§ 147-54.6. International relations assistance.

(a) The Secretary of State may offer direct and indirect assistance in matters relating to international relations and protocol to other governmental agencies and units of the State of North Carolina. The assistance may be provided upon request of the intended recipient when resources are available for these purposes.

(b) The Secretary of State, on behalf of the State, may accept gifts, donations, bequests, or other forms of voluntary contributions, apply for grants from public and private sources, and may expend funds received under this subsection for the purpose of promoting international relations and hosting foreign dignitaries and leaders in North Carolina. All funds and gifts received pursuant to this subsection shall be subject to audit by the Office of the State Auditor and all funds shall be expended in conformity with the Executive Budget Act and shall become the property of the State. (1999-260, s. 3.)

Editor's Note. — This section was enacted as G.S. 147-54.5 and was redesignated as G.S. 147-54.6 at the direction of the Revisor of Statutes.

§ 147-54.7. Abrogation of offensive geographical place-names.

(a) The General Assembly finds that certain geographical place-names are offensive or insulting to the State's people, history, and heritage. These place-names should be replaced by names that reflect the State's people, history, and heritage without resorting to offensive stereotypes, names, words, or phrases.

(b) The Secretary of State, in consultation with the North Carolina Geographic Information Coordinating Council, and pursuant to federal guidelines, shall adopt procedures to effect the change of geographical place-names that are offensive or insulting. The procedures shall include a notification to the governing body of the county where the offensive or insulting place-name is deemed to exist that the Council intends to make application to change the name. The county governing body shall have 90 days in which to respond to the Council, and no action to affect a change in the place-name shall be undertaken by the Council until it has reviewed the county's response, or the expiration of the 90-day period, whichever comes first.

(c) The procedures adopted by the Secretary pursuant to this section shall include the consideration of resolutions, if any, passed by the governing body of any county regarding the changing of a geographical place-name within the county. (2003-211, s. 1.)

Editor's Note. — Session Laws 2003-211, s. 2, provides: "The geographical place or location names in the State that contain the word "Nigger" are deemed to be an offensive and insulting place or location name. The North Carolina Geographic Coordinating Council shall notify the governing body of the county where there are geographic places or locations which contain the foregoing term that (i) application will be made to the U.S. Board of Geographic Names to change the offensive name, and (ii) that the county governing body has 90 days in which to forward a suggested replacement name to the Council. If the county's recommended replacement name is not deemed to be offensive or insulting by vote of the Council, then the Council shall make application to the U.S. Board of Geographic Names to change the offensive place-name to the name provided by the county governing body. If the county governing body fails to provide a replacement name within the specified time, or the provided name is deemed to be offensive or insulting by vote of the Council, then the Council shall make the application to change the offensive place-name to a name chosen within its discretion."

Session Laws 2003-211, s. 3, provides: "This act shall not be construed to apply to a geographic place-name which is that of a historic person or event or to a nonpejorative place-name."

§ 147-54.7A: Repealed by Session Laws 2006-201, s. 19, effective January 1, 2007.

Article 4A.

Constitutional Amendments Publication Commission.

§ 147-54.8. Constitutional Amendments Publication Commission.

(a) There is established within the Department of the Secretary of State the Constitutional Amendments Publication Commission (hereinafter "Commission").

(b) The Commission shall consist of three members who shall serve ex officio as follows: The Secretary of State, the Attorney General, and the Legislative Services Officer. (1983, c. 844, s. 1.)

Editor's Note. — Session Laws 1983, c. 844, s. 2, provided: "Nothing contained in this act shall affect the validity of the voting on any proposed constitutional amendment, including the exercise of any powers by the Constitutional Amendments Publication Commission."

§ 147-54.9. Officers; meetings; quorum.

(a) The Secretary of State shall be the Chairman of the Commission.

(b) A quorum shall consist of all three members.

(c) The Commission shall meet on the call of the Chairman or any two members. (1983, c. 844, s. 1.)

§ 147-54.10. Powers.

At least 60 days before an election in which a proposed amendment to the Constitution, or a revised or new Constitution, is to be voted on, the Commission shall prepare an explanation of the amendment, revision, or new Constitution in simple and commonly used language.

The summary prepared by the Commission shall be printed by the Secretary of State, in a quantity determined by the Secretary of State. A copy shall be sent along with a news release to each county board of elections, and a copy shall be available to any registered voter or representative of the print or broadcast media making request to the Secretary of State. The Secretary of State may make copies available in such additional manner as he may determine. (1983, c. 844, s. 1.)

Article 4B.

Business License Information Office.

§§ 147-54.11 through 147-54.19: Repealed by Session Laws 2004-124, s. 13.9A(a), effective July 1, 2004.

§§ 147-54.20 through 147-54.30: Reserved for future codification.

Article 4C.

Executive Branch Lobbying.

§§ 147-54.31 through 147-54.44: Repealed by Session Laws 2006-201, s. 19, effective January 1, 2007.

Editor's Note. — Session Laws 2006-264, s. 99.4(c), amended former G.S. 147-54.39, effective January 1, 2007. The amendment never took effect.

Session Laws 2006-264, s. 99.4(d) and (e), amended former G.S. 147-54.41, effective January 1, 2007. The amendment never took effect.

Session Laws 2006-201, s. 23(b), as amended by Session laws 2007-347, s. 16, provides "(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on orbefore January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

ARTICLE 5.

Auditor.

§ 147-55: Repealed by Session Laws 1983, c. 913, s. 1.

§ 147-56: Repealed by Session Laws 1983, c. 913, s. 1.

§ 147-57: Repealed by Session Laws 1981, c. 884, s. 12.

§ 147-58: Repealed by Session Laws 1983, c. 913, s. 1.

§§ 147-59 through 147-61: Repealed by Session Laws 1981, c. 302.

§ 147-62: Recodified as § 143-3.3 by Session Laws 1983, c. 913, s. 49.

§§ 147-63, 147-64: Recodified as § 143-3.4 by Session Laws 1983, c. 913, ss. 50, 51.

Cross References. — As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see G.S. 143-3.1 and 143-3.2.

ARTICLE 5A.

Auditor.

§ 147-64.1. Salary of State Auditor.

(a) The salary of the State Auditor shall be set by the General Assembly in the Current Operations Appropriations Act.

(b) In addition to the salary set by the General Assembly in the Current Operations Appropriations Act, longevity pay shall be paid on the same basis as is provided to employees of the State who are subject to the State Personnel Act. (1983, c. 761, s. 214; c. 913, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 738, s. 32(b).)

§ 147-64.2. Legislative policy and intent.

The General Assembly is ultimately responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, and shaping the administrative structure to perform the work of government throughout the State, and is held finally accountable for how the funds are spent and what is accomplished with them. The legislature should, therefore, provide the basic direction for audits of State agencies.

In the interest of reducing audit overlap and expense at all levels of government, the General Assembly and the Auditor should promote, to the extent possible, coordinated nonduplicating audits of public programs and activities of all governmental levels throughout the State.

It is the intent of this Article that all State agencies, and entities supported, partially or entirely, by public funds be subject to audit under the policy guidance of the Auditor. Such audits shall be made to assist in furnishing the General Assembly, the Governor, the executive departments and agencies of the State, the governing bodies and executive departments of the political subdivisions of the State, and the public in general with an independent evaluation of public program performance. (1983, c. 913, s. 2.)

§ 147-64.3. Legislative and management control system.

It is the intent of this Article that the State Auditor shall perform or coordinate all audit functions for State government. As appropriate, all State agencies are encouraged to establish, maintain, and use effective systems of management control. The adequacy of these control systems will be reviewed by the Auditor. The Auditor may, at his discretion, use such reviews to limit his audit activity or to suggest guidelines, make recommendations, and provide assistance where necessary within the resources available. (1983, c. 913, s. 2.)

§ 147-64.4. Definitions.

The words and phrases used in this Article have the following meanings:

(1) "Audit". — An independent review or examination of government organizations, programs, activities, and functions. The purpose of an audit is to help ensure full accountability and assist government officials and employees in carrying out their responsibilities. The elements of such an audit are:

a. Financial and compliance: to determine whether financial operations are properly conducted, whether the financial reports of an audited entity are presented fairly, and whether the entity has complied with applicable laws and regulations; and,

b. Economy and efficiency: to determine whether the entity is managing or utilizing its resources (such as personnel and property) in an economical and efficient manner and the causes of any inefficiencies or uneconomical practices, including inadequacies in laws and regulations, management information systems, administrative policies and procedures, or organizational structures; and,

c. Program results: to determine whether the desired results or benefits are being achieved, whether the objectives established by the General Assembly or other authorizing body are being met, and whether the agency has considered alternatives which might yield desired results at lower costs.

d. An audit may include all three elements or only one or two. It is not intended or desirable that every audit include all three. Economy and efficiency and program result audits should be selected when their use will meet the needs of expected users of audit results.

(2) "Accounting system". — The total structure of records and procedures which discover, record, classify, and report information on the financial position and operating results of a governmental unit or any of its funds, balanced account groups, and organizational components.

(3) "Federal agency". — Any department, agency, or instrumentality of the federal government and any federally owned or controlled corporation.

(4) "State agency". — Any department, institution, board, commission, committee, division, bureau, officer, official or any other entity for which the State has oversight responsibility, including but not limited to, any university, mental or specialty hospital, community college, or clerk of court. (1983, c. 913, s. 2; 1987, c. 564, s. 31.)

§ 147-64.5. Cooperation with Joint Legislative Commission on Governmental Operations and other governmental bodies.

(a) Joint Legislative Commission on Governmental Operations. — The Auditor shall furnish copies of any and all audits only when requested by the Joint Legislative Commission on Governmental Operations. The copies shall be in written or electronic form, as requested. Accordingly, the Auditor shall, upon request by the chairmen, appear before the Commission to present findings and answer questions concerning the results of these audits. The Commission is hereby authorized to use these audit findings in its inquiries concerning the operations of State agencies and is empowered to require agency heads to advise the Commission of actions taken or to be taken on any recommendations made in the report or explain the reasons for not taking action.

(b) Requests for Auditor Assistance. — Committees of the General Assembly, the Governor, and other State officials may make written requests that the Auditor undertake, to the extent deemed practicable and within the resources provided, a specific audit or investigation; provide technical assistance and advice; and provide recommendations on management systems, finance, accounting, auditing, and other areas of management interest. The Auditor may request the advice of the Joint Legislative Commission on Governmental Operations in prioritizing these requests and in determining whether the requests are practicable and can be undertaken within the resources provided.

(c) Cooperation with Other Governmental Bodies. — The Auditor shall cooperate, act, and function with other audit or evaluation organizations in the State, with appropriate councils or committees of other states, with governing bodies of the political subdivisions of the State, and with federal agencies in an effort to maximize the extent of intergovernmental audit coordination and thereby avoid unnecessary duplication and expense of audit effort. Nothing in this Article is intended nor shall it be construed as giving the Auditor control over the internal auditors of any agency. (1983, c. 913, s. 2; 1997-443, s. 25; 2001-424, s. 9.1(b).)

§ 147-64.6. Duties and responsibilities.

(a) It is the policy of the General Assembly to provide for the auditing of State agencies by the impartial, independent State Auditor.

(b) The duties of the Auditor are independently to examine into and make findings of fact on whether State agencies:

(1) Have established adequate operating and administrative procedures and practices; systems of accounting, reporting and auditing; and other necessary elements of legislative or management control.

(2) Are providing financial and other reports which disclose fairly, consistently, fully, and promptly all information needed to show the nature and scope of programs and activities and have established bases for evaluating the results of such programs and operations.

(3) Are promptly collecting, depositing, and properly accounting for all revenues and receipts arising from their activities.

(4) Are conducting programs and activities and expending funds made available in a faithful, efficient, and economical manner in compliance with and in furtherance of applicable laws and regulations of the State, and, if applicable, federal law and regulation.

(5) Are determining that the authorized activities or programs effectively serve the intent and purpose of the General Assembly and, if applicable, federal law and regulation.

(c) The Auditor shall be responsible for the following acts and activities:

(1) Audits made or caused to be made by the Auditor shall be conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the United States General Accounting Office, or other professionally recognized accounting standards-setting bodies.

(2) Financial and compliance audits may be made at the discretion of the Auditor without advance notice to the organization being audited. Audits of economy and efficiency and program results shall be discussed in advance with the prospective auditee unless an unannounced visit is essential to the audit.

(3) The Auditor, on his own initiative and as often as he deems necessary, or as requested by the Governor or the General Assembly, shall, to the extent deemed practicable and consistent with his overall responsibility as contained in this act, make or cause to be made audits of all or any part of the activities of the State agencies.

(4) The Auditor, at his own discretion, may, in selecting audit areas and in evaluating current audit activity, consider and utilize, in whole or in part, the relevant audit coverage and applicable reports of the audit staffs of the various State agencies, independent contractors, and federal agencies. He shall coordinate, to the extent deemed practicable, the auditing conducted within the State to meet the needs of all governmental bodies.

(5) The Auditor is authorized to contract with federal audit agencies, or any governmental agency, on a cost reimbursable basis, for the Auditor to perform audits of federal grants and programs administered by the State Departments and institutions in accordance with agreements negotiated between the Auditor and the contracting federal audit agencies or any governmental agency. In instances where the grantee State agency shall subgrant these federal funds to local governments, regional councils of government and other local groups or private or semiprivate institutions or agencies, the Auditor shall have the authority to examine the books and records of these subgrantees to the extent necessary to determine eligibility and proper use in accordance with State and federal laws and regulations.

The Auditor shall charge and collect from the contracting federal audit agencies, or any governmental agencies, the actual cost of all the audits of the grants and programs contracted by him to do. Amounts collected under these arrangements shall be deposited in the State Treasury and be budgeted in the Department of State Auditor and shall be available to hire sufficient personnel to perform these contracted audits and to pay for related travel, supplies and other necessary expenses.

(6) The Auditor is authorized and directed in his reports of audits or reports of special investigations to make any comments, suggestions, or recommendations he deems appropriate concerning any aspect of such agency's activities and operations.

(7) The Auditor shall charge and collect from each examining and licensing board the actual cost of each audit of such board. Costs collected under this subdivision shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such costs. Amounts collected under this subdivision shall be deposited into the general fund as nontax revenue.

(8) The Auditor shall examine as often as may be deemed necessary the accounts kept by the Treasurer, and if he discovers any irregularity or

deficiency therein, unless the same be rectified or explained to his satisfaction, report the same forthwith in writing to the General Assembly, with copy of such report to the Governor and Attorney General. In addition to regular audits, the Auditor shall check the treasury records at the time a Treasurer assumes office (not to succeed himself), and therein charge him with the balance in the treasury, and shall check the Treasurer's records at the time he leaves office to determine that the accounts are in order.

(9) The Auditor may examine the accounts and records of any bank or financial institution relating to transactions with the State Treasurer, or with any State agency, or he may require banks doing business with the State to furnish him information relating to transactions with the State or State agencies.

(10) The Auditor may, as often as he deems advisable, conduct a detailed review of the bookkeeping and accounting systems in use in the various State agencies which are supported partially or entirely from State funds. Such examinations will be for the purpose of evaluating the adequacy of systems in use by these agencies and institutions. In instances where the Auditor determines that existing systems are outmoded, inefficient, or otherwise inadequate, he shall recommend changes to the State Controller. The State Controller shall prescribe and supervise the installation of such changes, as provided in G.S. 143B-426.39(2).

(11) The Auditor shall, through appropriate tests, satisfy himself concerning the propriety of the data presented in the Comprehensive Annual Financial Report and shall express the appropriate auditor's opinion in accordance with generally accepted auditing standards.

(12) The Auditor shall provide a report to the Governor and Attorney General, and other appropriate officials, of such facts as are in his possession which pertain to the apparent violation of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee.

(13) At the conclusion of an audit, the Auditor or his designated representative shall discuss the audit with the official whose office is subject to audit and submit necessary underlying facts developed for all findings and recommendations which may be included in the audit report. On audits of economy and efficiency and program results, the auditee's written response shall be included in the final report if received within 30 days from receipt of the draft report.

(14) The Auditor shall notify the General Assembly, the Governor, the Chief Executive Officer of each agency audited, and other persons as the Auditor deems appropriate that an audit report has been published, its subject and title, and the locations, including State libraries, at which the report is available. The Auditor shall then distribute copies of the report only to those who request a report. The copies shall be in written or electronic form, as requested. He shall also file a copy of the audit report in the Auditor's office, which will be a permanent public record; Provided, nothing in this subsection shall be construed as authorizing or permitting the publication of information whose disclosure is otherwise prohibited by law.

(15) It is not the intent of the audit function, nor shall it be so construed, to infringe upon or deprive the General Assembly and the executive or judicial branches of State government of any rights, powers, or duties vested in or imposed upon them by statute or the Constitution.

(16) The Auditor shall be responsible for receiving reports of allegations of the improper governmental activities as provided in G.S. 147-64.6B.

The Auditor shall adopt policies and procedures necessary to provide for the investigation or referral of these allegations.

(17) Repealed by Session Laws 2009-136, s. 2, effective June 19, 2009.

(18) The Auditor shall, after consultation and in coordination with the State Chief Information Officer, assess, confirm, and report on the security practices of information technology systems. If an agency has adopted standards pursuant to G.S. 147-33.111(a), the audit shall be in accordance with those standards. The Auditor's assessment of information security practices shall include an assessment of network vulnerability. The Auditor may conduct network penetration or any similar procedure as the Auditor may deem necessary. The Auditor may enter into a contract with a State agency under G.S. 147-33.111(c) for an assessment of network vulnerability, including network penetration or any similar procedure. Any contract with the Auditor for the assessment and testing shall be on a cost-reimbursement basis. The Auditor may investigate reported information technology security breaches, cyber attacks, and cyber fraud in State government. The Auditor shall issue public reports on the general results of the reviews undertaken pursuant to this subdivision but may provide agencies with detailed reports of the security issues identified pursuant to this subdivision which shall not be disclosed as provided in G.S. 132-6.1(c). The Auditor shall provide the State Chief Information Officer with detailed reports of the security issues identified pursuant to this subdivision. For the purposes of this subdivision only, the Auditor is exempt from the provisions of Article 3 of Chapter 143 of the General Statutes in retaining contractors.

(19) Whenever the Auditor believes that information received or collected by the Auditor may be evidence of a violation of any of the provisions of Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, or Article 14 of Chapter 120 of the General Statutes, the Auditor shall report that information to the State Ethics Commission and the Secretary of State as appropriate. The Auditor shall be bound by interpretations issued by the State Ethics Commission as to whether or not any information reported by the Auditor under this subdivision involves or may involve a violation of Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, or Article 14 of Chapter 120 of the General Statutes. Nothing in this subdivision shall be construed to limit the Auditor's authority under subdivision (1) of this subsection.

(d) Reports and Work Papers. — The Auditor shall maintain for 10 years a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under the Auditor's authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of the Auditor's office shall be retained according to an agreement between the Auditor and State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of audit effort, and notwithstanding the provisions of G.S. 126-24, pertinent work papers and other supportive material related to issued audit reports may be, at the discretion of the Auditor and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations.

Except as provided in this section, or upon an order issued in Wake County Superior Court upon 10 days' notice and hearing finding that access is necessary to a proper administration of justice, audit work papers and related supportive material shall be kept confidential, including any interpretations, advisory opinions, or other information or materials furnished to or by the State Ethics Commission under this section. (1983, c. 913, s. 2; 1985 (Reg. Sess., 1986), c. 1024, ss. 24, 25; 1987, c. 738, s. 62; 1989, c. 236, s. 2; 1999-188, s. 2; 2001-142, s. 2; 2001-424, ss. 9.1(a), 15.2(c); 2002-126, s. 27.2(b); 2002-159, s. 48; 2004-129, s. 46; 2008-215, ss. 1(a), 2, 3; 2009-136, s. 2.)

Editor's Note. — The reference in subdivision (c)(3) of this section to "this act" refers to Session Laws 1983, c. 913, which enacted this Article and made other changes in the General Statutes.

Session Laws 1985 (Reg. Sess., 1986), c. 1024, s. 25 purported to rewrite "G.S. 147-64.6(11)." At the direction of the Revisor of Statutes, the amendment was effectuated in subdivision (c)(11).

Session Laws 2008-215, s. 9, provides: "This act is effective when it becomes law [August 15, 2008] and applies to all information received or collected by the State Auditor concerning alleged violations of Chapters 138A or 120C of the General Statutes or Article 14 of Chapter 120 of the General Statutes on or after January 1, 2007."

Effect of Amendments. — Session Laws 2008-215, ss. 1(a), 2, and 3, effective August 15, 2008, rewrote subdivision (c)(16); added subdivision (c)(19); and in subsection (d), substituted "the Auditor's" for "his" twice, and rewrote the second paragraph. See Editor's note for applicability.

Session Laws 2009-136, s. 2, effective June 19, 2009, deleted subdivision (c)(17), which read: "The Auditor or the Auditor's designee, in conjunction with the State Controller and the State Budget Officer or their designees, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information technology services from the Office."

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Persons Present at Meetings. — Members of the Information Resources Management Commission, or their delegates, who are representatives of other agencies may be present at the committee meeting during which information will be reported about audits of the security practices of information technology systems in specific agencies. See opinion of Attorney General to Beverly Eaves Perdue, Lieutenant Governor, 2002 N.C.A.G. 28 (11/8/02).

If the procedures for delegation of duties have been followed, then the designated subordinate of an ex officio member may participate in the full activities of the Information Resources Management Commission and its committees; this includes the right to vote and to participate in closed sessions. See opinion of Attorney General to Beverly Eaves Perdue, Lieutenant Governor, 2002 N.C.A.G. 28 (11/8/02).

A volunteer Information Protection and Privacy Committee member is not an official member of the Information Resources Management Commission or an official delegate of an IRMC member; therefore, volunteers are not representatives of a State agency as contemplated in subdivision (c)(18) of this section and should not attend closed meetings. See opinion of Attorney General to Beverly Eaves Perdue, Lieutenant Governor, 2002 N.C.A.G. 28 (11/8/02).

Confidentiality of security systems the presence of representatives Members of the Information Resources Management Commission, or their delegates, at committee meetings during which information will be reported about audits of the security practices of information technology systems in specific agencies does not waive the confidentiality of the security features of the systems under G.S. 132-6.1(c). See opinion of Attorney General to Beverly Eaves Perdue, Lieutenant Governor, 2002 N.C.A.G. 28 (11/8/02).

§ 147-64.6A. Audit of community colleges.

The State Auditor, within funds available to his Department, shall audit the Community Colleges and Technical Institutes so that all 58 institutions are audited no less than once every five years. (1987, c. 830, s. 71.)

§ 147-64.6B. Reports of improper governmental activities.

(a) The Auditor shall provide various means, including a telephone hotline, electronic mail, and Internet access to receive reports of allegations of improper governmental activities. The Auditor shall periodically publicize the hotline telephone number, electronic mail address, Internet Web site address, and any other means by which the Auditor may receive reports of allegations of improper governmental activities. Individuals who make a report under this section may choose to remain anonymous until the individual affirmatively consents to having his or her identity disclosed.

(b) The Auditor shall investigate reports of allegations of improper governmental activities of State agencies and State employees within the scope of authority set forth in G.S. 147-64.6, including misappropriation, mismanagement, or waste of State resources, fraud, violations of State or federal law, rule or regulation by State agencies or State employees administering State or federal programs, and substantial and specific danger to the public health and safety. When the allegation involves issues of substantial and specific danger to the public health and safety, the Auditor shall notify the appropriate State agency immediately. When the Auditor believes that an allegation of improper governmental activity is outside the authority set forth in G.S. 147-64.6, the Auditor shall refer the allegation to the appropriate State agency responsible for the enforcement or administration of the matter for investigation. When the Auditor believes that an allegation of improper governmental activity involves matters set forth in subdivisions (1), (2), or (3) of this subsection, those matters shall be referred as follows:

(1) Allegations of criminal misconduct to either the State Bureau of Investigation or the District Attorney for the county where the alleged misconduct occurred.

(2) Allegations of violations of Chapter 138A, Chapter 120C, and Article 14 of Chapter 120 of the General Statutes to the State Ethics Commission.

(3) Allegations of violations of Chapter 163 of the General Statutes to the State Board of Elections.

(c) All records maintained by the Auditor of reports of unsubstantiated allegations of improper governmental activities shall be destroyed within four years from the date the unsubstantiated allegation was received. (2008-215, s. 1(b).)

Editor's Note. — Session Laws 2008-215, s. 9, made this section effective August 15, 2008, and applicable to all information received or collected by the State Auditor concerning alleged violations of Chapters 138A or 120C of the General Statutes or Article 14 of Chapter 120 of the General Statutes on or after January 1, 2007.

§ 147-64.7. Authority.

(a) Access to Persons and Records. —

(1) The Auditor and the Auditor's authorized representatives shall have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of any State agency. The review of State tax returns shall be limited to matters of official business and the Auditor's report shall not violate the confidentiality provisions of tax laws. Notwithstanding confidentiality provisions of tax laws, the Auditor may use and disclose information related to overdue tax debts in support of the Auditor's statutory mission.

(2) The Auditor and the Auditor's duly authorized representatives shall have such access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation which is in the possession of any individual, private corporation, institution, association, board, or other organization which pertain to:

a. Amounts received pursuant to a grant or contract from the federal government, the State, or its political subdivisions.

b. Amounts received, disbursed, or otherwise handled on behalf of the federal government or the State. In order to determine that payments to providers of social and medical services are legal and proper, the providers of such services will give the Auditor, or the Auditor's authorized representatives, access to the records of recipients who receive such services.

(3) The Auditor shall, for the purpose of examination and audit authorized by this act, have the authority, and will be provided ready access, to examine and inspect all property, equipment, and facilities in the possession of any State agency or any individual, private corporation, institution, association, board, or other organization which were furnished or otherwise provided through grant, contract, or any other type of funding by the State of North Carolina, or the federal government.

(4) All contracts or grants entered into by State agencies or political subdivisions shall include, as a necessary part, a clause providing access as intended by this section.

(5) The Auditor and his authorized agents are authorized to examine all books and accounts of any individual, firm, or corporation only insofar as they relate to transactions with any agency of the State.

(b) Experts; Contracted Audits. —

(1) The Auditor may obtain the services of independent public accountants, qualified management consultants, or other professional persons and experts as he deems necessary or desirable to carry out the duties and functions assigned under the act.

(2) No State agency may enter into any contract for auditing services which may impact on the State's comprehensive annual financial report without consultation with, and the prior written approval of, the Auditor, except in instances where audits are called for by the Governor under G.S. 143C-2-1 and he shall so notify the Auditor. The Auditor shall prescribe policy and establish guidelines containing appropriate criteria for selection and use of independent public accountants, qualified management consultants, or other professional persons by State agencies and governing bodies to perform all or part of the audit function.

(c) Authority to Administer Oaths, Subpoena Witnesses and Records, and Take Depositions. —

(1) For the purposes of this Article the Auditor or his authorized representative shall have the power to subpoena witnesses, to take testimony under oath, to cause the deposition of witnesses (residing within or without the State) to be taken in a manner prescribed by law, and to assemble records and documents, by subpoena or otherwise. The subpoena power granted by this section may be exercised only at the specific written direction of the Auditor or his chief deputy.

(2) In case any person shall refuse to obey a subpoena, the Auditor shall invoke the aid of any North Carolina court within the jurisdiction of which the investigation is carried on or where such person may be, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Auditor or officers designated by the Auditor, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. (1983, c. 913, s. 2; 1999-188, s. 1; 2006-203, s. 116; 2007-484, s. 34.5.)

Editor's Note. — The references in subdivisions (a)(3) and (b)(1) of this section to "act" and "the act" refer to Session Laws 1983, c. 913, which enacted this Article and made other changes in the General Statutes.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 116, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-2-1" for "G.S. 143-3" in the first sentence of subdivision (b)(2).

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Pursuant to § 147-64.13, the provisions of subdivision (a)(1) of this section supersede the provisions of § 126-24 to the extent they conflict. Specifically, the Auditor's power to examine documents in the course of an authorized audit includes the power to examine confidential employee personnel files relevant to that audit without the consent of the employee or his employer. See opinion of Attorney General to The Honorable Ralph Campbell, Jr., State Auditor, 1999 N.C.A.G. 8 (3/5/99).

§ 147-64.7A. Obstruction of audit.

Any person who shall willfully make or cause to be made to the State Auditor or his designated representatives any false, misleading, or unfounded report for the purpose of interfering with the performance of any audit, special review, or investigation, or to hinder or obstruct the State Auditor or the State Auditor's designated representatives in the performance of their duties, shall be guilty of a Class 2 misdemeanor. (1997-526, s. 1.)

§ 147-64.8. Independence.

The Auditor shall maintain independence in the performance of his authorized duties. Except as otherwise provided by law, neither the General Assembly nor the Governor nor any department or agency of the executive or judicial branches of State government shall have the authority to limit the scope, direction, or report of an audit undertaken by the Auditor. No State regulatory agency shall by any fiscal or administrative requirements attempt to limit the scope, direction, or report of an audit undertaken by the Auditor. (1983, c. 913, s. 2.)

§ 147-64.9. Rules and regulations.

The Auditor shall make and enforce such reasonable rules and regulations as are necessary for the operation of his office. The Auditor shall install an adequate accounting system for his office and shall keep or cause to be kept a complete, accurate, and adequate record of all fiscal transactions of his office. (1983, c. 913, s. 2.)

§ 147-64.10. Powers of appointment.

The Auditor may, subject to the provisions of the State Personnel Act, appoint all employees necessary to perform the duties and functions assigned to him by the provisions of this Article.

Except where otherwise provided in this Article, all powers and duties vested in the Auditor may be delegated by him to deputies, assistants, employees, or other auditors, consultants, professionals, and experts, whose services are obtained in accordance with the provisions of this act; but the Auditor shall retain responsibility for the powers and duties so delegated. (1983, c. 913, s. 2.)

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Delegation of Power to Attend Meetings. — Those members of the Council of State who have statutory authority to delegate duties may, in conformity with such statutes, attend and vote at meetings of Boards of which they are *ex officio* members through delegates or designated subordinates. The remaining members of the Council of State may make similar delegations or designations where, in the member's judgment, other duties necessitate his absence and the statute creating his *ex officio* membership does not express or clearly imply an intent of the General Assembly that the powers of such membership be exercised personally. See opinion of Attorney General to the honorable James E. Long, Commissioner of Insurance, 55 N.C.A.G. 116 (1986).

§ 147-64.11. Review of office.

The Auditor may, on his own initiative and as often as he deems necessary, or as requested by the General Assembly, cause to be made a quality review audit of the operations of his office. Such a "peer review" shall be conducted in accordance with standards prescribed by the accounting profession. Upon the recommendation of the Joint Legislative Commission on Governmental Operations may contract with an independent public accountant, qualified management consultant, or other professional person to conduct a financial and compliance, economy and efficiency, and program result audit of the State Auditor. (1983, c. 913, s. 2; 2006-203, s. 117.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 117, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "the Advisory Budget Commission," following "recommendation of" in the last sentence.

§ 147-64.12. Conflict of interest.

(a) To preserve the independence and objectivity of the audit function, the Auditor and his employees may not, unless otherwise expressly authorized by statute, serve in any capacity on an administrative board, commission, or agency of government of a political subdivision of the State or any other organization that, under the provisions of this act, they have the responsibility or authority to audit. Nor shall they have a material, direct or indirect financial, or other economic interest in the transactions of any State agency.

(b) The Auditor shall not conduct an audit on a program or activity for which he had management responsibility or in which he has been employed during the preceding two years. The General Assembly shall otherwise provide for the necessary audit of programs and activities within the meaning of this subsection.

If the Auditor's hotline receives a report of allegations of improper governmental activities in a program or activity that the Auditor is prohibited by this subsection from auditing, the Hotline Manager shall transmit the report to the Legislative Services Officer or his designee. The report shall retain the same confidentiality after transmittal to the General Assembly that it had in the possession of the Auditor. (1983, c. 913, s. 2; 1993, c. 152, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 8(n).)

§ 147-64.13. Construction.

This Article shall be construed liberally in the aid of its declared purpose. It is the intent of this Article that the establishment of the Office of the Auditor and the duties, powers, qualifications, and purposes herein specified shall take precedence over any conflicting part or application of any other law. (1983, c. 913, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Pursuant to this section, the provisions of § 147-64.7(a)(1) supersede the provisions of § 126-24 to the extent they conflict. Specifically, the Auditor's power to examine documents in the course of an authorized audit includes the power to examine confidential employee personnel files relevant to that audit without the consent of the employee or his employer. See opinion of Attorney General to The Honorable Ralph Campbell, Jr., State Auditor, 1999 N.C.A.G. 8 (3/5/99).

§ 147-64.14. Severability.

If any provision of this Article or the application thereof to any person, State agency, political subdivision, or circumstance is held invalid, such invalidation shall not affect other provisions or applications of this Article which can be given effect without the invalid provision of application, and to this end the provisions of this Article are declared severable. (1983, c. 913, s. 2.)

ARTICLE 6.

Treasurer.

§ 147-65. Salary of State Treasurer.

The salary of the State Treasurer shall be as established in the Current Operations Appropriations Act. In addition to the salary set by the General Assembly in the Current Operations Appropriations Act, longevity pay shall be paid on the same basis as is provided to employees of the State who are subject to the State Personnel Act. (Code, s. 3723; 1891, c. 505; Rev., s. 2739; 1907, c. 830, s. 3; c. 994, s. 2; 1917, c. 161; 1919, c. 233; c. 247, s. 3; C.S., s. 3868; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 16; 1977, c. 802, s. 42.9; 1983, c. 761, s. 215; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 738, s. 32(b).)

Cross References. — As to settlement of affairs of inoperative boards and agencies, see G.S. 143-267 through 143-272.

Commission to Study the Governance and the Adequacy of the Investment Authority of Various State-Owned Funds for the Purposes of Enhancing the Return on Investments. — Session Laws 2009-574, ss. 47.1 through 47.4, provide: "SECTION 47.1. There is established the Commission to Study the Governance and the Adequacy of the Investment Authority of Various State-Owned Funds for the Purposes of Enhancing the Return on Investments.

"SECTION 47.2.(a) The Commission shall be composed of 18 members as follows:

"(1) Five members of the Senate, appointed by the President Pro Tempore of the Senate.

"(2) Five members of the House of Representatives, appointed by the Speaker of the House of Representatives.

"(3) The State Treasurer or her or his designee.

"(4) A representative from The University of North Carolina System.

"(5) A representative from the Community College System.

"(6) A representative from the Office of the State Controller.

"(7) A representative from the Office of State Budget and Management.

"(8) One member of the banking community, appointed by the President Pro Tempore of the Senate.

"(9) One member who is a certified public accountant, appointed by the Speaker of the House of Representatives.

"(10) One member who is a certified financial advisor with investment expertise, appointed by the Governor.

"Vacancies on the Commission shall be filled by the appointing authority. The Commission shall be chaired by a Senator and a Representative designated by the appointing authority. A quorum of the Commission shall be 10 members.

"The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including all the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them.

"The Commission may meet at any time upon call of the chairs. The Commission may meet in the Legislative Building, the Legislative Office Building, the Offices of the State Treasurer, or any other location as agreed upon by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"SECTION 47.2.(b) The initial meeting of the Commission shall be called by the cochairs.

"SECTION 47.3. The Commission shall study issues relating to the source, nature, purpose, and distribution of various State funds. As part of its study, the Commission may examine issues related to:

"(1) The identification, documentation, and categorization of funds, including:

"a. The source of the funds.

"b. The current location and type of fund.

"c. Fund balances, including amounts needed to maintain adequate cash flow and amounts available for investments.

"d. Guiding documents.

"e. Governance structure.

"f. Current protections and investment authority.

"The Commission may consider any other issues it deems relevant to this study.

"SECTION 47.4. The Commission shall make an interim report to the 2010 Regular Session of the 2009 General Assembly prior to its convening, and shall make a final report to the 2010 Regular Session of the General Assembly. The report shall include any proposed legislation."

Session Laws 2009-574, s. 52.1, provides: "For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate."

§ 147-66. Office and office hours.

The Treasurer shall keep his office at the City of Raleigh, and shall attend there between the hours of 10 o'clock A.M. and three o'clock P.M., Sundays and legal holidays excepted. He shall be allowed such office room as may be necessary. (1868-9, c. 270, ss. 80, 81; Code, s. 3362; Rev., s. 5369; C.S., s. 7679.)

§ 147-67: Repealed by Session Laws 1981, c. 884, s. 14.

§ 147-68. To receive and disburse moneys; to make reports.

(a) It is the duty of the Treasurer to receive all moneys which shall from time to time be paid into the treasury of this State; and to pay all warrants legally drawn on the Treasurer.

(b) No moneys shall be paid out of the treasury except on warrant unless there is a legislative appropriation or authority to pay the same.

(c) It shall be the responsibility of the Treasurer to determine that all warrants presented to him for payment are valid and legally drawn on the Treasurer.

(d) The Treasurer shall report to the Governor annually and to the General Assembly at the beginning of each biennial session the exact balance in the treasury to the credit of the State, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year.

(d1) The Treasurer shall report to the Joint Legislative Commission on Governmental Operations, the chairs of the House of Representatives and Senate Appropriations Committees, the chairs of the House of Representatives and Senate Finance Committees, and the Fiscal Research Division of the General Assembly, on a quarterly basis, concerning all investments and deposits made by and through his office. The report shall include a listing of all investments with or on behalf of the State or any of its agencies or institutions and shall include the particular agency or institution, fund, rate of return, duration of the investment, and the amount of deposit on all noninterest bearing accounts. The first report is due 90 days after July 1, 1982, and shall include all investments and deposits made during the 1981-82 fiscal year and all investments made during the first quarter of the 1982-83 fiscal year; thereafter, reports shall be made on a quarterly basis including all investments and deposits made during that reporting period. The report shall include a specific listing of all investments made with certified green managers and companies and funds that support sustainable practices, including the names of the companies, managers, and funds, the amount invested, and the State's return on investment.

(d2) After consulting with the Select Committee on Information Technology and the Joint Legislative Commission on Governmental Operations and after consultation with and approval of the Information Resources Management Commission, the Department of State Treasurer may spend departmental receipts for the 2000-2001 fiscal year to continue improvement of the Department's investment banking operations system, retirement payroll systems, and other information technology infrastructure needs. The Department of State Treasurer shall report by January 1, 2001, and annually thereafter to the following regarding the amount and use of the departmental receipts: the Joint Legislative Commission on Governmental Operations, the Chairs of the General Government Appropriations Subcommittees of both the House of Representatives and the Senate, and the Joint Legislative Committee on Information Technology.

(e) The State Treasurer, in carrying out the responsibilities of this section, shall be independent of any fiscal control exercise by the Director of the Budget or the Department of Administration and shall be responsible to the General Assembly and the people of North Carolina for the efficient and faithful exercise of the responsibilities of his office. The State Treasurer, for all other purposes, is subject to Chapter 143C of the General Statutes. (1868-9, c. 270, s. 71; Code, s. 3356; Rev., s. 5370; C.S., s. 7682; 1955, c. 577; 1957, c. 269, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 65; 1983, c. 913, s. 52; 2000-67, s. 24A; 2003-284, s. 28.2(a); 2004-129, s. 46A; 2006-203, s. 118; 2007-323, s. 13.2(b).)

Cross References. — As to funds of inoperative boards and agencies, see G.S. 143-267 through 143-272. As to Sexual Assault and Rape Crisis Center Fund, see G.S. 143B-394.21.

Editor's Note. — Session Laws 2000-67, s. 24A, effective July 1, 2000, was codified as subsection (d2) of this section at the direction of the Revisor of Statutes.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-203, s. 118, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (d), deleted "and Advisory Budget Commission" following "to the Governor"; in subsection (e), deleted "the Advisory Budget Commission," preceding "the General Assembly" in the first sentence, and substituted "Chapter 143C" for "Article 1 of Chapter 143" in the last sentence.

CASE NOTES

The Treasurer is not required to pay every warrant which the Auditor may sign, but only those which are legally drawn, and the fact that the Auditor finds that a claim for which he issues a warrant on the Treasurer is authorized by law is not binding upon or a protection to the latter. Commercial & Farmers' Bank v. Worth, 117 N.C. 146, 23 S.E. 160 (1895).

As He Has No Right to Pay Out Money Except on Proper Warrants. — As it is the duty of the State Treasurer to keep his accounts, showing the transactions of each fiscal year ending December 31, he has no right to pay out money except upon proper warrants drawn upon the proper funds in the treasury. Arendell v. Worth, 125 N.C. 111, 34 S.E. 232 (1899).

And the Treasurer is not liable to a mandamus for refusing to pay a warrant improperly drawn. Arendell v. Worth, 125 N.C. 111, 34 S.E. 232 (1899).

Where the State Treasurer denies the correctness of a claim audited by the State Auditor and alleges fraud in the creation of the indebtedness or that the services for which a warrant was issued were not rendered, mandamus will not lie to compel him to pay it, the question raised by such claim being for the legislature, and not the courts, to determine. Garner v. Worth, 122 N.C. 250, 29 S.E. 364 (1898).

Or for Refusing to Pay a Claim Where No Warrant Has Been Issued. — Mandamus will not lie to compel the Treasurer to pay a claim where the Auditor has not issued a warrant therefor, as the Treasurer can only pay on such warrant. Burton v. Furnam, 115 N.C. 166, 20 S.E. 443 (1894).

But the Treasurer is entitled to a mandamus to enforce the drawing of proper warrants upon the proper funds before paying them, as they are his vouchers. Arendell v. Worth, 125 N.C. 111, 34 S.E. 232 (1899).

The courts cannot direct the State Treasurer to pay a claim against the State, however just and unquestioned, when there is no legislative appropriation to pay the same; and when there is such an appropriation, the coercive power is applied not to compel payment of the State liability, but to compel a public servant to discharge his duty by obedience to a legislative enactment. Garner v. Worth, 122 N.C. 250, 29 S.E. 364 (1898).

Refund of Taxes. — The State Treasurer is responsible for the efficient and faithful exercise of the responsibilities of his office, including refunding taxes erroneously collected. Bailey v. State, 330 N.C. 227, 412 S.E.2d 295 (1991), cert. denied, 504 U.S. 911, 112 S. Ct. 1942, 118 L. Ed. 2d 547 (1992), overruled on other grounds, 348 N.C. 130, 500 S.E.2d 54 (1998).

Although the Secretary of Revenue is authorized by G.S. 105-266.1 [repealed] to refund excessive or incorrect taxes paid by a taxpayer who applies for such refund according to the statutory requisites of G.S. 105-266.1, she is not authorized by that statute or by G.S. 105-267 [repealed] to order the refund of an invalid or illegal tax, since questions of constitutionality are for the courts. Bailey v. State, 330 N.C. 227, 412 S.E.2d 295 (1991), cert. denied, 504 U.S. 911, 112 S. Ct. 1942, 118 L. Ed. 2d 547 (1992), overruled on other grounds, 348 N.C. 130, 500 S.E.2d 54 (1998).

Applied in Gardner v. Board of Trustees of N.C. Local Governmental Employees' Retirement Sys., 226 N.C. 465, 38 S.E.2d 314 (1946).

OPINIONS OF ATTORNEY GENERAL

Repeal of provisions of the Executive Budget Act by S.L. 1985-290, §§ 1, 2 and 6 was not intended by the General Assembly to also repeal subsection (e) of this section, by implication; therefore, the State Treasurer is authorized to carry out his responsibilities independent of any fiscal control exercised by the Director of the Budget or the Department of Administration, except as set forth in G.S.143-25. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

§ 147-68.1. Banking operations.

The cost of administration, management, and operations of the banking operations of the Department of State Treasurer shall be apportioned equitably among the funds and programs using these services, and the costs so apportioned shall be deposited with the State Treasurer as a general fund nontax revenue. The cost of administration, management and operations of the banking operations of the Department of State Treasurer shall be covered by an appropriation to the State Treasurer for this purpose in the Current Operations Appropriations Act. (1983 (Reg. Sess., 1984), c. 1034, s. 118.)

§ 147-69. Deposits of State funds in banks and savings and loan associations regulated.

Banks and savings and loan associations having State deposits shall furnish to the Auditor of the State, upon the Auditor's request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in the Treasurer's office a full account of all moneys deposited in and drawn from all banks and savings and loan associations in which the Treasurer may deposit or cause to be deposited any of the public funds, and these accounts shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank or savings and loan association shall be authorized to pay checks not bearing the Treasurer's official signature. The Treasurer is authorized to use a facsimile signature machine or device in affixing the Treasurer's signature to warrants, checks or any other instrument the Treasurer is required by law to sign. The Commissioner of Banks, the bank examiners, and the savings and loan examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all these depository banks and savings and loan associations, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank or savings and loan association, require ample security from the bank or savings and loan association for these deposits. (1905, c. 520; Rev., s. 5371; 1915, c. 168; 1917, c. 159; C.S., s. 7684; 1931, c. 127, s. 1; c. 243, s. 5; 1933, c. 175, s. 1; 1945, c. 644; 1949, c. 1183; 1967, c. 398, s. 2; 1977, c. 401, s. 1; 1983, c. 158, s. 4; 1987, c. 751, s. 1; 1989, c. 76, s. 27; 2001-193, s. 16; 2004-203, s. 11.)

Legal Periodicals. — For comment on the 1949 amendment to this section, see 27 N.C.L. Rev. 425 (1949).

§ 147-69.1. Investments authorized for General Fund and Highway Funds assets.

(a) The Governor and Council of State, with the advice and assistance of the State Treasurer, shall adopt such rules and regulations as shall be necessary and appropriate to implement the provisions of this section.

(b) This section applies to funds held by the State Treasurer to the credit of:
(1) The General Fund;
(2) The Highway Fund and Highway Trust Fund.

(c) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (b) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.

(2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service, the Export-Import Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, and the Student Loan Marketing Association.

(3) Repurchase Agreements with respect to securities issued or guaranteed by the United States government or its agencies or other securities eligible for investment by this section executed by a bank or trust company or by primary or other reporting dealers to the Federal Reserve Bank of New York.

(4) Obligations of the State of North Carolina.

(5) Certificates of deposit and other time deposits of financial institutions under any of the following conditions:

a. With financial institutions with a physical presence in the State for the purpose of receiving commercial or retail deposits; provided that any principal amount of such deposit in excess of the amount insured by the federal government or any agency thereof, be fully secured by surety bonds, or be fully collateralized; provided further that the rate of return or investment yield may not be less than that available in the market on United States government or agency obligations of comparable maturity.

b. With financial institutions with a physical presence inside or outside the State, in accordance with all of the following conditions:

1. The funds are initially deposited through a bank or savings and loan association in the State that is an official depository and that is selected by the State Treasurer, provided that the rate of return or investment yield shall not be less than that available in the market on United States government or agency obligations of comparable maturity.

2. The selected bank or savings and loan association arranges for the deposit of the funds in certificates of deposit for the account of the State in one or more federally insured banks or savings and loan associations wherever located, provided that no State funds shall be deposited in a bank or savings and loan association that at the time holds other time deposits from the State.

3. The full amount of principal and any accrued interest of each certificate of deposit are covered by federal deposit insurance.

4. The selected bank or savings and loan association acts as custodian for the State with respect to the certificates of deposit issued for the State's account.

5. At the same time that the State funds are deposited and the certificates of deposit are issued, the selected bank or savings and loan association receives an amount of deposits from customers of other federally insured financial institutions wherever located equal to or greater than the amount of the funds invested by the State through the selected bank or

savings and loan association pursuant to this sub-subdivision.

(6) Repealed by Session Laws 1989 (Regular Session, 1990), c. 813, s. 10.

(7) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.

(8) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.

(9) Asset-backed securities (whether considered debt or equity) provided they bear the highest rating of at least one nationally recognized rating service and do not bear a rating below the highest rating by any nationally recognized rating service which rates the particular securities.

(10) Corporate bonds and notes provided they bear the highest rating of at least one nationally recognized rating service and do not bear a rating below the highest by any nationally recognized rating service which rates the particular obligation.

(d) Unless otherwise provided by law, the interest or income received and accruing from all deposits or investments of such cash balances shall be paid into the State's General Fund, except that all interest or income received and accruing on the monthly balance of the Highway Fund and Highway Trust Fund shall be paid into the State Highway Fund and Highway Trust Fund. The cash balances of the several funds may be combined for deposit or investment purposes; and when such combined deposits or investments are made, the interest or income received and accruing from all deposits or investments shall be prorated among the funds in conformity with applicable law and the rules and regulations adopted by the Governor and Council of State.

(e) The State Treasurer shall cause to be prepared quarterly statements on or before the tenth day of February, May, August, and November in each year, which shall show the amount of cash on hand, the amount of money on deposit, the name of each depository, and all investments for which he is in any way responsible. Each quarterly statement shall be delivered to the Governor, Council of State, President Pro Tempore of the Senate, and Speaker of the House of Representatives; and a copy shall be posted in the office of the State Treasurer for the information of the public.

(f) Repealed by Session Laws 1989 (Regular Session, 1990), c. 813, s. 10.

(g) Repealed by Session Laws 2001-444, s. 1, effective October 1, 2001. (1943, c. 2; 1949, c. 213; 1957, c. 1401; 1961, c. 833, s. 2.2; 1967, c. 398, s. 1969, c. 125; 1975, c. 482; 1979, c. 467, s. 1; c. 717, s. 1; 1981, c. 801, ss. 1, 2; 1985, c. 313, s. 3; 1987, c. 751, ss. 2-4; 1987 (Reg. Sess., 1988), c. 882, s. 5; 1989, c. 76, s. 28; c. 751, s. 7(43); 1989 (Reg. Sess., 1990), c. 813, s. 10; 1991 (Reg. Sess., 1992), c. 959, s. 75; 1993, c. 105, s. 2; 1999-251, s. 1; 2001-444, s. 1; 2001-487, s. 14(m); 2005-394, s. 1.)

Cross References. — See G.S. 124-5.1(a), directing the application of dividends of the North Carolina Railroad Company received by the State to reduce the obligations described in Session Laws 1997-443, s. 32.30(c), as amended by Session Laws 1999-237, s. 27.11(d). See also G.S. 124-5.1(b), regarding the cessation of accrual of interest on the remaining balance of the obligations described in Session Laws 1997-443, s. 32.20(c), as amended by Session Laws 1999-237, s. 27.11(d), effective January 1, 2000.

Editor's Note. — Subsection (c), as

amended by Session Laws 1999-251, s. 1, has been set forth above consistent with directions from the Revisor of Statutes.

§ 147-69.2. Investments authorized for special funds held by State Treasurer.

(a) This section applies to funds held by the State Treasurer to the credit of each of the following:

(1) The Teachers' and State Employees' Retirement System.
(2) The Consolidated Judicial Retirement System.
(3) The State Health Plan for Teachers and State Employees.
(4) The General Assembly Medical and Hospital Care Plan.
(5) The Disability Salary Continuation Plan.
(6) The Firemen's and Rescue Workers' Pension Fund.
(7) The Local Governmental Employees' Retirement System.
(8) The Legislative Retirement System.
(9) The Escheat Fund.
(10) The Legislative Retirement Fund.
(11) The State Education Assistance Authority.
(12) The State Property Fire Insurance Fund.
(13) The Stock Workers' Compensation Fund.
(14) The Mutual Workers' Compensation Fund.
(15) The Public School Insurance Fund.
(16) The Liability Insurance Trust Fund.
(16a) The University of North Carolina Hospitals at Chapel Hill funds, except appropriated funds, deposited with the State Treasurer pursuant to G.S. 116-37.2.
(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1.
(17a) North Carolina Veterans Home Trust Fund.
(17b) North Carolina National Guard Pension Fund.
(17c) Retiree Health Premium Reserve Account.
(17d) The Election Fund.
(17e) The North Carolina State Lottery Fund.
(17f) Funds deposited with the State Treasurer by public hospitals pursuant to G.S. 159-39(g).
(17g) The Local Government Other Post-Employment Benefits Fund.
(17h) The Local Government Law Enforcement Special Separation Allowance Fund.
(17i) The North Carolina Conservation Easement Endowment Fund.
(17j) The Conservation Grant Fund.
(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.
(19) The Swain County Settlement Trust Fund.

(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c)(1)-(7).
(2) General obligations of other states of the United States.
(3) General obligations of cities, counties and special districts in North Carolina.
(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or outside the United

States, including obligations that are convertible into equity securities, if the obligations bear one of the four highest ratings of at least one nationally recognized rating service when acquired.

(5) Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4).

(6a) In addition to the limitations and requirements with respect to the investments of the Retirement Systems set forth in this subsection, the State Treasurer shall select investments of the assets of the Retirement Systems such that investments made pursuant to subdivisions (b)(1) through (6) of this section shall at all times equal or exceed twenty percent (20%) of the market value of all invested assets of the Retirement Systems.

(6b) Investments pursuant to subdivisions (b)(1) through (6) of this section may be made directly by the State Treasurer or through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by subdivisions (b)(1) through (6) of this section, provided for each indirect investment, the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

(6c) With respect to Retirement Systems' assets referred to in subdivision (b)(8), they may be invested in obligations and other debt securities, including debt securities convertible into other securities, that do not meet the requirements of any of subdivisions (b)(1) through (6) of this section nor subdivision (b)(7) of this section, provided such investments are made through investment companies registered under the Investment Company Act of 1940, individual, common collective trust funds of banks and trust companies, group trusts and limited partnerships, limited liability companies or other limited liability investment vehicles that invest primarily in investments authorized by this subdivision and through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by this subdivision, provided the investment manager for each investment pursuant to this subdivision has assets under management of at least one hundred million dollars ($100,000,000) and provided that the investments authorized under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

(7) With respect to Retirement Systems' assets referred to in subdivision (8) of this subsection, (i) insurance contracts that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, (v) investment companies registered under the Investment Company Act of 1940, and (vi) limited partnerships, limited liability companies, or other limited liability investment vehicles; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located within or outside the United States; and provided that the investments authorized by this subdivision shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems), and assets invested pursuant to subdivision (b2) of this section, they may be invested in equity securities traded on a public securities exchange or market organized and regulated pursuant to the laws of the jurisdiction of such exchange or market and issued by any company incorporated or otherwise created or located within or outside the United States; provided the investments meet the conditions of this subdivision.

The investments authorized for the Retirement Systems under this subdivision cannot exceed sixty-five percent (65%) of the market value of all invested assets of the Retirement Systems. So long as each investment manager has assets under management of at least one hundred million dollars ($100,000,000), the assets authorized under this subdivision can be invested through (i) investment companies registered under the Investment Company Act of 1940; (ii) individual, common, or collective trust funds of banks and trust companies, (iii) group trusts, and (iv) contractual arrangements in which investment managers have full and complete discretion and authority to invest assets specified in such contractual arrangements.

The assets authorized under this subdivision can also be invested directly by the State Treasurer in any equity securities represented in the S&P 500 Index or that have been publicly announced to be included in the S&P 500 Index. No more than one and one-half percent (11/2%) of the market value of the Retirement Systems' assets that may be invested directly under this subdivision can be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed eight percent (8%) of the issued and outstanding stock of that corporation.

(9) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in interests in limited partnerships, limited liability companies, or other limited liability investment vehicles that are not publicly traded if the primary purpose of the limited partnership, limited liability company, or other limited liability investment vehicle is to invest in public or private equity, or corporate buyout transactions, within or outside the United States. The amount invested under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

(9a) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in inflation-linked bonds, timberlands, commodities, and other assets that are acquired for the primary purpose of providing protection against risks associated with inflation, provided such investments are made through investment companies registered under the Investment Company Act of 1940, individual, common or collective trust funds of banks and trust companies, group trusts and limited partnerships, limited liability companies or other limited liability investment vehicles that invest primarily in investments authorized by this subdivision and through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by this subdivision, provided the investment manager for each investment pursuant to this subdivision has assets under management of at least one hundred million dollars ($100,000,000) and provided that the investments authorized under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems. Notwithstanding anything in this subsection to the contrary, the investments authorized by this subdivision shall not be included in any subdivision other than this subdivision for purposes of the percentage investment limitations therein or otherwise.

(10) Recodified as part of subdivision (b)(9) by Session Laws 2000-160, s. 2.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than October 1, 2011. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision.

(12) With respect to assets of the Escheat Fund, in addition to those investments authorized by subdivisions (1) through (6) of this subsection, up to twenty percent (20%) of such assets may be invested in the investments authorized under subdivisions (7) through (9) of this subsection, notwithstanding the percentage limitations imposed on the Retirement Systems' investments under those subdivisions.

(b1) With respect to investments authorized by subdivisions (b)(7), (b)(8), and (b)(9) of this section, the State Treasurer shall appoint an Investment Advisory Committee, which shall consist of seven members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and four members selected from the general public. The four public members must have experience in areas relevant to the administration of a large, diversified investment program, including, but not limited to, investment management, securities law, real estate development, or absolute return strategies. The State Treasurer shall also appoint a Secretary of the Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1.

(b2) The State Treasurer may invest funds deposited pursuant to subdivision (a)(17f) of this section in any of the investments authorized under subdivisions (b)(1) through (6), subdivision (b)(6c), and subdivision (b)(8) of this section, notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess reasonable fees, not to exceed 15 basis points per annum, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection by a hospital shall remain the funds of that hospital, and interest or other investment income earned thereon shall be prorated and credited to the contributing hospital on the basis of the amounts thereof contributed, figured according to sound accounting principles. Fees assessed by the State Treasurer may be used to defray the cost of administering investments pursuant to this subsection.

(b3) The State Treasurer may invest funds deposited pursuant to subdivision (a)(16a) of this section in any of the investments authorized under subdivisions (1) through (6), subdivision (6c) and subdivision (b)(8) of this section, notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess reasonable fees, not to exceed 15 basis points per annum, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection by the University of North Carolina Hospitals at Chapel Hill shall remain the funds of the University of North Carolina Hospitals at Chapel Hill, and interest or other investment income earned thereon shall be prorated and credited to the University of North Carolina Hospitals at Chapel Hill on the basis of the amounts thereof contributed, figured according to sound accounting principles. Fees assessed by the State Treasurer may be used to defray the cost of administering investments pursuant to this subsection.

(b4) In addition to the investments authorized under subdivisions (b)(1) through (6) of this section, the State Treasurer may invest funds deposited in the Local Government Other Post-Employment Benefits Fund in any of the investments authorized under subdivisions (b)(6c) and (b)(8) of this section, notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. For investments from that Fund made under subdivisions (b)(6c) and (b)(8) of this section, the State Treasurer may require a minimum deposit of up to one hundred thousand dollars ($100,000) and may assess fees of up to 15 basis points per annum as a condition of making the investment. The fee may be used to defray the costs of administering the Fund.

(b5) In addition to the investments authorized under subdivisions (b)(1) through (6) of this section, the State Treasurer may invest funds deposited in the Local Government Law Enforcement Special Separation Allowance Fund in any of the investments authorized under subdivisions (b)(6c) and (b)(8) of this section, notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. For investments from that Fund made under subdivisions (b)(6c) and (b)(8) of this section, the State Treasurer may require a minimum deposit of up to one hundred thousand dollars ($100,000) and may assess fees of up to 15 basis points per annum as a condition of making the investment. The fee may be used to defray the costs of administering the Fund.

(c) Repealed by Session Laws 1995, c. 501, s. 2.

(d) The State Treasurer may invest funds deposited pursuant to subdivision (a)(17i) of this section in any of the investments authorized under subdivisions (1) through (6) and subdivision (8) of subsection (b) of this section. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess a reasonable fee, not to exceed 15 basis points, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection shall remain the funds of the North Carolina Conservation Easement Endowment Fund, and interest or other investment income earned thereon shall be prorated and credited to the North Carolina Conservation Easement Endowment Fund on the basis of the amounts thereof contributed, figured according to sound accounting principles. (1979, c. 467, s. 2; 1983, c. 702, ss. 1-9; 1987, c. 446, s. 1; c. 751, s. 5; 1987 (Reg.

Sess., 1988), c. 1070; 1989, c. 770, s. 54; 1989 (Reg. Sess., 1990), c. 813, s. 11; c. 848, s. 5; 1991, c. 542, s. 16; c. 636, s. 3; c. 749, s. 8; 1993 (Reg. Sess., 1994), c. 777, s. 4(i); 1995, c. 346, s. 2; c. 501, s. 2; 1997-456, s. 27; 1999-237, s. 27.16; 1999-251, s. 2; 2000-160, s. 2; 2001-444, ss. 2, 3; 2003-12, s. 2; 2004-124, s. 30.22(b); 2005-144, s. 7; 2005-201, s. 2; 2005-252, s. 1; 2005-276, s. 28.17; 2005-344, s. 10; 2005-417, s. 2; 2007-323, s. 27.7; 2007-384, ss. 2, 3, 7, 8; 2008-13, s. 2; 2008-107, ss. 12.9(b), (c), 12.13; 2009-98, s. 1; 2009-283, s. 2; 2009-451, s. 25.2(a).)

Cross References. — As to investment by community colleges and technical institutes, see G.S. 115D-58.6.

Editor's Note. — Subsection (a), as amended by Session Laws 1999-251, s. 2, has been set forth above with subdivision designation changes pursuant to direction from the Revisor of Statutes.

The preamble to Session Laws 2003-12, which amended this section, reads as follows: "Whereas, in 2002, Congress enacted the Help America Vote Act of 2002 (HAVA), Public Law 107-252, entitled an act to establish a program to provide funds to states to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of federal elections and to otherwise provide assistance with the administration of certain federal election laws and programs, to establish minimum election administration standards for states and units of local government with responsibility for the administration of federal elections, and for other purposes; and has appropriated over thirty-one million dollars ($31,000,000) to the State of North Carolina for the current fiscal year; and

"Whereas, Section 254(b) of HAVA requires each state receiving funds to establish a fund to receive and disburse these funds; Now, therefore,

"The General Assembly of North Carolina enacts:"

Session Laws 2003-12, s. 1, provides: "There is established a special fund to be known as the Election Fund. All funds received for implementation of the Help America Vote Act of 2002, Public Law 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement HAVA."

Session Laws 2004-124, s. 30.22.(a) and (c) provide: "(a) From funds borrowed from the Escheat Fund pursuant to G.S. 63A-4(a)(22) and G.S. 147-69.2(b)(11), the North Carolina Global TransPark Authority shall make a payment of two million five hundred thousand dollars ($2,500,000) to the Escheat Fund as soon as feasible after the effective date of this section and shall not expend or obligate any other funds that were borrowed from the Escheat Fund except after consultation with the Joint Legislative Commission on Governmental Operations on its intent to expend or obligate the funds."

"(c) All interest on funds borrowed from the Escheat Fund pursuant to G.S. 63A-4(a)(22) and G.S. 147-69.2(b)(11) and on account with the State Treasurer for the benefit of the North Carolina Global TransPark Authority may only be used to repay the loan."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2004-138, s. 1.1, provides: "Except after consultation with the Joint Legislative Commission on Governmental Operations on its intent to expend or obligate funds, the North Carolina Global TransPark Authority shall not expend or obligate any funds that were borrowed from the Escheat Fund pursuant to G.S. 63A-4(a)(22) and G.S. 147-69.2(b)(11), or any interest earned on those funds."

The preamble to Session Laws 2005-252, which amended this section, reads as follows: "Whereas, the State Constitution mandates that proceeds of the Escheat Fund shall be utilized to aid needy and worthy North Carolina students enrolled in public institutions of higher education; and

"Whereas, continued tuition increases are intensifying the demand on the Escheat Fund to provide North Carolina students with loans and tuition assistance to offset tuition hikes; and

"Whereas, adoption of a proactive investment policy for the Escheat Fund will enable the State to realize a greater benefit from existing capital, thereby enhancing the Escheat Fund's constitutionally provided purpose; and

"Whereas, the assets of the Escheat Fund have grown to nearly $600,000,000, necessitating the establishment of a modern investment allocation strategy for these funds; and

"Whereas, such a policy will enable the State Treasurer to invest in those types of investments considered prudent for the Escheat Fund; Now, therefore,"

Session Laws 2005-344, s. 14, provides: "Nothing in this act [which established the North Carolina State Lottery] shall be construed to obligate the General Assembly to appropriate funds to implement this act."

Subdivision (a)(17f) was enacted as subdivision (a)(17e) by Session Laws 2005-417, s. 2, and redesignated as subdivision (a)(17f) at the direction of the Revisor of Statutes.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-13, s. 2, effective June 25, 2008, added subdivision (a)(19).

Session Laws 2008-107, ss. 12.9(b), (c), and 12.13, effective July 1, 2008, added subdivisions (a)(17i) and (a)(17j) and subsection (d).

Session Laws 2009-98, s. 1, effective June 11, 2009, substituted "The State Health Plan for Teachers and State Employees" for "The Teachers" and State Employees' Hospital and Medical Insurance Plan" in subdivision (a)(3); and rewrote subsections (b) and (b1) through (b5).

Session Laws 2009-283, s. 2, effective July 10, 2009, in subsection (b1), in the first sentence, substituted "subsections (b)(7), (b)(8), and (b)(9)" for "subsections (b)(8) and (b)(9)" near the beginning, "seven members" for "five members" near the middle, and "four members" for "two members" near the end; and rewrote the second sentence.

Session Laws 2009-451, s. 25.2(a), effective July 1, 2009, substituted "October 1, 2011" for "October 1, 2009" in the first sentence of subdivision (b)(11).

Legal Periodicals. — For note, "North Carolina's South African Divestment Statute," see 67 N.C.L. Rev. 949 (1989).

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Investments made through the North Carolina Equity Investment Fund Pooled Trust and managed by State Street Bank and Trust Company are not subject to the conditions set forth in subdivisions (8)a.-g. of this section. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

Investments in Limited Partnerships or Limited Liability companies. — Authority of the State Treasurer under subdivision (b)(9) of this section to invest in limited partnerships or limited liability companies does not specify or limit the types of investment vehicles in which the limited partnerships or limited liability companies may invest; therefore, investments in derivatives are not prohibited. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

Economic Development. — As long as an investment by the State Treasurer is authorized by this section and G.S.147-69.3, it is not disqualified by the fact that it might indirectly facilitate economic development. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

§ 147-69.3. Administration of State Treasurer's investment programs.

(a) The State Treasurer shall establish, maintain, administer, manage, and operate within the Department of State Treasurer one or more investment programs for the deposit and investment of assets pursuant to the provisions of G.S. 147-69.1 and G.S. 147-69.2.

(b) Any official, board, commission, other public authority, local government, school administrative unit, local ABC board, or community college of the State having custody of any funds not required by law to be deposited with and invested by the State Treasurer may deposit all or any portion of those funds with the State Treasurer for investment in one of the investment programs established pursuant to this section, subject to any provisions of law with respect to eligible investments, provided that any occupational licensing board as defined in G.S. 93B-1 may participate in one of the investment programs established pursuant to this section regardless of whether or not the funds were required by law to be deposited with and invested by the State Treasurer. In the absence of specific statutory provisions to the contrary, any of those funds may be invested in accordance with the provisions of G.S. 147-69.2 and 147-69.3. Upon request from any depositor eligible under this subsection, the State Treasurer may authorize moneys invested pursuant to this subsection to be withdrawn by warrant on the State Treasurer.

(c) The State Treasurer's investment programs shall be so managed that in the judgment of the State Treasurer funds may be readily converted into cash when needed.

(d) Except as provided by G.S. 147-69.1(d), the total return earned on investments shall accrue pro rata to the fund whose assets are invested according to the formula prescribed by the State Treasurer with the approval of the Governor and Council of State.

(e) The State Treasurer has full powers as a fiduciary to hold, purchase, sell, assign, transfer, lend and dispose of any of the securities or investments in which any of the programs created pursuant to this section have been invested, and may reinvest the proceeds from the sale of those securities or investments and any other investable assets of the program.

(f) The cost of administration, management, and operation of investment programs established pursuant to this section shall be apportioned equitably among the programs in such manner as may be prescribed by the State Treasurer, such costs to be paid from each program, and to the extent not otherwise chargeable directly to the income or assets of the specific investment program or pooled investment vehicle, shall be deposited with the State Treasurer as a General Fund nontax revenue. The cost of administration, management, and operation of investment programs established pursuant to this section and not directly paid from the income or assets of such program shall be covered by an appropriation to the State Treasurer for this purpose in the Current Operations Appropriations Act.

(g) The State Treasurer is authorized to retain the services of independent appraisers, auditors, actuaries, attorneys, investment counseling firms, statisticians, custodians, or other persons or firms possessing specialized skills or knowledge necessary for the proper administration of investment programs created pursuant to this section.

(h) The State Treasurer shall prepare, as of the end of each fiscal year, a report on the financial condition of each investment program created pursuant to this section. A copy of each report shall be submitted within 30 days following the end of the fiscal year to the official, institution, board, commission or other agency whose funds are invested, the State Auditor, and the chairs of the Finance Committees of the House of Representatives and the Senate.

(i) The State Treasurer shall report at least twice a year to the General Assembly, through the Finance Committees of the House of Representatives and the Senate, on the investment programs created under this section. The Treasurer shall present the reports to a joint meeting of the Finance Committees. The chairs of the Finance Committees may receive the reports and call the meetings. The Finance Committees may meet during the interim as necessary to hear the reports from the State Treasurer. The State Treasurer's report and presentation to the Finance Committees shall include all of the following:

(1) A full and complete statement of all moneys invested by virtue of the provisions of G.S. 147-69.1 and G.S. 147-69.2.
(2) The nature and character of the investments.
(3) The revenues derived from the investments.
(4) The costs of administering, managing, and operating the investment programs, including the recapture of any investment commissions.

(5) A statement of the investment policies for the revenues invested.

(6) Any other information that may be helpful in understanding the State Treasurer's investment policies and investment results.

(7) Any other information requested by the Finance Committees.

(i1) The State Treasurer shall report the incentive bonus paid to the Chief Investment Officer to the Joint Legislative Commission on Governmental Operations by October 1 of each year.

(i2) In order to retain key public employees in the Investment Division, the State Treasurer is authorized to establish compensation including bonuses for the Chief Investment Officer and Investment Directors. The bonuses may be based on compensation studies conducted by a nationally recognized firm specializing in public fund investment compensation and the Pension Plan performance. The salaries and other associated benefits shall be apportioned directly from the investment program. The Treasurer shall report the bonuses paid to the Joint Legislative Commission on Governmental Operations annually.

(j) Subject to the provisions of G.S. 147-69.1(d), the State Treasurer shall adopt any rules necessary to carry out the provisions of this section. (1979, c. 467, s. 3; 1981, c. 445, ss. 4, 5; 1983, c. 515, s. 1; c. 702, s. 10; 1983 (Reg. Sess., 1984), c. 1034, ss. 116, 117; 1987, c. 751, ss. 6-8; 2001-444, s. 4; 2002-126, s. 6.12; 2005-276, s. 27.3; 2006-203, s. 119; 2008-132, s. 5.)

Cross References. — As to investment by community colleges and technical institutes, see G.S. 115D-58.6.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2008-132, s. 5, effective July 1, 2008, was codified as subsection (i2) of this section at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2006-203, s. 119, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "the Advisory Budget Commission," following "the State Auditor," in the last sentence of subsection (h).

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Commission Recapture Program. — Funds generated through the commission recapture program are available for payment of authorized expenses to the same extent as other income and assets of the State Treasurer's investment programs. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

Contracts for Administration of Investment Programs. — Pursuant to subsection (g) of this section, the State Treasurer has authority to contract with independent appraisers, auditors, actuaries, attorneys, investment counseling firms, statisticians, custodians, or other persons or firms possessing specialized skills or knowledge necessary for the proper administration of investment programs without adhering to the requirements set forth in G.S. Ch. 143, Arts. 3 and 3C. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

Economic Development. — As long as an investment by the State Treasurer is authorized by G.S.147-69.2 and this section, it is not disqualified by the fact that it might indirectly facilitate economic development. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

§ 147-69.4. Local Government Other Post-Employment Benefits Fund.

The Local Government Other Post-Employment Benefits Fund is established as a fund in the Office of the State Treasurer under the management of the Treasurer. The Fund consists of contributions made by local governments and other entities authorized to make contributions to the Fund and interest and other investment income earned by the Fund. Contributions to the Fund are irrevocable. Assets of the Fund may be used only to provide other post-employment benefits to individuals who are former employees, or beneficiaries of former employees, of an entity that contributes to the Fund and are entitled to other post-employment benefits payable by the entity. The assets of the Fund are not subject to the claims of creditors of an entity that contributes to the Fund. (2007-384, s. 1.)

Editor's Note. — Session Laws 2007-384, s. 11(a), made this section effective August 19, 2007.

§ 147-69.5. Local Government Law Enforcement Special Separation Allowance Fund.

The Local Government Law Enforcement Special Separation Allowance Fund is established as a fund in the Office of the State Treasurer under the management of the Treasurer. The Fund consists of contributions made by entities authorized to make contributions to the Fund and interest and other investment income earned by the Fund. Contributions to the Fund are irrevocable. Assets of the Fund may be used only to provide law enforcement special separation allowance benefits to individuals who are former employees of a unit of local government that contributes to the Fund and are entitled to law enforcement special separation allowance payable by the unit. The assets of the Fund are not subject to the claims of creditors of an entity that contributes to the Fund. (2007-384, s. 6.)

Editor's Note. — Session Laws 2007-384, s. 11(a), made this section effective August 19, 2007.

§ 147-69.6. Swain County Settlement Trust Fund.

(a) The Swain County Settlement Trust Fund is established as a special fund in the Office of the State Treasurer under the management of the Treasurer. The Fund shall consist of the proceeds of any payments made by the United States in settlement of the 1943 agreement between Swain County and the United States Department of Interior, such other contributions as Swain County or other entities may choose to make to the Fund, and the interest and other investment income earned by the Fund. Contributions to the Fund are irrevocable. Assets in the Fund may be disbursed only to Swain County.

(b) On such schedule as the State Treasurer may determine, in consultation with the Board of Commissioners of Swain County, the State Treasurer shall disburse to Swain County amounts requested by the Swain County Board of Commissioners pursuant to a majority vote of that body, provided that disbursements to Swain County under this subsection in any fiscal year shall not exceed the total interest and investment income earned by the Fund in that fiscal year. At the start of each fiscal year, the State Treasurer shall issue a nonbinding opinion and recommendation to the Swain County Board of Commissioners suggesting an appropriate amount of interest and investment income to be reinvested in the Fund to ensure that the principal investment grows to keep pace with inflation.

(c) No portion of the principal balance of the Fund may be disbursed to Swain County absent a request by the Swain County Board of Commissioners accompanied by a certification by the Swain County Board of Elections that two-thirds of the registered voters of Swain County voted in favor of the disbursement and subsequent expenditure of the amount requested in a referendum conducted under subsection (f) of this section.

(d) Funds disbursed to Swain County under subsections (b) or (c) of this section shall be managed by the county in accordance with the requirements of the Local Government Budget and Fiscal Control Act as amended from time to time.

(e) No part of the principal of the Swain County Settlement Trust Fund or of any interest or other income earned on that principal may be paid to or received by any agent or attorney on account of services rendered in connection with negotiating the settlement agreement between Swain County and the United States Department of Interior or obtaining the monetary settlement from the United States.

(f) The Board of Commissioners of Swain County may direct the Swain County Board of Elections to conduct an advisory referendum on the question of whether any portion of the principal of the Fund should be disbursed to and expended by the county for a particular purpose. The election shall be held on a date jointly agreed upon by the two boards, which may be the same day as any other referendum or election in the county, but may not otherwise be during the period beginning 30 days before and ending 30 days after the day of any other referendum or election to be conducted by the board of elections and already validly called or scheduled by law. The election shall be held in accordance with the procedures of G.S. 163-287. The question to be presented on the ballot shall disclose the specific purpose proposed for expenditure of the principal investment of the Trust Fund and the amount proposed for expenditure.

(g) The Swain County Settlement Trust Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(h) The Swain County Settlement Trust Fund and the income therefrom shall not take the place of or be counted against any other State appropriations or program providing funds or disbursements to Swain County. (2008-13, s. 3.)

Editor's Note. — Session Laws 2008-13, s. 4, made this section effective June 25, 2008.

Session Laws 2008-13, s. 1, provides: "Legislative Findings. — It is hereby determined and declared as a matter of legislative finding that:

"(1) Flooding caused by the construction of Fontana Dam destroyed a road that had been constructed with road bonds which had been assumed by Swain County.

"(2) The United States Department of Interior and the Tennessee Valley Authority entered into an agreement in 1943 with Swain County and the State of North Carolina to compensate Swain County for this loss by, among other obligations, constructing a new road, which would traverse the Great Smoky Mountains National Park.

"(3) The promised road has not been built. Early attempts to construct the road were abandoned by the National Park Service because of the expense involved and concerns about environmental impacts.

"(4) In 2007, the National Park Service concluded, after completing a full environmental impact statement of the road proposal, that construction of the road would have unacceptable impacts to the natural environment in the Great Smoky Mountains National Park. The National Park Service instead has endorsed an alternative proposal, also supported by Swain County, to negotiate a monetary settlement of the United States' unfulfilled obligations under its 1943 agreement with Swain County.

"(5) The proposed monetary settlement of the 1943 agreement between Swain County and the United States Department of Interior is an unprecedented opportunity to provide for the future prosperity of the people of Swain County.

"(6) Appropriate fiscal management of this significant monetary settlement requires authority and programs not currently provided by North Carolina law.

"(7) The Swain County Board of Commissioners has by resolution announced its desire and intention that the proceeds of any monetary settlement with the United States be managed for the long-term prosperity of the people of Swain County.

"(8) The Swain County Board of Commissioners has by resolution announced its desire and intention that the proceeds of a monetary settlement with the United States Department of Interior be preserved and insulated from improvident expenditure."

§ 147-69.7. Discharge of duties to Retirement Systems.

(a) The Treasurer shall discharge his or her duties with respect to the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Squad Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, and the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems) as follows:

(1) Solely in the interest of the participants and beneficiaries.
(2) For the exclusive purpose of providing benefits to participants and beneficiaries and paying reasonable expenses of administering the Retirement Systems.
(3) With the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose.
(4) Impartially, taking into account any differing interests of participants and beneficiaries.
(5) Incurring only costs that are appropriate and reasonable.
(6) In accordance with a good-faith interpretation of the law governing the Retirement Systems.

(b) In investing and managing assets of the Retirement Systems pursuant to subsection (a) of this section, the Treasurer:

(1) Shall consider the following circumstances:
  a. General economic conditions.
  b. The possible effect of inflation or deflation.
  c. The role that each investment or course of action plays within the overall portfolio of the Retirement Systems.
  d. The expected total return from income and the appreciation of capital.
  e. Needs for liquidity, regularity of income, and preservation or appreciation of capital.
  f. The adequacy of funding for the Retirement Systems based on reasonable actuarial factors.
(2) Shall diversify the investments of the Retirement Systems unless the Treasurer reasonably determines that, because of special circumstances, it is clearly prudent not to do so.
(3) Shall make a reasonable effort to verify facts relevant to the investment and management of assets of the Retirement Systems.
(4) May invest in any kind of property or type of investment consistent with the provisions of Article 6 of Chapter 146 of the General Statutes.
(5) May consider benefits created by an investment in addition to investment return only if the Treasurer determines that the investment providing these collateral benefits would be prudent even without collateral benefits.

(c) Compliance by the Treasurer with this section must be determined in light of the facts and circumstances existing at the time of the Treasurer's decision or action and not by hindsight.

(d) The Treasurer's investment and management decisions must be evaluated not in isolation but in the context of the portfolio of the Retirement Systems as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the Retirement Systems. (2009-283, s. 3.)

Editor's Note. — Session Laws 2009-283, s. 5, made this section effective July 10, 2009.

§ 147-69.8. Annual report on new investment authority.

Whenever the General Assembly broadens the investment authority of the State Treasurer as to the General Fund, the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Squad Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, the North Carolina National Guard Pension Fund, or any idle funds, the State Treasurer shall annually report in detail to the General Assembly the investments made under such new authority, including the returns on those investments, earnings, changes to value, and gains and losses in disposition of such investments. The report shall be made during the first six months of each calendar year, covering performance in the prior calendar year. As to each type of new investment authority, the report shall be made for at least four years. (2009-283, s. 4.)

Editor's Note. — Session Laws 2009-283, s. 5, made this section effective July 10, 2009.

§ 147-70. To make short-term notes in emergencies.

Subject to the approval of the Governor and Council of State, the State Treasurer is authorized to make short-term notes for temporary emergencies, but such notes must only be made to provide for appropriations already made by the General Assembly. (1915, c. 168, s. 3; C.S., s. 7685.)

§ 147-71. May demand and sue for money and property of State.

The Treasurer is authorized to demand, sue for, collect and receive all money and property of the State not held by some person under authority of law. (1866, c. 46; Code, s. 3359; Rev., s. 5375; C.S., s. 7688.)

§ 147-72. Ex officio treasurer of State institutions; duties as such.

The Treasurer shall be ex officio the treasurer of the Department of Agriculture and Consumer Services, of the North Carolina State College of Agriculture and Engineering, of the North Carolina School for the Deaf and Dumb at Morganton, of the North Carolina Institution for the Deaf and Dumb and the Blind at Raleigh, for the State hospitals (for the insane) at Raleigh, Morganton and Goldsboro and for the State's prison. He may appoint deputies to act for him at Morganton and Goldsboro, and may pay such deputies reasonable compensation. He shall keep all accounts of the institutions, and shall pay out all moneys, upon the warrant of the respective chief officers or superintendents, countersigned by two members of the board of directors, managers, or trustees. He shall report to the respective boards at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. He shall perform his duties as treasurer of these several institutions under such regulation as shall be prescribed in each case by their respective boards of managers, trustees or directors, with the approval of the Governor; and shall be responsible on his official bond for the faithful discharge of his duties as treasurer of each of the several institutions. As treasurer of such institutions he shall, annually, after the examination, verification, and cancellation of his vouchers, deposit the same with the respective institutions, and the superintendents thereof shall be responsible for their safekeeping. (1879, c. 240, s. 2; 1881, c. 128; c. 211, s. 9; 1883, c. 156, s. 12; c. 405; Code, ss. 2235, 2251, 3723; 1895, c. 434; 1899, c. 1, s. 11; Rev., s. 5376; 1919, c. 314, s. 6; C.S., s. 7689; 1947, c. 781; 1997-261, s. 109.)

Cross References. — As to State schools for hearing impaired children, see G.S. 143B-216.40 et seq. As to the state school for sight-impaired children, see G.S. 143B-164.10 et seq.

Editor's Note. — The North Carolina State College of Agriculture and Engineering is now the North Carolina State University at Raleigh. See Session Laws 1963, c. 448, s. 6; 1965, c. 213. And see § 116-4.

§ 147-73. Office of treasurer of each State institution abolished.

The office of treasurer of each of the several State institutions of which the State Treasurer is ex officio treasurer is hereby abolished. (1929, c. 337, s. 3.)

§ 147-74. Office of State Treasurer declared office of deposit and disbursement.

The office of the State Treasurer is declared to be an office of deposit and disbursement and only such records and accounts as may be necessary to disclose the accountability of the State Treasurer shall be kept. The purpose of this section is to prevent duplication in account and record keeping and such accounts as may be necessary shall be prescribed by the Director of the Budget under the terms of the Executive Budget Act. (1929, c. 337, s. 2.)

§ 147-75. Deputy to act for Treasurer.

The Treasurer may authorize a deputy to perform any duties pertaining to the office. The Treasurer may authorize a deputy to affix the Treasurer's signature to any check, warrant or any other instrument the Treasurer is required to sign by use of the facsimile signature machine or device during the Treasurer's absence or disability. The Treasurer shall be responsible for the conduct of his deputies. (1868-9, c. 270, s. 76; Code, s. 3358; Rev., s. 5377; C.S., s. 7690; 1977, c. 401, s. 2.)

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Delegation of Power to Attend Meetings. — Those members of the Council of State who have statutory authority to delegate duties may, in conformity with such statutes, attend and vote at meetings of Boards of which they are *ex officio* members through delegates or designated subordinates. The remaining members of the Council of State may make similar delegations or designations where, in the member's judgment, other duties necessitate his absence and the statute creating his *ex officio* membership does not express or clearly imply an intent of the General Assembly that the powers of such membership be exercised personally. See opinion of Attorney General to the honorable James E. Long, Commissioner of Insurance, 55 N.C.A.G. 116 (1986).

§ 147-76. Liability for false entries in his books.

If the Treasurer of the State shall wittingly or falsely make, or cause to be made, any false entry or charge in any book by him as Treasurer, or shall wittingly or falsely form, or procure to be formed, any statement of the treasury, to be by him laid before the Governor, the General Assembly, or any committee thereof, or to be by him used in any settlement which he is required to make with intent, in any of said instances, to defraud the State or any person, such Treasurer shall be guilty of a Class 1 misdemeanor. (R.C., c. 34, s. 68; Code, s. 1119; Rev., s. 3606; C.S., s. 7691; 1983, c. 913, s. 53; 1993, c. 539, s. 1055; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 147-77. Daily deposit of funds to credit of Treasurer.

All funds belonging to the State of North Carolina, in the hands of any head of any department of the State which collects revenue for the State in any form whatsoever, and every institution, agency, officer, employee, or representative of the State or any agency, department, division or commission thereof, except officers and the clerks of the Supreme Court and Court of Appeals, collecting or receiving any funds or money belonging to the State of North Carolina, shall daily deposit the same in some bank, or trust company, selected or designated by the State Treasurer, in the name of the State Treasurer, at noon, or as near thereto as may be, and shall report the same daily to said Treasurer: Provided that the State Treasurer may authorize exemptions from the provisions of this section so long as funds are deposited and reported pursuant to the provisions of this section at least once a week and, in addition, so long as funds are deposited and reported pursuant to the provisions of this section whenever as much as two hundred fifty dollars ($250.00) has been collected and received: Provided, that the Treasurer may refund the amount of any bad checks which have been returned to the department by the Treasurer when the same have not been collected after 30 days' trial. (1925, c. 128, s. 1; 1945, c. 159; 1969, c. 44, s. 77; 1985, c. 708.)

Cross References. — As to daily deposits by community colleges and technical institutes, see G.S. 115D-58.9.

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"Enterprise funds" maintained by the Division of Vocational Rehabilitation Services and "student activity funds" maintained by the Schools for the Deaf are required to be deposited with the State Treasurer pursuant to G.S. 147-77. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

Funds donated to Lenox Baker Children's Hospital are required to be deposited with the State Treasurer unless the conditions or terms of the gift provide to the contrary, or unless otherwise provided by law. See opinion of Attorney General to Mr. Richard J. Vinegar, Chairman Board of Directors of Lenox Baker Children's Hospital, 56 N.C.A.G. 31 (1986).

Any gift in trust where the terms contraindicate investment or deposit with the State Treasurer (for example where the terms of the gift provide for a private trustee) would be exempt from the operation of the cash management policy. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

§ 147-78. Treasurer to select depositories.

The State Treasurer is hereby authorized and empowered to select and designate, wherever necessary, in this State some bank or banks, savings and loan association or associations, or trust company as an official depository of the State. (1925, c. 128, s. 2; 1979, c. 637, s. 4; 1983, c. 158, s. 5.)

§ 147-78.1. Good faith deposits; use of master trust.

Notwithstanding any other provision of law, the State Treasurer is authorized to select a bank or trust company as master trustee to hold cash or securities to be pledged to the State when deposited with him pursuant to statute or at the request of another State agency. Securities may be held by the master trustee in any form that, in fact, perfects the security interest of the State in the securities. The State Treasurer shall by rule or regulation establish the manner in which the master trust shall operate. The master trustee may charge reasonable fees for services rendered to each person who deposits the cash or securities with the State. (1985, c. 496, s. 1.)

§ 147-79. Deposits to be secured; reports of depositories.

(a) The amount of funds deposited by the State Treasurer in an official depository shall be adequately secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner, as may be prescribed by rule or regulation of the State Treasurer with the approval of the Governor and Council of State. No security is required for the protection of funds remitted to and received by a bank or trust company designated by the State Treasurer under G.S. 142-1 and acting as paying agent for the payment of the principal of or interest on bonds or notes of the State.

(b) Each official depository having deposits required to be secured by subsection (a) of this section may be required to report to the State Treasurer on January 1 and July 1 of each year (or such other dates as he may prescribe) a list of all surety bonds or investment securities securing such deposits. If the State Treasurer finds at any time that any funds of the State are not properly secured, he shall so notify the depository. Upon such notification, the depository shall comply with the applicable law or regulations forthwith.

(c) Violation of the provisions of this section shall be a Class 1 misdemeanor. (1933, c. 461, ss. 1, 11/2; 1979, c. 637, s. 3; 1993, c. 539, s. 1056; 1994, Ex. Sess., c. 24, s. 14(c).)

Legal Periodicals. — For review of this section, see 11 N.C.L. Rev. 201 (1933).

§ 147-80. Deposit in other banks unlawful; liability.

It shall be unlawful for any funds of the State to be deposited by any person, institution, or department or agency in any place or bank or trust company, other than those so selected and designated as official depositories of the State of North Carolina by the State Treasurer, and any person so offending or aiding and abetting in such offense shall be guilty of a Class 1 misdemeanor and any person so offending or aiding and abetting in such offense shall also immediately become civilly liable to the State of North Carolina in the amount of the money or funds unlawfully deposited, and, at the instance of the State Treasurer, or at the instance of the Governor, the Attorney General shall forthwith institute the civil action in the name of the State of North Carolina against such person or persons, either in the courts of Wake County, according to their respective jurisdiction, or in the county in which said unlawful deposit has been made, according to the selection made by the officer requesting the institution of such action, for the purpose of recovering the amount of the money so unlawfully deposited, with interest thereon at six percent (6%) per annum, and for the cost of said action, and the court in which said action is tried may also tax, as a part of the cost in said action, to the use of the State of North Carolina, a sum sufficient to reimburse the State of North Carolina for all expense incidental to or connected with the preparation and prosecution of such action. (1925, c. 128, s. 3; 1993, c. 539, s. 1057; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 147-81. Number of depositories; contract.

The State Treasurer is authorized and empowered to select as many depositories in one place and in the State as may appear to him to be necessary and convenient for the various officers, representatives and employees of the State, to comply with the purposes of G.S. 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84, and may make such contracts with said depositories for the payment of interest on average daily or monthly balances as may appear advantageous to the State in the opinion of such Treasurer and the Governor. (1925, c. 128, s. 4.)

§ 147-82. Accounts of funds kept separate.

In order to preserve and keep them separate, all funds that are now required by law to be kept separate or to be separately administered, both by State departments, institutions, commissions, and other agencies or divisions of the State which collect or receive funds belonging to the State, or funds handled or maintained as trust funds in any form by such department, division or institution shall be evidenced in daily reports by distribution sheets, which shall reflect and show an exact copy of the accounts, showing the distribution of said money kept by such collecting departments, institutions and agencies, and the same shall be entered in the records of the office of the State Treasurer, so as to keep and maintain in the office where the same is first collected or received the same account thereof, and of the distribution thereof, the same records and accounts as are kept in the office of the State Treasurer relating thereto. (1925, c. 128, s. 5.)

§ 147-83. Receipts from federal government and gifts not affected.

General Statutes 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84 shall not be held or construed to affect or interfere with the receipts and disbursements of any funds received by any institution or department of this State from the federal government or any gift or donation to any institution or department of the State or commission or agency thereof when either in the act of Congress, relating to such funds received from the federal government, or in the instrument evidencing the said private donation or gift, a contrary disposition or handling is prescribed or required, and the said sections shall not apply to any moneys paid to any department, institution or agency, or undertaking of the State of North Carolina, as a part of any legislative appropriation, or allotment from any contingent fund, as provided by law, after the same has been paid out of the State treasury. (1925, c. 128, s. 6.)

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When Federally Confiscated Drug Related Property Is Returned to Local Authorities. — If federal authorities confiscate drug related property and thereafter return a part of it to local authorities for law enforcement purposes, the N.C. Constitution and laws do not require these funds to go to the local school board as forfeited property and they may be used by local law enforcement. See opinion of the Attorney General to Mr. Aubrey S. Tomlinson, Jr., Attorney for Franklin County, 58 N.C.A.G. 51 (1988).

Funds donated to Lenox Baker Children's Hospital are required to be deposited with the State Treasurer unless the conditions or terms of the gift provide to the contrary, or unless otherwise provided by law. See opinion of Attorney General to Mr. Richard J. Vinegar, Chairman Board of Directors of Lenox Baker Children's Hospital, 56 N.C.A.G. 31 (1986).

Any gift in trust where the terms contraindicate investment or deposit with the State Treasurer (for example where the terms of the gift provide for a private trustee) would be exempt from the operation of the cash management policy. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

§ 147-84. Refund of excess payments.

Whenever taxes or other receipts of any kind are or have been by clerical error, misinterpretation of the law, or otherwise, collected and paid into the State treasury in excess of the amount found legally due the State, said excess amount shall be refunded to the person entitled thereto. (1925, c. 128, s. 7; 1983, c. 913, s. 54.)

§ 147-85. Fiscal year.

The fiscal year of the State government shall annually close on the thirtieth day of June. (1868-9, c. 270, s. 77; 1883, c. 60; Code, s. 3360; 1885, c. 334; 1905, c. 430; Rev., s. 5378; C.S., s. 7692; 1921, c. 229; Ex. Sess. 1921, c. 7; 1925, c. 89, s. 21; 1983, c. 913, s. 55.)

CASE NOTES

Applied in Martin v. Swain County, 201 N.C. 68, 158 S.E. 843 (1931).

§ 147-86. Additional clerical assistance authorized; compensation and duties.

The State Treasurer, by and with the consent and advice of the Governor and Council of State, is authorized to employ an additional clerk in the Treasury Department, whose compensation and duties shall be fixed by the State Treasurer, by and with the consent and advice of the Governor and Council of State. The compensation of such additional clerk as may be employed pursuant to this section shall be paid as other officers and clerks are paid. (1923, c. 172; C.S., s. 7693 (a).)

§ 147-86.1. Pool account for local government unemployment compensation.

(a) The State Treasurer is authorized to establish a pool account, in accordance with rules and regulations of the Employment Security Commission, in cooperation with any one or more units of local government, for the purpose of reimbursing the Employment Security Commission for unemployment benefits paid by the Commission and chargeable to each local unit of government participating in the pool account. In the pool account established pursuant to this section, the funds contributed by a unit of local government shall remain the funds of the particular unit, and interest or other investment income earned by the pool account shall be prorated and credited to the various contributing local units on the basis of the amounts thereof contributed, figured according to an average periodic balance or some other sound accounting principle.

(b) The State Treasurer shall pay to the Employment Security Commission, within 25 days from receipt of a list thereof, all unemployment benefits charged by the Commission to each unit of local government participating in the pool account from the funds in the pool account belonging to each such unit, to the extent that said funds are sufficient to do so.

(c) Notwithstanding the participation by a unit of local government in the pool account authorized by this section, such unit shall remain liable to the

Employment Security Commission for any benefits duly charged by the Commission to the unit which are not paid by the State Treasurer from funds in the pool account belonging to the unit. Notwithstanding its participation in the pool account, each unit of local government shall continue to maintain an individual account with the Employment Security Commission.

(d) The Director of the Budget shall be authorized to transfer from the interest earned on the pool account, to the State Treasurer's departmental budget, such funds as may be necessary to defray the Treasurer's cost of administering the pool account. (1977, c. 1124; 1983, c. 717, s. 89.)

§ 147-86.2. Information Technology Services fees; dispute resolution panel.

The State Treasurer or the State Treasurer's designee, in conjunction with the State Controller and the State Budget Officer or their designees, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information technology services from the Office. (2009-136, s. 3.)

Editor's Note. — Session Laws 2009-136, s. 5, made this section effective June 19, 2009.

§§ 147-86.3 through 147-86.9: Reserved for future codification purposes.

ARTICLE 6A.

Cash Management.

§ 147-86.10. Statement of policy.

It is the policy of the State of North Carolina that all agencies, institutions, departments, bureaus, boards, commissions, and officers of the State, whether or not subject to the State Budget Act, Chapter 143C of the General Statutes, shall devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody which are designed to maximize interest-bearing investment of cash, and to minimize idle and nonproductive cash balances. This policy shall apply to the General Court of Justice as defined in Article IV of the North Carolina Constitution, the public school administrative units, and the community colleges with respect to the receipt, deposit, and disbursement of moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer. This policy shall include the acceptance of electronic payments in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices. (1985, c. 709, s. 1; 1999-434, s. 2; 2006-203, s. 120.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 120, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act, Chapter 143C" for "Executive Budget Act, Chapter 143, Article 1" in the first sentence.

§ 147-86.11. Cash management for the State.

(a) Uniform Plan. — The State Controller, with the advice and assistance of the State Treasurer, the State Budget Officer, and the State Auditor, shall develop, implement and amend as necessary a uniform statewide plan to carry out the cash management policy for all State agencies. The State Auditor shall report annually to the General Assembly on the implementation of the plan as shown in the audits completed during the prior fiscal year. The State Treasurer shall recommend periodically to the General Assembly any implementing legislation necessary or desirable in the furtherance of the State policy. When used in this section, "State agency" means any agency, institution, bureau, board, commission or officer of the State; however, except as provided in G.S. 147-86.12, 147-86.13, 147-86.14, and 147-86.22, this Article does not apply to the agencies, institutions, bureaus, boards, commissions and officers of the General Court of Justice as defined in Article IV of the North Carolina Constitution or to the local school administrative units and community colleges and their officers and employees.

(b) Duties of Auditor. — The State Auditor pursuant to authority under G.S. 147-64.6 shall monitor agency compliance with this Article, and make any comments, suggestions, and recommendations the Auditor deems advisable to the agencies.

(c) Treasurer's Report. — The State Treasurer shall publish a quarterly report on all funds in the control or custody of the State Treasurer showing cash balances on hand, investments of cash balances and a comparative analysis of earnings and investment performances.

(d) Earnings on Trust Funds. — The statewide cash management plan shall provide that any net earnings on invested funds, whose beneficial owner is not the State or a local governmental unit, shall be paid to the beneficial owners of the funds. "Net earnings" are the amounts remaining after allowance for the cost of administration, management, and operation of the invested funds.

(e) Elements of Plan. — For moneys received or to be received, the statewide cash management plan shall provide at a minimum that:

(1) Except as otherwise provided by law, moneys received by employees of State agencies in the normal course of their employment shall be deposited as follows:

a. Moneys received in trust for specific beneficiaries for which the employee-custodian has a duty to invest shall be deposited with the State Treasurer under the provisions of G.S. 147-69.3.

b. All other moneys received shall be deposited with the State Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.

(2) Moneys received shall be deposited daily in the form and amounts received, except as otherwise provided by statute.

(3) Moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and deposited.

(4) Unpaid billings due to a State agency other than amounts owed by patients to the University of North Carolina Health Care System shall be turned over to the Attorney General for collection no more than 90 days after the due date of the billing, except that a State agency need not turn over to the Attorney General unpaid billings of less than five hundred dollars ($500.00), or (for institutions where applicable) amounts owed by all patients which are less than the federally established deductible applicable to Part A of the Medicare program, and instead may handle these unpaid bills pursuant to agency debt collection procedures.

(4a) The University of North Carolina Health Care System may turn over to the Attorney General for collection accounts owed by patients.

(5) Moneys received in the form of warrants drawn on the State Treasurer shall be deposited by the State agency directly with the State Treasurer and not through the banking system, unless otherwise approved by the State Treasurer.

(6) State agencies shall accept payment by electronic payment in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices.

(f) Disbursement Requirements. — For the disbursement of money, the statewide cash management plan shall provide at a minimum that:

(1) Moneys deposited with the State Treasurer remain on deposit with the State Treasurer until final disbursement to the ultimate payee.

(2) The order in which appropriations and other available resources are expended shall be subject to the provisions of Chapter 143C of the General Statutes regardless of whether the State agency disbursing or expending the moneys is subject to the State Budget Act.

(3) Federal and other reimbursements of expenditures paid from State funds shall be paid immediately to the source of the State funds.

(4) Billings to the State for goods received or services rendered shall be paid neither early nor late but on the discount date or the due date to the extent practicable.

(5) Disbursement cycles for each agency shall be established to the extent practicable so that the overall efficiency of the warrant disbursement system is maximized while maintaining prompt payment of bills due.

(g) Interest Maximized. — The interest earnings of the General Fund and Highway Fund shall be maximized to the extent practicable. To this end:

(1) Interest earnings shall not be allocated to an account by the State Treasurer unless all of the moneys in the account are expressly eligible by law for receiving interest allocations.

(2) State officers and employees who received moneys in trust or for investment shall be solely responsible for properly segregating such funds for investment in the manner prescribed by law. The officer or employee charged with the responsibility for these moneys shall be under a duty to segregate the funds in a timely manner. No investment income shall be allocated by the State Treasurer to trust or other investment accounts until properly segregated into investment accounts as provided by law and the rules of the State Treasurer.

(h) New Technologies. — The statewide cash management plan shall consider new technologies and procedures whenever the technologies and procedures are economically beneficial to the State as a whole. Where the new technologies and procedures may be implemented without additional legislation, the technologies and procedures shall be implemented in the plan.

(i) Penalty. — A willful or continued failure of an employee paid from State funds or employed by a State agency to follow the statewide cash management plan is sufficient cause for immediate dismissal of the employee. (1985, c. 709, s. 1; 1985 (Reg. Sess., 1986), c. 1024, s. 26; 1987, c. 564, s. 32; c. 738, s. 59(a)(1); 1991, c. 95, s. 1; c. 542, s. 15; 1999-434, s. 4; 2006-203, s. 121; 2007-306, s. 3.)

ITS Maintenance Agreement Pilot Project. — Session Laws 2003-284, s. 21.2(a) and (b), as amended by Session Laws 2004-124, s. 22.1, provides: "(a) Notwithstanding the cash management provisions of G.S. 146-86.11 [G.S. 147-86.11], the State Controller may authorize the Office of Information Technology Services (ITS) to purchase not more than four infrastructure maintenance agreements for periods not exceeding two years where the terms of those maintenance agreements require payment of the full purchase price at the beginning of the maintenance period. The State Controller shall not authorize the agreements authorized by this section unless all of the following conditions are met:

"(1) The proposed infrastructure maintenance agreement is entered into after June 30, 2004, and before July 1, 2005.

"(2) The State Controller receives conclusive evidence that the proposed infrastructure agreement would be more cost-effective than any similar agreement that complies with G.S. 146-86.11 [G.S. 147-86.11].

"(3) The State Controller verifies that the savings resulting from the proposed infrastructure agreement will be passed on to users in the form of lower rates for ITS services.

"(4) The purchase of the proposed maintenance agreement complies in all other respects with applicable statutes and rules.

"(5) ITS shall make adjustments of excess revenue, based on IRMC-approved rates, over allowable costs.

"(b) The State Controller shall provide full justification for any authorizations granted under this section to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the General Assembly within 60 day safter the authorization is granted."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Multiyear Maintenance Contracts. — Session Laws 2005-276, ss. 20A.1(a)-(c), provide: "Notwithstanding the cash management provisions of G.S. 147-86.11, the State Controller may authorize the Office of Information Technology Services (ITS) to purchase not more than four infrastructure maintenance agreements for periods not exceeding three years where the terms of those maintenance agreements require payment of the full purchase price at the beginning of the maintenance period. The State Controller shall not authorize the agreements authorized by this section unless all of the following conditions are met:

"(1) The proposed infrastructure maintenance agreement is entered into after June 30, 2005, and before July 1, 2007.

"(2) The State Controller receives conclusive evidence that the proposed infrastructure agreement would be more cost effective than any similar agreement that complies with G.S. 147-86.11.

"(3) The purchase of the proposed maintenance agreement complies in all other respects with applicable statutes and rules.

"(4) The proposed infrastructure maintenance agreement contains contract terms that protect the financial interests of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by other reasonable means that have legally binding effect.

"The Office of State Budget and Management (OSBM) shall ensure that the savings from any authorized multiyear infrastructure maintenance contract will be included in ITS's calculation of rates before OSBM annually approves the proposed rates.

"OSBM shall report on any budget impacts resulting from the multiyear contracts and provide full justification for any authorizations granted under this section to the Chairs of the Senate and House of Representatives Appropriations Committees and to the Fiscal Research Division annually on or before May 1."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2008-107, s. 6.11, provides: "(a) Notwithstanding the cash management provisions of G.S. 147-86.11, the Office of Information Technology Services (ITS) may procure information technology goods and services for periods not exceeding three years where the terms require payment of all or a portion of the purchase price at the beginning of the agreement. All of the following conditions must be met before payment for these agreements may be disbursed:

"(1) Any advance payment complies with the ITS budget.

"(2) The State Controller receives conclusive evidence that the proposed agreement would be more cost-effective than a multiyear agreement that complies with G.S. 147-86.11.

"(3) The procurement complies in all other respects with applicable statutes and rules.

"(4) The proposed agreement contains contract terms that protect the financial interests of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by other reasonable means that have legally binding effect."

"(b) The Office of State Budget and Management (OSBM) shall ensure that the savings from any authorized agreement will be included in the ITS calculation of rates before OSBM annually approves the proposed rates.

"(c) The Office of Information Technology Services shall report to the Office of State Budget and Management on any State agency budget impacts resulting from the multiyear contracts.

"(d) By January 1, 2009, then quarterly thereafter, the Office of Information Technology Services shall submit a written report of any authorizations granted under this section to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 6.7(c), provides: "Notwithstanding the cash management provisions of G.S. 147-86.11, the Office of Information Technology Services may procure information technology goods and services for periods of up to a total of three years where the terms of the procurement contract require payment of all, or a portion, of the contract purchase price at the beginning of the agreement. All of the following conditions shall be met before payment for these agreements may be disbursed:

"(1) Any advance payment complies with the Office of Information Technology Services budget.

"(2) The State Controller receives conclusive evidence that the proposed agreement would be more cost-effective than a multiyear agreement that complies with G.S. 147-86.11.

"(3) The procurement complies in all other aspects with applicable statutes and rules.

"(4) The proposed agreement contains contract terms that protect the financial interests of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by any other reasonable means that have legally binding effect.

"The Office of State Budget and Management shall ensure the savings from any authorized agreement shall be included in the Office of Information Technology Services calculation of rates before the Office of State Budget and Management annually approves the proposed rates. The Office of Information Technology Services shall report to the Office of State Budget and Management on any State agency budget impacts resulting from multiyear contracts.

"The Office of Information Technology Services shall submit a quarterly written report of any authorizations granted under this subsection to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-203, s. 121, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (a), deleted "the Advisory Budget Commission and" preceding "the General Assembly"; and in subdivision (f)(2), substituted "Chapter 143C of the General Statutes" for "G.S. 143-27" and "State Budget Act" for "Executive Budget Act."

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"Enterprise funds" maintained by the Division of Vocational Rehabilitation Services and "student activity funds" maintained by the Schools for the Deaf are required to be deposited with the State Treasurer pursuant to G.S. 147-77. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

Individual patient funds which are held in trust by a state institution operated under the Division of Mental Health are not required to be deposited with the State Treasurer. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

Any gift in trust where the terms contraindicate investment or deposit with the State Treasurer (for example where the terms of the gift provide for a private trustee) would be exempt from the operation of the cash management policy. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

Individual patient funds held in trust by a state institution may not be invested with the State Treasurer without consent; however, such funds may be placed in an insured interest-bearing savings account without the consent of the patient, grantor of the trust, or legally responsible person. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

In the case of individual patient funds held in trust by a state custodian, the patient who is the beneficial owner of the funds is entitled to any interest or income generated by deposit in an interest-bearing savings account. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

In the case of individual patient funds deposited in a common interest-bearing savings account, the state cannot charge an administrative handling fee to cover the costs of computing interest which has accrued on individual funds deposited in the common account. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

Funds donated to Lenox Baker Children's Hospital are required to be deposited with the State Treasurer unless the conditions or terms of the gift provide to the contrary, or unless otherwise provided by law. See opinion of Attorney General to Mr. Richard J. Vinegar, Chairman Board of Directors of Lenox Baker Children's Hospital, 56 N.C.A.G. 31 (1986).

§ 147-86.12. Cash management for school administration units.

All school administrative units and their officers and employees are subject to the provision of G.S. 147-86.11 with respect to moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to the school administrative unit for expenditure by warrants drawn on the State Treasurer. (1985, c. 709, s. 1.)

§ 147-86.13. Cash management for community colleges.

All community colleges and their officers and employees are subject to the provisions of G.S. 147-86.11 with respect to moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer. (1985, c. 709, s. 1; 1987, c. 564, s. 9.)

§ 147-86.14. Cash management for the General Court of Justice.

All agencies, institutions, bureaus, boards, commissions, and officers of the General Court of Justice as defined in Article IV of the Constitution are subject to the provisions of G.S. 147-86.11 with respect to moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer; provided, that the provisions of G.S. 147-86.11 shall not apply to any funds deposited with a clerk of superior court unless the beneficial owner of the funds is either the State or a local governmental unit of the State. (1985, c. 709, s. 1.)

§ 147-86.15. Cash management of the Highway Fund and the Highway Trust Fund.

The State Treasurer may combine the balances of the Highway Fund and the Highway Trust Fund for cash management purposes. The State Treasurer may make short-term loans between the Funds to accomplish the purposes of this section. (2001-424, s. 27.23(b).)

Editor's Note. — Session Laws 2001-424, s. 27.23(a), provides: "The Department of Transportation is directed to reorganize its cash management procedures consistent with the March 2001 Joint Legislative Transportation Oversight Committee Cash Management Study final report.

"The Department is directed to:

"(1) Utilize cash flow financing to the maximum extent possible to fund highway construction projects with the goal of reducing the combined average daily cash balance of the Highway Trust Fund and the Highway Fund to an amount equal to twelve percent (12%) of combined estimate of the yearly receipts of the Funds, exclusive of municipal aid funds.

"(2) Establish necessary management controls to facilitate use of cash flow financing, such as establishment of a financial planning committee, development of a monthly financial report, establishment of appropriate fund cash level targets, review of revenue forecasting procedures, and reduction of accrued unbilled costs.

"(3) Strengthen the project delivery process by reorganization of preconstruction functions in order to expedite project delivery and maximize use of cash flow financing of projects. The Department shall designate one person responsible for project delivery, developing project delivery reports, and continually assessing which projects can be accelerated using cash flow financing.

"(4) Report quarterly for a period of two years, beginning in September 2001, to the Joint Legislative Transportation Oversight Committee on its efforts to reorganize the cash management and project delivery process and the results of those efforts."

Session Laws 2001-424, s. 27.23(c), provides: "The Department of Transportation and the State Treasurer are directed to jointly:

"(1) Evaluate the recommendations of the March 2001 Joint Legislative Transportation Oversight Committee Cash Management Study final report concerning authorization for the State Treasurer to borrow funds on a short-term basis in order to allow the Department of Transportation to maintain lower target cash balances and expedite highway construction projects;

"(2) Develop recommendations concerning short-term borrowing for cash management purposes, including any needed legislation; and

"(3) Submit findings and recommendations to the Joint Legislative Transportation Oversight Committee by February 1, 2002."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

§§ 147-86.16 through 147-86.19: Reserved for future codification purposes.

Article 6B.

Statewide Accounts Receivable Program.

§ 147-86.20. Definitions.

The following definitions apply in this Article:

(1) Account Receivable. — An asset of the State reflecting a debt that is owed to the State and has not been received by the State agency servicing the debt. The term includes claims, damages, fees, fines, forfeitures, loans, overpayments, and tuition as well as penalties, interest, and other costs authorized by law. The term does not include court costs or fees assessed in actions before the General Court of Justice or counsel fees and other expenses of representing indigents under Article 36 of Chapter 7A of the General Statutes.

(2) Debtor. — A person who owes an account receivable.

(2a) Electronic payment. — Payment by charge card, credit card, debit card, or by electronic funds transfer as defined in this subsection.
(3) Past Due. — An account receivable is past due if the State has not received payment of it by the payment due date.
(4) Person. — An individual, a fiduciary, a firm, a partnership, an association, a corporation, a unit of government, or another group acting as a unit.
(5) State Agency. — Defined in G.S. 147-64.4(4). The term does not include, however, a community college, a local school administrative unit, an area mental health, developmental disabilities, and substance abuse authority, or the General Court of Justice.
(6) Write-off. — To remove an account receivable from a State agency's accounts receivable records. (1993, c. 512, s. 1; 1999-434, s. 1.)

Editor's Note. — Article 36 of Chapter 7A, referred to in this section, is codified as G.S. 7A-450 et seq.

§ 147-86.21. State agencies to collect accounts receivable in accordance with statewide policies.

A State agency to which an account receivable is owed is responsible for collecting the account receivable. In fulfilling this responsibility, a State agency shall establish internal policies and procedures for the management and collection of accounts receivable and shall submit its internal policies and procedures to the State Controller for review.

The State Controller shall examine the policies and procedures submitted by a State agency to determine whether they are consistent with statewide policies and procedures adopted by the State Controller. The statewide policies and procedures shall ensure that a State agency takes all cost-effective and appropriate actions to collect accounts receivable owed to it. If the State Controller determines that a State agency's policies and procedures are not consistent with the statewide policies and procedures, the State Controller shall discuss the inconsistencies with the State agency to determine whether special circumstances, such as a requirement of federal law, justify the inconsistencies. If the State Controller, after consulting with the Office of the Attorney General, finds that no special circumstances justify the inconsistencies, the State Controller shall notify the State agency and the State agency shall conform its policies and procedures to the statewide policies and procedures. If the State Controller finds that special circumstances justify the inconsistencies, the State agency's internal policies and procedures shall reflect the special circumstances. (1993, c. 512, s. 1.)

§ 147-86.22. Statewide accounts receivable program.

(a) Program. — The State Controller shall implement a statewide accounts receivable program. As part of this program, the State Controller shall do all of the following:
(1) Monitor the State's accounts receivable collection efforts.
(2) Coordinate information, systems, and procedures between State agencies to maximize the collection of past-due accounts receivable.
(3) Adopt policies and procedures for the management and collection of accounts receivable by State agencies.
(4) Establish procedures for writing off accounts receivable and for determining when to end efforts to collect accounts receivable after they have been written off.

(b) Electronic Payment. — Notwithstanding the provisions of G.S. 147-86.20 and G.S. 147-86.21, this subsection applies to debts owed a community college, a local school administrative unit, an area mental health, developmental disabilities, and substance abuse authority, and the Administrative Office of the Courts, and to debts payable to or through the office of a clerk of superior court or a magistrate, as well as to debts owed to other State agencies as defined in G.S. 147-86.20.

The State Controller shall establish policies that allow accounts receivable to be payable under certain conditions by electronic payment. These policies shall be established with the concurrence of the State Treasurer. In addition, any policies that apply to debts payable to or through the office of a clerk of superior court or a magistrate shall be established with the concurrence of the Administrative Officer of the Courts. The Administrative Officer of the Courts may also establish policies otherwise authorized by law that apply to these debts as long as those policies are not inconsistent with the Controller's policies.

A condition of payment by electronic payment is receipt by the appropriate State agency of the full amount of the account receivable owed to the State agency. A debtor who pays by electronic payment may be required to pay any fee or charge associated with the use of electronic payment. Fees associated with processing electronic payments may be paid out of the General Fund and Highway Fund if the payment of the fee by the State is economically beneficial to the State and the payment of the fee by the State has been approved by the State Controller and State Treasurer.

The State Controller and State Treasurer shall consult with the Joint Legislative Commission on Governmental Operations before establishing policies that allow accounts receivable to be payable by electronic payment and before authorizing fees associated with electronic payment to be paid out of the General Fund and Highway Fund. A State agency must also consult with the Joint Legislative Commission on Governmental Operations before implementing any program to accept payment under the policies established pursuant to this subsection.

A payment of an account receivable that is made by electronic payment and is not honored by the issuer of the card or the financial institution offering electronic funds transfer does not relieve the debtor of the obligation to pay the account receivable.

(c) Collection Techniques. — The State Controller, in conjunction with the Office of the Attorney General, shall establish policies and procedures to govern techniques for collection of accounts receivable. These techniques may include use of credit reporting bureaus, judicial remedies authorized by law, and administrative setoff by a reduction of an individual's tax refund pursuant to the Setoff Debt Collection Act, Chapter 105A of the General Statutes, or a reduction of another payment, other than payroll, due from the State to a person to reduce or eliminate an account receivable that the person owes the State.

No later than January 1, 1999, the State Controller shall negotiate a contract with a third party to perform an audit and collection process of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors. The third party shall be compensated only from funds recovered as a result of the audit. Savings realized in excess of costs shall be transferred from the agency to the Office of State Budget and Management and placed in a special reserve account for future direction by the General Assembly. Any disputed savings shall be settled by the State Controller. This paragraph does not apply to the purchase of medical services by State agencies or payments used to reimburse or otherwise pay for health care services. (1993, c. 512, s. 1; 1998-212, s. 26.1; 1999-434, s. 3; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

§ 147-86.23. Interest and penalties.

A State agency shall charge interest at the rate established pursuant to G.S. 105-241.21 on a past-due account receivable from the date the account receivable was due until it is paid. A State agency shall add to a past-due account receivable a late payment penalty of no more than ten percent (10%) of the account receivable. A State agency may waive a late-payment penalty for good cause shown. If another statute requires the payment of interest or a penalty on a past-due account receivable, this section does not apply to that past-due account receivable. This section does not apply to money owed to the University of North Carolina Health Care System for health care services. (1993, c. 512, s. 1; 2007-306, s. 4; 2007-491, s. 44(1)a.)

Effect of Amendments. — Session Laws 2007-491, s. 44(1)a, effective January 1, 2008, substituted "G.S. 105-241.21" for "G.S. 105-241.1(i)" in the first sentence.

§ 147-86.24. Debtor information and skip tracing.

A State agency shall collect from clients and debtors minimum identifying information as prescribed by the State Controller. A State agency shall use all available debtor information to skip trace debtors as prescribed by the State Controller.

The State Controller shall establish procedures to give the State Controller access to information that is in the custody of a State agency and could assist another State agency in the collection of accounts receivable owed to that State agency. A State agency that has this information shall cooperate with the State Controller in giving the State Controller access to the information. If the information is contained in an electronic database, the State agency shall provide the State Controller on-line electronic access upon request. A State agency is not required to give the State Controller access to information when a State or federal law prohibits the disclosure of the information. (1993, c. 512, s. 1.)

§ 147-86.25. Setoff debt collection.

The State Controller shall implement a statewide setoff debt collection program to provide for collection of accounts receivable that have been written off. The statewide program shall supplement the Setoff Debt Collection Act, Chapter 105A of the General Statutes, and shall provide for written-off accounts receivable to be set off against payments the State owes to debtors, other than payments of individual income tax refunds and payroll.

A program shall provide that, before final setoff can occur, the State agency servicing the debt must notify the debtor of the proposed setoff and of the debtor's right to contest the setoff through an administrative hearing and judicial review. A proposed setoff by a State agency that is a "claimant agency" under Chapter 105A of the General Statutes shall be conducted in accordance with the procedures the State agency must follow under that Chapter. A proposed setoff by a State agency that is not a "claimant agency" under Chapter 105A of the General Statutes shall be conducted under Articles 3 and 4 of Chapter 150B of the General Statutes. (1993, c. 512, s. 1.)

§ 147-86.26. Reporting requirements.

A State agency shall provide the State Controller a complete report of the agency's accounts receivable at least quarterly or more frequently as required by the State Controller. The State Controller shall use the information provided by a State agency and any additional information available to compile a summary report of the agency. The State Controller shall provide copies of these summary reports annually to the Governor, the Joint Legislative Commission on Governmental Operations, and each State agency. Each summary report shall include the following:

(1) The type of accounts receivable owed to the State agency.
(2) An aging of the accounts receivable.
(3) Any attempted collection activity and any costs incurred in the collection process.
(4) Any accounts receivable that have been written off.
(5) Information required by subdivisions (1) through (4) for the previous three years.
(6) Identification of a State agency that is not complying with this Article or Chapter 105A of the General Statutes.
(7) Any additional information the State Controller considers useful. (1993, c. 512, s. 1.)

§ 147-86.27. Rules.

A State agency may adopt rules to implement this Article. (1993, c. 512, s. 1.)

§§ 147-86.28, 147-86.29: Reserved for future codification purposes.

Article 6C.

Health and Wellness Trust Fund.

§ 147-86.30. Health and Wellness Trust Fund established.

(a) Fund Established. — There is established the Health and Wellness Trust Fund in the Office of the State Treasurer to be used to develop a comprehensive plan to finance programs and initiatives to improve the health and wellness of the people of North Carolina. As used in this Article, the term "Fund" means the Health and Wellness Trust Fund. It is the intent of the General Assembly that the funds provided pursuant to this Article to address the health needs of North Carolinians be used to supplement, not supplant, existing funding of health and wellness programs.

(b) Fund Earnings, Assets, and Balances. — The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the chair of the Commission, pursuant to directives of the Commission. The Commission may expend moneys in the Fund only as provided in subsections (c) and (d) of this section.

(c) Priority Use of Funds. — As soon as practicable after the beginning of each fiscal year, the State Treasurer must certify in writing to the chair of the Commission the estimated amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-124. The chair of the Commission must issue a warrant from the Fund to the General Fund for the lesser of (i) one-half of the amount certified by the Treasurer and (ii) the applicable percentage of the Fund's receipts for the current fiscal year. For fiscal years beginning before July 1, 2007, the applicable percentage is thirty percent (30%). For fiscal years beginning on or after July 1, 2007, the applicable percentage is sixty-five percent (65%).

(d) Use of Remaining Funds. — The Commission may expend or commit moneys in the Fund in a fiscal year only after the payment required by subsection (c) of this section has been made.

(e) Fund Purposes. — Moneys from the Fund may be used for any of the following purposes:

(1) To address the health needs of vulnerable and underserved populations in North Carolina.

(2) To fund programs and initiatives that include research, education, prevention, and treatment of health problems in North Carolina and to increase the capacity of communities to respond to the public's health needs.

(3) To develop a comprehensive, community-based plan with goals and objectives to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and with an emphasis on reducing youth tobacco use. The plan shall include measurable health and wellness objectives and a proposed timetable for achieving these objectives. In developing the plan, the Commission shall consider all facets of health, including prevention, education, treatment, research, and related areas.

(f) Limit on Operating and Administrative Expenses. — No more than two and one-half percent (2 1/2%) of the annual receipts of the Fund for the fiscal year beginning July 1 or a total of one million dollars ($1,000,000), whichever is less, may be used each fiscal year for administrative and operating expenses of the Commission and its staff. All administrative expenses of the Commission shall be paid from the Fund. (2000-147, s. 2; 2004-179, s. 1.3; 2006-203, s. 122; 2008-187, s. 28.)

Cross References. — As to the Tobacco Trust Fund, see G.S. 143-715 et seq.

Editor's Note. — Session Laws 2000-147, s. 8(a)-(c), provides:

"(a) Interpretation of Act. — The foregoing sections of this act provide an additional and alternative method for the doing of the things authorized by the act, are supplemental and additional to powers conferred by other laws, and do not derogate any powers now existing.

"(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as amended and as they may be amended from time to time by the General Assembly.

"(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-147, s. 8(d), contains a severability clause.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 21.100, provides: "The Health and Wellness Trust Fund Commission shall, as it develops criteria for awarding grants under Article 6C of Chapter 147 of the General Statutes, include criteria that will enable programs and initiatives addressing the need to expand access to prescription drugs to North Carolina senior and disabled citizens to receive grants from the Fund. In making the grants, the Commission shall consider, and coordinate with, the availability of any federal funds allocated to North Carolina pursuant to any federal initiative to provide financial assistance to senior and disabled citizens for the cost of prescription drugs.

"In making its annual report to the Joint Legislative Commission on Governmental Operations and to the chairs of the Joint Legislative Health Care Oversight Committee regarding the implementation of that Article, the chair of the Health and Wellness Trust Fund Commission shall report on the programs and initiatives to expand access to prescription drugs to senior and disabled citizens that were funded by the Trust Fund. The report shall include the amount of funds disbursed for programs and initiatives to expand access to prescription drugs to senior and disabled citizens and the success of those programs and initiatives towards helping senior and disabled citizens obtain prescription drugs."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 6.8(a), provides: "Notwithstanding G.S. 147-86.30, the Health and Wellness Trust Fund Commission may for the fiscal year 2002-2003 expend not more than three million dollars ($3,000,000) of the funds reserved pursuant to G.S. 147-86.30(c) to develop and implement a Senior Prescription Drug Access Program. As used in this section, the term "senior" means an individual age 65 years and older. The purpose of the Program is to reduce costs of and improve access to and use of prescription drugs by:

"(1) Providing one-on-one assistance to seniors and low-income citizens in accessing public and private prescription drug assistance programs.

"(2) Making available pharmacist evaluators to review all prescriptions and to provide face-to-face counseling for seniors to promote compliance and identify potential adverse effects from interactions among the prescribed drugs.

"(3) Utilizing software currently licensed by the Department of Health and Human Services to guide patients through the complexities of all drug coverage options, including drug acquisition through low-cost or discount drug programs provided through manufacturer's card programs, and by government programs.

"Drug acquisition services under the Program shall be available to senior citizens and to low-income citizens eligible for assistance under these public and private prescription drug programs. Counseling services provided by the Program shall be available to senior citizens age 65 and older. There shall be no fee for Program medication counseling services to seniors who are Medicaid recipients and seniors enrolled in Carolina CARxES. The Commission may authorize a reasonable fee to be charged by the pharmacist evaluator to other seniors using medication counseling services, provided that the fee is charged on a sliding scale based on individual or family income. In no event may the fee exceed the actual cost of the service provided. The Commission shall consult with other State agencies and public and private entities to avoid duplication and enhance cooperation and collaboration in providing Program services. In allocating funds under the Program, the Commission shall consider diversity of populations served, geographic representation, and increasing community capacity to respond to health needs. The Commission may phase in the availability of services such that initially all geographic regions of the State have services available."

Session Laws 2002-126, s. 6.8(b), provides: "In developing and implementing the Senior Prescription Drug Access Program, the Commission may do the following:

"(1) Establish a centralized database with linkages to Medicaid databases to enable review of each participant's prescription drug regimen and to ensure quality of services, quality of care, and cost-effectiveness. The database shall comply with all State and federal privacy protection requirements and shall be accessible only to participating pharmacists, primary care physicians, and case managers.

"(2) Use reserved funds authorized under this section to contract with public and private entities to provide prescription drug assistance services.

"(3) Use reserved funds authorized under this section to award grants to applicants eligible under G.S. 147-86.31 to receive grant funds. Grant funds may be used to subsidize costs of hiring and training staff to operate drug acquisition software."

Session Laws 2002-126, s. 6.8(c), provides: "The Commission shall provide for ongoing evaluation of the Program to measure its usage and effectiveness. The Commission shall include in its annual report required under G.S. 147-86.35 the use of funds for and activities of the Senior Prescription Drug Access Program and the results of its Program evaluation. The report shall include data on the number of persons who received services, fees authorized, and the geographic distribution of Program services."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 2.2(g), provides: "Notwithstanding G.S. 147-86.30(c), the Health and Wellness Trust Fund Commission may expend the balance of funds remaining from funds transferred from the Fund Reserve to Health and Wellness Trust Fund nonreserved funds pursuant to Section 2.2(h) of S.L. 2002-126. These funds shall be expended in accordance with G.S. 147-86.30(d) during the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2003-284, s. 2.2(c), as amended by Session Laws 2004-124, s. 2.2(b), provides: "Notwithstanding G.S. 143-16.4(a1), of the funds credited to the Health Trust Account from the Master Settlement Agreement pursuant to Section 6(2) of S.L. 1999-2 during the 2003-2004 fiscal year, the sum of twenty million dollars ($20,000,000) that would otherwise be deposited in the Fund Reserve established by G.S. 147-86.30(c) and five million ($5,000,000) of the funds that are not reserved pursuant to G.S. 147-86.30(c) shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2003-2004 fiscal year.

"Notwithstanding G.S. 143-16.4(a1) and G.S. 147-86.30, of the funds credited to the Health Trust Account from the Master Settlement Agreement pursuant to Section 6(2) of S.L. 1999-2 during the 2004-2005 fiscal year, the sum of twenty-five million dollars ($25,000,000) shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2004-2005 fiscal year. Any funds remaining after the transfer to the General Fund shall be used in accordance with G.S. 147-86.30."

Session Laws 2005-276, s. 2.2(b), provides: "Notwithstanding G.S. 143-16.4(a2), of the funds credited to the Tobacco Trust Account from the Master Settlement Agreement pursuant to Section 6(2) of S.L. 1999-2 during the 2005-2007 fiscal biennium, the sum of thirty-four million dollars ($34,000,000) for the 2005-2006 fiscal year and the sum of thirty million dollars ($30,000,000) for the 2006-2007 fiscal year shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund) to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) to support General Fund appropriations for the 2005-2006 and 2006-2007 fiscal years."

Session Laws 2005-276, s. 2.2(d), provides: "Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, the State Controller shall transfer one hundred twenty-five million dollars ($125,000,000) from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2005. Funds transferred under this section to the Repairs and Renovations Reserve Account are appropriated for the 2005-2006 fiscal year to be used in accordance with G.S. 143-15.3A. This subsection becomes effective June 30, 2005."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

This section was amended by Session Laws 2006-203, s. 122, effective July 1, 2007, in the coded bill drafting format provided by G.S. 120-20.1. The 2006 amendment failed to account for changes made to the section by Session Laws 2004-179, s. 1.3. The second version of subsection (c) has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2007-532, s. 5, as amended by Session Laws 2009-550, s. 9, provides: "Notwithstanding G.S. 143C-9-3(b) and G.S. 147-86.30, of the funds credited to the Health Trust Account from the Master Settlement Agreement pursuant to Section 6(3) of S.L. 1999-2 during the 2008-2009 fiscal year, the sum of five million dollars ($5,000,000) for the 2008-2009 fiscal year shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund) to the North Carolina Health Insurance Risk Pool, as enacted by this act."

Effect of Amendments. — Session Laws 2006-203, s. 122, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-9-3" for "G.S. 143-16.4" in subsection (c). See Editor's note.

Session Laws 2008-187, s. 28, effective August 7, 2008, deleted the second paragraph of subsection (c), which read: "G.S. 143C-9-3."

§ 147-86.31. Health and Wellness Trust Fund; eligibility for grants; annual reports from non-State agencies.

(a) Eligible Grant Applicants. — Any of the following are eligible to apply for a grant from the Fund:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation which has as a significant purpose promoting the public's health, limiting youth access to tobacco products, or reducing the health consequences of tobacco use.

(b) Annual Report From Non-State Agencies. — Grant or financial assistance recipients that are non-State agencies shall submit an annual report to the Commission. The report shall include information concerning how the funds are used, the intended goals and objectives of the recipient's grant proposal or program initiative, and the results of an evaluation of the extent to which the outcomes of the initiatives or proposal achieved those goals and objectives. (2000-147, s. 2.)

Cross References. — As to the development and implementation of a Senior Prescription Drug Access Program, see the note at G.S. 147-86.30

§ 147-86.32. Health and Wellness Trust Fund; Commission established; membership qualifications; vacancies.

(a) Commission Established. — There is established the Health and Wellness Trust Fund Commission. As used in this Article, the term "Commission" means the Health and Wellness Trust Fund Commission. The Commission shall exercise its powers independently, but for administrative purposes, the Commission shall be located within the Office of the State Treasurer.

(b) Membership. — The Commission shall consist of 18 members. The members shall not be employed by or be agents of tobacco product manufacturing companies. The Commission shall be appointed as follows: six members by the Governor, six members by the President Pro Tempore of the Senate, and six members by the Speaker of the House of Representatives. These members shall be appointed as follows:

(1) The Governor shall make the following appointments:
  a. A person involved in public health.
  b. A person involved in the operation of health care delivery systems.
  c. A health care practitioner.
  d. An at-large appointee.
  e. An at-large appointee.
  f. An at-large appointee.

(2) The President Pro Tempore of the Senate shall make the following appointments:
  a. A person involved in health research.
  b. A person involved in tobacco-related health care issues.
  c. A person involved in health promotion and disease prevention.
  d. An at-large appointee.
  e. An at-large appointee.
  f. An at-large appointee.

(3) The Speaker of the House of Representatives shall make the following appointments:
  a. A person involved in health policy trends.

b. A person involved with health care for underserved populations.
c. A person involved with child health care.
d. An at-large appointee.
e. An at-large appointee.
f. An at-large appointee.

It is the intent of the General Assembly that the appointing authorities, in appointing members, shall appoint members who represent the geographic, political, gender, and racial diversity of the State.

(c) Initial Appointments; Term Limits; Officers. — To provide for a staggered membership, the members initially appointed pursuant to sub-subdivisions (b)(1)a., (1)b., (2)d., and (3)d. of this section shall serve one-year terms ending on June 30, 2001. The members initially appointed pursuant to sub-subdivisions (b)(2)c., (2)e., (3)a., and (3)e. shall serve two-year terms ending on June 30, 2002. The members initially appointed pursuant to sub-subdivisions (b)(1)c., (1)d., (1)e., (2)b., and (3)c. shall serve three-year terms ending June 30, 2003. The remaining members initially appointed pursuant to subsection (b) of this section shall serve four-year terms ending June 30, 2004.

Except as provided for the initial members under this subsection, members shall serve four-year terms beginning July 1. No member may serve more than two full consecutive terms. Members may continue to serve beyond their terms until their successors are duly appointed, but any holdover shall not affect the expiration date of the succeeding term. A member may be removed from the Commission for cause by the authority that appointed the member.

The Commission shall elect from its membership a chair, vice-chair, and other officers as necessary for two-year terms beginning July 1 at the first meeting of the Commission held on or after July 1 of every even-numbered year. The vice-chair may act for the chair in the absence of the chair as authorized by the Commission.

(d) Vacancies. — Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term.

(e) Frequency of Meetings. — The Commission shall meet at least twice each year and may hold special meetings at the call of the chair or a majority of the voting members. The Governor shall call the initial meeting of the Commission.

(f) Quorum; Majority. — Ten members shall constitute a quorum of the Commission. The Commission may act upon a majority vote of all the members of the Commission on matters involving the disbursement of funds and personnel matters properly before the Commission. On all other matters, the Commission may act by majority vote of the members of the Commission at a meeting at which a quorum is present.

(g) Meeting Facilities. — The Office of the State Treasurer shall provide meeting facilities for the Commission and its staff as requested by the chair of the Commission.

(h) Per Diem and Expenses. — The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the members shall be paid from the Fund.

(i) Conflict of Interest. — The members of the Commission shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest. In addition to the restrictions imposed under G.S. 14-234, a member shall not vote on, participate in the deliberations of, or otherwise attempt through his or her official capacity to influence the vote on a grant or other financial assistance award by the Commission to a nonprofit entity of which the member is an officer, director, or employee or to a governmental entity of which the member is an employee or a member of the governing board. A violation of this subsection is a Class 1 misdemeanor. (2000-147, s. 2.)

Cross References. — For policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events, see G.S. 115D-20.1.

§ 147-86.33. Health and Wellness Trust Fund; powers and duties.

(a) The Commission shall do the following:

(1) Allocate moneys from the Fund as grants. A grant may be awarded only for a program or initiative that satisfies the criteria and furthers the purposes of this Article, but the provisions of this Article shall be liberally construed. The Commission shall strive to avoid imposing any unnecessary barriers in the grant application process.

(2) Develop criteria for awarding grants under this Article. The criteria shall include types of programs and initiatives to be funded, including programs which address the short-and long-term health and wellness of the citizens of North Carolina.

(3) Develop criteria by which to measure the outcomes of funded programs to evaluate the extent to which those programs achieved the goals for which funds were awarded.

(4) Develop a mechanism with which to evaluate individual applications.

(5) Ensure that good faith efforts are made to achieve federal mandates targeting the reduction of youth access to tobacco products.

(6) Administer the provisions of this Article.

(7) Adopt rules to implement this Article.

(b) The Commission is authorized to hire staff or contract for other expertise for the administration of the Fund.

(c) Gifts and Grants. — The Commission is authorized to accept gifts or grants from other sources. (2000-147, s. 2.)

Cross References. — For policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events, see G.S. 115D-20.1.

§ 147-86.34. Advisory Council.

The Commission shall create an Advisory Council to advise it with regard to issues as requested by the Commission. The Advisory Council shall include the Secretary of the Department of Health and Human Services, the State Health Director, the Dean of the School of Public Health of the University of North Carolina, and others the Commission considers necessary. (2000-147, s. 2.)

§ 147-86.35. Health and Wellness Trust Fund; reporting requirements.

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Commission on Governmental Operations and to the chairs of the Joint Legislative Health Care Oversight Committee regarding implementation of this Article, including a report on funds disbursed during the fiscal year by amount, purpose, and category of recipient, and other information as requested by the Joint Legislative Commission on Governmental Operations. The annual report shall also include a summary of each recipient's annual report submitted to the Health and Wellness Trust Fund Commission pursuant to G.S. 147-86.31(b) and an analysis of progress toward the goals and objectives of any comprehensive, community-based plan established pursuant to G.S. 147-86.30(e)(3). A written copy of the annual report shall also be sent to the Legislative Library by November 1 each year. Written reports shall also be sent on a quarterly basis to the Joint Legislative Commission on Governmental Operations.

(b) Any non-State entity as that term is defined in G.S. 143C-1-1 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S. 143C-6-23. (2000-147, s. 2; 2004-196, s. 3; 2006-203, s. 123.)

Cross References. — As to Report on the development and implementation of a Senior Prescription Drug Access Program, see the note at G.S. 147-86.30.

Editor's Note. — Subsection (b), as amended by Session Laws 2004-196, s. 3, effective July 1, 2005, is applicable to appropriations and grants made for fiscal years beginning on or after that date.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 123, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-1-1" for "G.S. 143-6.2" and "G.S. 143C-6-23" for "G.S. 143-6.2" in subsection (b).

§ 147-86.36. Health and Wellness Trust Fund; open meeting and public records requirements.

The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the Public Records Act (Chapter 132 of the General Statutes) shall apply to the Fund and the Commission, and the Fund and the Commission shall be subject to audit by the State Auditor as provided by law. The Commission shall reimburse the State Auditor for the actual cost of the audit. (2000-147, s. 2.)

ARTICLE 6D.

Sudan (Darfur) Divestment Act.

§ 147-86.41. Legislative findings.

(1) On July 23, 2004, the United States Congress declared that "the atrocities unfolding in Darfur, Sudan, are genocide."

(2) On September 9, 2004, Secretary of State Colin L. Powell told the U.S. Senate Foreign Relations Committee that "genocide has occurred and may still be occurring in Darfur" and "the Government of Sudan and the Janjaweed bear responsibility."

(3) On September 21, 2004, addressing the United Nations General Assembly, President George W. Bush affirmed the Secretary of State's finding and stated, "At this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide."

(4) On December 7, 2004, the U.S. Congress noted that the genocidal policy in Darfur has led to reports of "systematic rape of thousands of women and girls, the abduction of women and children, and the destruction of hundreds of ethnically African villages, including the poisoning of their wells and the plunder of their crops and cattle upon which the people of such villages sustain themselves."

(5) Also on December 7, 2004, Congress found that "the Government of Sudan has restricted access by humanitarian and human rights workers to the Darfur area through intimidation by military and security forces, and through bureaucratic and administrative obstruction, in an attempt to inflict the most devastating harm on those individuals displaced from their villages and homes without any means of sustenance or shelter."

(6) On September 25, 2006, Congress reaffirmed that "the genocide unfolding in the Darfur region of Sudan is characterized by acts of terrorism and atrocities directed against civilians, including mass murder, rape, and sexual violence committed by the Janjaweed and associated militias with the complicity and support of the National Congress Party-led faction of the Government of Sudan."

(7) On September 26, 2006, the U.S. House of Representatives stated that "an estimated 300,000 to 400,000 people have been killed by the Government of Sudan and its Janjaweed allies since the [Darfur] crisis began in 2003, more than 2,000,000 people have been displaced from their homes, and more than 250,000 people from Darfur remain in refugee camps in Chad."

(8) The Darfur crisis represents the first time the United States Government has labeled ongoing atrocities genocide.

(9) The Federal Government has imposed sanctions against the Government of Sudan since 1997. These sanctions are monitored through the U.S. Treasury Department's Office of Foreign Assets Control (OFAC).

(10) According to a former chair of the U.S. Securities and Exchange Commission, "the fact that a foreign company is doing material business with a country, government, or entity on OFAC's sanctions list is, in the SEC staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in that company."

(11) Since 1993, the U.S. Secretary of State has determined that Sudan is a country the government of which has repeatedly provided support for acts of international terrorism, thereby restricting United States assistance, defense exports and sales, and financial and other transactions with the Government of Sudan.

(12) A 2006 U.S. House of Representatives report states that "a company's association with sponsors of terrorism and human rights abuses, no matter how large or small, can have a materially adverse result on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment."

(13) In response to the financial risk posed by investments in companies doing business with a terrorist-sponsoring state, the Securities and Exchange Commission established its Office of Global Security Risk to provide for enhanced disclosure of material information regarding such companies.

(14) The current Sudan divestment movement encompasses nearly 100 universities, cities, states, and private pension plans.

(15) Companies facing such widespread divestment present further material risk to remaining investors.

(16) It is a fundamental responsibility of the State of North Carolina to decide where, how, and by whom financial resources in its control should be invested, taking into account numerous pertinent factors.

(17) It is the prerogative and desire of the State of North Carolina in respect to investment resources in its control and to the extent reasonable, with due consideration for, among other things, return on investment, on behalf of itself and its investment beneficiaries, not to participate in an ownership or capital-providing capacity with entities that provide significant practical support for genocide, including certain non-United States companies presently doing business in Sudan.

(18) It is the judgment of the General Assembly that this article should remain in effect only insofar as it continues to be consistent with, and does not unduly interfere with, the foreign policy of the United States as determined by the Federal Government.

(19) It is the judgment of this General Assembly that mandatory divestment of public funds from certain companies is a measure that should be employed sparingly and judiciously. A Congressional and Presidential declaration of genocide satisfies this high threshold. (2007-486, s. 1.)

Editor's Note. — Session Laws 2007-486, s. 11, made this article effective on August 30, 2007.

Session Laws 2007-486, s. 10, contains a severability clause.

§ 147-86.42. Definitions.

As used in this article, the following definitions apply:

(1) "Active Business Operations" means all Business Operations that are not Inactive Business Operations.

(2) "Business Operations" means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(3) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

(4) "Complicit" means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including, but not limited to, preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(5) "Direct Holdings" in a Company means all securities of that Company held directly by the Public Fund or in an account or fund in which the Public Fund owns all shares or interests.

(6) "Government of Sudan" means the government in Khartoum, Sudan, which is led by the National Congress Party (formerly known as the National Islamic Front) or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan), and does not include the regional government of southern Sudan.

(7) "Inactive Business Operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(8) "Indirect Holdings" in a Company means all securities of that Company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the Public Fund, in which the Public Fund owns shares or interests together with other investors not subject to the provisions of this article.

(9) "Marginalized Populations of Sudan" include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan's North-South civil war; the Beja,

Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(10) "Military Equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles; or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(11) "Mineral Extraction Activities" include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(12) "Oil-Related Activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered Oil-Related Activities.

(13) "Power Production Activities" means any Business Operation that involves a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar Government of Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(14) "Public Fund" means any funds held by the State Treasurer to the credit of:
- a. The Teachers' and State Employees' Retirement System.
- b. The Consolidated Judicial Retirement System.
- c. The Firemen's and Rescue Workers' Pension Fund.
- d. The Local Governmental Employees' Retirement System.
- e. The Legislative Retirement System.
- f. The Legislative Retirement Fund.
- g. The North Carolina National Guard Pension Fund.

(14a) "Scrutinized Business Operations" means Business Operations that have resulted in a Company becoming a Scrutinized Company.

(15) "Scrutinized Company" means any Company that meets the criteria in sub-subdivisions a., b., or c. below:
- a. The Company has Business Operations that involve contracts with and/or provision of supplies or services to the Government of Sudan, to companies in which the Government of Sudan has any direct or indirect equity share, Government of Sudan-commissioned consortiums or projects, or to Companies involved in Government of Sudan-commissioned consortiums or projects and at least one of the following conditions is satisfied:
  - 1. More than ten percent (10%) of the Company's revenues or assets linked to Sudan involve Oil-Related Activities or Mineral Extraction Activities; less than seventy-five percent

(75%) of the Company's revenues or assets linked to Sudan involve contracts with and/or provision of Oil-Related or Mineral Extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the Company has failed to take Substantial Action.

2. More than ten percent (10%) of the Company's revenues or assets linked to Sudan involve Power Production Activities; less than seventy-five percent (75%) of the Company's Power Production Activities include projects whose intent is to provide power or electricity to the Marginalized Populations of Sudan; and the Company has failed to take Substantial Action.

b. The Company is Complicit in the Darfur genocide.

c. The Company supplies Military Equipment within Sudan, unless it clearly shows that the Military Equipment cannot be used to facilitate offensive military actions in Sudan or the Company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, for example, through post-sale tracking of such equipment by the Company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

Notwithstanding anything herein to the contrary, a Social Development Company which is not Complicit in the Darfur genocide shall not be considered a Scrutinized Company.

(16) "Social Development Company" means a Company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to Oil-Related Activities, Mineral Extraction Activities, or Power Production Activities.

(17) "Substantial Action" means adopting, publicizing, and implementing a formal plan to cease Scrutinized Business Operations within one year and to refrain from any such new Business Operations; undertaking significant humanitarian efforts on behalf of one or more Marginalized Populations of Sudan; or through engagement with the Government of Sudan, materially improving conditions for the genocidally victimized population in Darfur. (2007-486, s. 2.)

§ 147-86.43. Identification of companies.

(a) Within 90 days of August 30, 2007, the Public Fund shall make its best efforts to identify all Scrutinized Companies in which the Public Fund has Direct or Indirect Holdings or could possibly have such holdings in the future. Such efforts shall include, as appropriate:

(1) Reviewing and relying, as appropriate in the Public Fund's judgment, on publicly available information regarding Companies with Business Operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

(2) Contacting asset managers contracted by the Public Fund that invest in Companies with Business Operations in Sudan; or

(3) Contacting other institutional investors that have divested from and/or engaged with Companies that have Business Operations in Sudan.

(b) By the first meeting of the Public Fund following the 90-day period described in subsection (a), the Public Fund shall assemble all Scrutinized Companies identified into a "Scrutinized Companies List."

(c) The Public Fund shall update the Scrutinized Companies List on a quarterly basis based on evolving information from, among other sources, those listed in subsection (a) of this section. (2007-486, s. 3.)

§ 147-86.44. Required actions.

(a) General. — The Public Fund shall adhere to the procedure for Companies on the Scrutinized Companies List as provided in this section:

(b) Engagement. —

(1) The Public Fund shall immediately determine the Companies on the Scrutinized Companies List in which the Public Fund owns Direct or Indirect Holdings.

(2) For each Company identified in subdivision (1) of this section with only Inactive Business Operations, the Public Fund shall send a written notice informing the Company of this article and encouraging it to continue to refrain from initiating Active Business Operations in Sudan until it is able to avoid Scrutinized Business Operations. The Public Fund shall continue such correspondence on a semiannual basis.

(3) For each Company newly identified in subdivision (1) of this section with Active Business Operations, the Public Fund shall send a written notice informing the Company of its Scrutinized Company status and that it may become subject to divestment by the Public Fund. The notice shall offer the Company the opportunity to clarify its Sudan-related activities and shall encourage the Company, within 90 days, to either cease its Scrutinized Business Operations or convert such operations to Inactive Business Operations in order to avoid qualifying for divestment by the Public Fund.

(4) If, within 90 days following the Public Fund's first engagement with a Company pursuant to subdivision (3) of this section that Company ceases Scrutinized Business Operations, the Company shall be removed from the Scrutinized Companies List and the provisions of this Section shall cease to apply to it unless it resumes Scrutinized Business Operations. If, within 90 days following the Public Fund's first engagement, the Company converts its Scrutinized Active Business Operations to Inactive Business Operations, the Company shall be subject to all provisions relating thereto.

(c) Divestment. —

(1) If, after 90 days following the Public Fund's first engagement with a Company pursuant to subdivision (b)(3) of this section, the Company continues to have Scrutinized Active Business Operations, and only while such Company continues to have Scrutinized Active Business Operations, the Public Fund shall sell, redeem, divest, or withdraw all publicly traded securities of the Company within 15 months after the Company's most recent appearance on the Scrutinized Companies List.

(2) If a Company that ceased Scrutinized Active Business Operations following engagement pursuant to subdivision (b)(3) of this section resumes such operations, subdivision (1) of this subsection shall immediately apply, and the Public Fund shall send a written notice to

the Company. The Company shall also be immediately reintroduced onto the Scrutinized Companies List.

(d) Prohibition. — At no time shall the Public Fund acquire securities of Companies on the Scrutinized Companies List that have Active Business Operations, except as provided below.

(e) Exemption. — No Company which the United States Government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall be subject to divestment or investment prohibition pursuant to subsections (c) and (d) of this section.

(f) Excluded Securities. — Notwithstanding anything herein to the contrary, subsections (c) and (d) of this section shall not apply to Indirect Holdings in actively managed investment funds. The Public Fund shall, however, submit letters to the managers of such investment funds containing Companies with Scrutinized Active Business Operations requesting that they consider removing such Companies from the fund or create a similar actively managed fund with Indirect Holdings devoid of such Companies. If the manager creates a similar fund, the Public Fund shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investing standards. For the purposes of this section, "private equity" funds shall be deemed to be actively managed investment funds. (2007-486, s. 4.)

§ 147-86.45. Reporting.

(a) The Public Fund shall file a publicly available report to the General Assembly that includes the Scrutinized Companies List annually.

(b) Annually thereafter, the Public Fund shall file a publicly available report to the General Assembly and send a copy of that report to the United States Presidential Special Envoy to Sudan (or an appropriate designee or successor) that includes:

(1) A summary of correspondence with Companies engaged by the Public Fund under G.S. 147-86.44(b)(2) and (b)(3).
(2) All investments sold, redeemed, divested, or withdrawn in compliance with G.S. 147-86.44(c).
(3) All prohibited investments under G.S. 147-86.44(d); and
(4) Any progress made under G.S. 147-86.44(f). (2007-486, s. 5.)

§ 147-86.46. Expiration of this article.

This article expires upon the occurrence of any of the following:

(1) The Congress or President of the United States declaring that the Darfur genocide has been halted for at least 12 months.
(2) The United States revoking all sanctions imposed against the Government of Sudan.
(3) The Congress or President of the United States declaring that the Government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons.
(4) The Congress or President of the United States, through legislation or executive order, declaring that mandatory divestment of the type provided for in this article interferes with the conduct of United States foreign policy. (2007-486, s. 6.)

§ 147-86.47. Other legal obligations.

With respect to actions taken in compliance with this article, including all good faith determinations regarding Companies as required by this article, the

Public Fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations in respect to choice of asset managers, investment funds, or investments for the Public Fund's securities portfolios. (2007-486, s. 7.)

§ 147-86.48. Reinvestment in certain companies with Scrutinized Active Business Operations.

Notwithstanding anything in this article, the Public Fund is permitted to cease divesting from certain Scrutinized Companies pursuant to G.S. 147-86.44(c) and/or reinvest in certain Scrutinized Companies from which it divested pursuant to G.S. 147-86.44(c) if clear and convincing evidence shows that the value for all assets under management by the Public Fund becomes equal to or less than 99.50% (50 basis points) of the hypothetical value of all assets under management by the Public Fund assuming no divestment for any company had occurred under G.S. 147-86.44(c). Cessation of divestment, reinvestment, and/or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in the preceding sentence. For any cessation of divestment, reinvestment, and/or subsequent ongoing investment authorized by this section, the Public Fund shall provide a written report to the General Assembly in advance of initial reinvestment, updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, and/or remain invested in Companies with Scrutinized Active Business Operations. This section has no application to reinvestment in Companies on the ground that they have ceased to have Scrutinized Active Business Operations. (2007-486, s. 8.)

§ 147-86.49. Enforcement.

The Attorney General is charged with enforcing the provisions of this article and, through any lawful designee, may bring such actions in court as are necessary to do so. (2007-486, s. 9.)

Article 7.

Secretary of Revenue.

§ 147-87. Secretary of Revenue; appointment; salary.

A Secretary of Revenue shall be appointed by the Governor on January 1, 1933, and quadrennially thereafter. The term of office of the Secretary shall be four years and until his successor is appointed and qualified. His salary shall be fixed by the General Assembly in the Current Operations Appropriations Act. (1921, c. 40, ss. 2, 6; 1929, c. 232; 1973, c. 476, s. 193; 1983, c. 717, s. 90; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

Cross References. — As to the Department of Revenue, see G.S. 143B-217 et seq.

CASE NOTES

Cited in Boylan-Pearce, Inc. v. Johnson, 257 N.C. 582, 126 S.E.2d 492 (1962).

§ 147-88: Repealed by Session Laws 1991, c. 10, s. 3.

Cross References. — As to preparation of reports concerning taxes by the Secretary of Revenue, see now G.S. 105-256.

ARTICLE 8.

District Attorneys.

§ 147-89. To prosecute cases removed to federal courts.

It shall be the duty of the district attorneys of this State, in whose jurisdiction the circuit and district courts of the United States are held, having first obtained the permission of the judges of said courts, to prosecute, or assist in the prosecution of, all criminal cases in said courts where the defendants are charged with violations of the laws of this State, and have moved their cases from the State to the federal courts under the provisions of the various acts of Congress on such subjects. (1874-5, c. 164, s. 1; Code, s. 1239; Rev., s. 5381; C.S., s. 7696; 1973, c. 47, s. 2.)

CASE NOTES

Public Nuisances. — The State Constitution and G.S. 7A-61, 147-89 and 19-2.1 do not prohibit a district attorney from employing private counsel to assist in public nuisance actions. Whitfield v. Gilchrist, 126 N.C. App. 241, 485 S.E.2d 61 (1997), rev'd on other grounds, 348 N.C. 39, 497 S.E.2d 412 (1998).

§ 147-90. Investigations of uses of deadly force.

In every instance in which a private citizen is killed as a result of the use of a firearm by a law enforcement officer in the line of duty, the district attorney in the prosecutorial district in which the death occurred shall, upon the request of the surviving spouse or next of kin of the private citizen within 180 days of the death, request the State Bureau of Investigation to conduct an investigation into the incident. For purposes of this section, the term "next of kin" includes only the child, father, mother, sister, or brother of the private citizen.

Statements prepared by or on behalf of a district attorney pursuant to this section are not public records as defined by G.S. 132-1 and may be released by the district attorney only as provided by G.S. 132-1.4 or other applicable law. (2007-129, s. 1.)

Editor's Note. — Session Laws 2007-129, s. 2, made this section effective October 1, 2007, and applicable to acts occurring on or after that date.

Chapter 148.

State Prison System.

Article 1.

Organization and Management.

Sec.
148-1. [Repealed.]
148-2. Prison moneys and earnings.
148-3. Prison property.
148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.
148-4.1. Release of inmates.
148-5. Secretary to manage prison property.
148-5.1. Confining inmates away from victims.
148-6. Custody, employment and hiring out of convicts.
148-7. [Repealed.]
148-8, 148-8.1. [Transferred.]
148-9. [Repealed.]
148-10. Department of Environment and Natural Resources to supervise sanitary and health conditions of prisoners.
148-10.1. Employment of clinical chaplains for inmates.
148-10.2. Policy: Certain inmates not to contact family members of victims.
148-10.3. Electronic monitoring costs.

Article 2.

Prison Regulations.

148-11. Authority to adopt rules; authority to designate uniforms.
148-12. Diagnostic and classification programs.
148-13. Regulations as to custody grades, privileges, gain time credit, etc.
148-14 through 148-17. [Repealed.]
148-18. Wages, allowances and loans.
148-18.1. Confiscation of unauthorized articles.
148-19. Health services.
148-19.1. Exemption from licensure and certificate of need.
148-20. Corporal punishment of prisoners prohibited.
148-21. [Repealed.]
148-22. Treatment programs.
148-22.1. Educational facilities and programs for selected inmates.
148-22.2. Procedure when surgical operations on inmates are necessary.
148-23. Prison employees not to use intoxicants, narcotic drugs or profanity.
148-23.1. (Effective until March 1, 2010) Smoking prohibited in State correctional facilities.
148-23.1. (Effective March 1, 2010) Tobacco products prohibited on State correctional facilities premises.
148-23.2. (Effective March 1, 2010) Mobile phones prohibited on State correctional facilities premises.
148-24. Religious services.
148-25. Secretary to investigate death of convicts.

Article 3.

Labor of Prisoners.

148-26. State policy on employment of prisoners.
148-26.1. Definitions.
148-26.2 through 148-26.4. [Repealed.]
148-26.5. Pay and time allowances for work.
148-27. [Repealed.]
148-28. Sentencing prisoners to Central Prison; youthful offenders.
148-29. Transportation of convicts to prison; reimbursement to counties; sheriff's expense affidavit.
148-30. [Repealed.]
148-31. Maintenance of Central Prison; warden; powers and duties.
148-32. [Repealed.]
148-32.1. Local confinement, costs, alternate facilities, parole, work release.
148-32.2. Community work crew fee.
148-33. Prison labor furnished other State agencies.
148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges.
148-33.2. Restitution by prisoners with work-release privileges.
148-34, 148-35. [Repealed.]
148-36. Secretary of Correction to control classification and operation of prison facilities.
148-37. Additional facilities authorized; contractual arrangements.
148-37.1. Prohibition on private prisons housing out-of-state inmates.
148-37.2. Lease-purchase of prison facilities.
148-37.3. Authority of private correctional officers employed pursuant to a contract with the Federal Bureau of Prisons.
148-38, 148-39. [Repealed.]
148-40. Recapture of escaped prisoners.
148-41. Recapture of escaping prisoners; reward.
148-42, 148-43. [Repealed.]
148-44. Separation as to sex.
148-45. Escaping or attempting escape from

Sec.
State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.
148-46. Degree of protection against violence allowed.
148-46.1. Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform assigned duties.
148-46.2. Procedure when consent is refused by prisoner.
148-47. Disposition of child born of female prisoner.
148-48. Parole powers of Parole Commission unaffected.
148-49. Prison indebtedness not assumed by Board of Transportation.

Article 3A.

Facilities and Programs for Youthful Offenders.

148-49.1 through 148-49.9. [Repealed.]

Article 3B.

Facilities and Programs for Youthful Offenders.

148-49.10 through 148-49.16. [Repealed.]

Article 4.

Paroles.

148-50 through 148-52. [Repealed.]
148-52.1. Prohibited political activities of member of Post-Release Supervision and Parole Commission.
148-53. Investigators and investigations of cases of prisoners.
148-54. Parole and post-release supervision supervisors provided for; duties.
148-54.1, 148-55. [Repealed.]
148-56. Assistance in supervision of parolees or post-release supervisees and preparation of case histories.
148-57. Rules and regulations for parole consideration.
148-57.1. Restitution as a condition of parole or post-release supervision.
148-58, 148-58.1. [Repealed.]
148-59. Duties of clerks of superior courts as to commitments; statements filed with Department of Correction.
148-60. [Repealed.]
148-60.1. Allowances for paroled prisoner and prisoner on post-release supervision.
148-60.2 through 148-62. [Repealed.]
148-62.1. Entitlement of indigent parolee and post-release supervisee to counsel, in discretion of Post-Release Supervision and Parole Commission.
148-63. Arrest powers of police officers.
148-64. Cooperation of prison and parole officials and employees.
148-64.1. Early conditional release of inmates subject to a removal order; revocation of release.
148-65. [Repealed.]

Article 4A.

Out-of-State Parolee Supervision.

148-65.1 through 148-65.3. [Repealed.]

Article 4B.

Interstate Compact for Adult Offender Supervision.

148-65.4. Short title.
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148-70.1 through 148-70.7. [Repealed.]

Article 6.

Reformatory.

148-71 through 148-73. [Repealed.]

Article 7.

Records, Statistics, Research and Planning.

148-74. Records Section.
148-75. [Repealed.]
148-76. Duties of Records Section.

Sec.
148-77. Statistics, research, and planning.
148-78. Reports.
148-79. [Repealed.]
148-80. Seal of Records Section; certification of records.
148-81. [Repealed.]

Article 8.

Compensation to Persons Erroneously Convicted of Felonies.

148-82. Provision for compensation.
148-83. Form, requisites and contents of petition; nature of hearing.
148-84. Evidence; action by Industrial Commission; payment and amount of compensation.

Article 9.

Prison Advisory Council.

148-85 through 148-88. [Repealed.]

Article 10.

Interstate Agreement on Detainers.

148-89 through 148-95. [Transferred.]
148-96 through 148-100. [Reserved.]

Article 11.

Inmate Grievance Commission.

148-101 through 148-118. [Repealed.]

Article 11A.

Corrections Administrative Remedy Procedure.

148-118.1. Authority.
148-118.2. Effect.

Sec.
148-118.3. Publication of procedure.
148-118.4. Definitions.
148-118.5. Records confidentiality.
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148-118.7. Removal of members.
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148-118.9. Investigatory power of the Grievance Resolution Board.

Article 12.

Interstate Corrections Compact.

148-119. Short title.
148-120. Governor to execute; form of compact.
148-121. Proceedings to be open; all documents public records; exception.

Article 13.

Transfer of Convicted Foreign Citizens Under Federal Treaty.

148-122. Transfer of convicted foreign citizens under treaty; consent by Governor.
148-123 through 148-127. [Reserved.]

Article 14.

Correction Enterprises.

148-128. Authorization for Correction Enterprises.
148-129. Purposes of Correction Enterprises.
148-130. Correction Enterprises Fund.
148-131. Powers and responsibilities.
148-132. Distribution of products and services.
148-133. Inmate wages and conditions of employment.
148-134. Preference for Department of Correction products.

ARTICLE 1.

Organization and Management.

Editor's Note. — For note regarding Session Laws 1989 (Reg. Sess., 1990), c. 933, also known as the Prison Facilities Legislative Bond Act of 1990, see the Editor's note under G.S. 148-4.1.

§ 148-1: Repealed by Session Laws 1973, c. 1262, s. 10.

Cross References. — For present provisions as to the Department of Correction, see § 143B-260 et seq.

§ 148-2. Prison moneys and earnings.

(a) Persons authorized to collect or receive the moneys and earnings of the State prison system shall enter into bonds payable to the State of North Carolina in penal sums and with security approved by the Department of Correction, conditioned upon the faithful performance by these persons of their duties in collecting, receiving, and paying over prison moneys and earnings to the State Treasurer. Only corporate security with sureties licensed to do business in North Carolina shall be accepted.

(b) Repealed by Session Laws 2007-280, s. 2, effective August 1, 2007.

(c) Notwithstanding G.S. 147-77, Article 6A of Chapter 147 of the General Statutes, or any other provision of law, the Department of Correction may deposit revenue from prison canteens in local banks. The profits from prison canteens shall be deposited with the State Treasurer on a monthly basis in a fund denominated as the Correction Inmate Welfare Fund. Once the operating budget for the Correction Inmate Welfare Fund has been met, an amount equal to the funds allocated to each prison unit on a per inmate per year basis shall be credited to the Crime Victims Compensation Fund established in G.S 15B-23 as soon as practicable after the total amount paid to each unit per inmate per year has been determined. (1901, c. 472, s. 7; Rev., s. 5389; C.S., s. 7704; 1923, c. 156; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 2; 1967, c. 996, s. 14; 1973, c. 1262, s. 10; 1985 (Reg. Sess., 1986), c. 1014, s. 203; 1991 (Reg. Sess., 1992), c. 902, s. 4; 1993 (Reg. Sess., 1994), c. 769, s. 21.5(a); 2007-280, s. 2.)

Editor's Note. — Session Laws 2005-276, s. 17.9, as amended by Session Laws 2006-66, s. 16.9, provides: "Notwithstanding the provisions of G.S. 148-2, the Department of Correction may use up to the sum of one million dollars ($1,000,000) during the 2006-2007 fiscal year from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 148-3. Prison property.

(a) The State Department of Correction shall subject to the provisions of G.S. 143-341, have control and custody of all unexpended surplus highway funds previously allocated for prison purposes and all property of every kind and description now used by or considered a part of units of the State prison system, except vehicles used on a rental basis. The property coming within the provisions of this section shall be identified and agreed upon by the executive heads of the highway and prison systems, or by their duly authorized representatives. The Governor shall have final authority to decide whether or not particular property shall be transferred to the Department of Correction in event the executive heads of the two systems are unable to agree.

(b) Property, both real and personal, deemed by the Department of Correction to be necessary or convenient in the operation of the State prison system may, subject to the provisions of G.S. 143-341, be acquired by gift, devise, purchase, or lease. The Department of Correction may, subject to the provisions of G.S. 143-341, dispose of any prison property, either real or personal, or any interest or estate therein. (1901, c. 472, ss. 2, 6; Rev., s. 5392; C.S., s. 7705; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409; 1957, c. 349, s. 3; 1967, c. 996, s. 13.)

CASE NOTES

Discretion as to Operation of Prison. — Whether the maintenance and operation of a prison on a particular site shall be conducted either as at present, or as enlarged by the construction of additional buildings and facilities, or as a "minimum security prison" is a matter for determination by the State Prison Commission (now the Department of Correction) in the exercise of its discretion, and the court has no power to substitute its discretion for that of the Commission; and, in the absence of fraud, manifest abuse of discretion or conduct in excess of lawful authority, the court has no power to intervene. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

Construction of a prison on a site selected by public officials pursuant to statutory authority will not be enjoined. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

§ 148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.

The Secretary of Correction shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Department of Correction, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Secretary of Correction or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Secretary shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Employees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the authorized agents of the Secretary of Correction for the purpose of maintaining control and custody of prisoners who may be placed under the supervision and control of such employees, including guarding and transferring such prisoners from place to place in the State as their duties might require, and apprehending and arresting escaped prisoners and returning them to prison. The governing authorities of the State prison system are authorized to determine by rules and regulations the manner of designating these agents and placing prisoners under their supervision and control, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system.

The Secretary of Correction may extend the limits of the place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to

(1) Contact prospective employers; or
(2) Secure a suitable residence for use when released on parole or upon discharge; or
(3) Obtain medical services not otherwise available; or
(4) Participate in a training program in the community; or
(5) Visit or attend the funeral of a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person though not a natural parent, has acted in the place of a parent), brother, or sister; or
(6) Participate in community-based programs of rehabilitation, including, but not limited to the existing community volunteer and home-leave programs, pre-release and after-care programs as may be provided for and administered by the Secretary of Correction and other programs determined by the Secretary of Correction to be consistent with the prisoner's rehabilitation and return to society; or
(7) Be on maternity leave, for a period of time not to exceed 60 days. The county departments of social services are expected to cooperate with officials at the North Carolina Correctional Center for Women to coordinate prenatal care, financial services, and placement of the child; or
(8) Receive palliative care, only in the case of a terminally ill inmate or a permanently and totally disabled inmate that the Secretary finds no longer poses a significant public safety risk, and only after consultation with any victims of the inmate or the victims' families. For purposes of this subdivision, the term "terminally ill" describes an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing and was not diagnosed upon entry to prison, that will likely produce death within six months, and that is so debilitating that it is highly unlikely that the inmate poses a significant public safety risk. For purposes of this subdivision, the term "permanently and totally disabled" describes an inmate who, as determined by a licensed physician, suffers from permanent and irreversible physical incapacitation as a result of an existing physical or medical condition that was unknown at the time of sentencing and was not diagnosed upon entry to prison, and that is so incapacitating that it is highly unlikely that the inmate poses a significant public safety risk. The Department's medical director shall notify the Secretary immediately when an inmate has been classified as terminally ill and shall provide regular reports on inmates classified as permanently and totally disabled. The Secretary shall act expeditiously in determining whether to extend the limits of confinement under this subdivision upon receiving notice that an inmate has been classified as terminally ill or permanently and totally disabled and, in the case of a terminally ill inmate, the Secretary shall make a good faith effort to reach a determination within 30 days of receiving notice of the inmate's terminal condition.

The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Secretary of Correction, shall be deemed an escape from the custody of the Secretary of Correction punishable as provided in G.S. 148-45. (1901, c. 472, s. 4; Rev., s. 5390; C.S., s. 7706; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; 1943, c. 409; 1955, c. 238, s. 2; 1957, c. 349, s. 10; 1959, c. 109; 1965, c. 1042; 1967, c. 996, ss. 13, 15; 1973, c. 902; c. 1262, s. 10; 1977, c. 704, s. 5; 1985, c. 483; 2001-424, s. 25.9(a); 2005-276, s. 17.13.)

Pilot Program — Conducting Court Proceedings Using Videoconferencing Technology for Persons in Custody. — Session Laws 2009-270, ss. 1-4, provide: "SECTION 1. The Administrative Office of the Courts, in consultation with the Department of Correction, shall conduct a pilot program to test the feasibility of using videoconference or similar technology to conduct court proceedings involving defendants in the custody of the Department of Correction, instead of requiring live appearances in court for those defendants. The Administrative Office of the Courts shall designate two counties to participate in the pilot, and the Department of Correction shall designate one prison facility. The Administrative Office of the Courts may also designate one or more counties to participate in a pilot program involving persons in the custody of local confinement facilities to test the feasibility of using videoconferencing equipment to conduct proceedings authorized by this act but not otherwise authorized by law.

"SECTION 2. Notwithstanding any other provision of law, the courts participating in the pilot program authorized by this act may conduct proceedings required under G.S. 15A-511, Article 26 of Chapter 15A of the General Statutes, G.S. 15A-601, and G.S. 15A-941 by videoconference without the consent of the defendant. If a defendant voluntarily and knowingly waives his or her right to appear in person, the court may also accept guilty pleas and impose sentences in cases in which the plea is taken by videoconference, conduct hearings on motions, and conduct probation modification or revocation proceedings. The waiver may be taken by videoconference. In the jurisdictions participating in the pilot programs, no proceeding in which a person is charged with a capital felony may be conducted using videoconferencing equipment, but nothing in this act shall be construed to limit the use of testimony at a trial taken by videoconferencing equipment when the testimony is otherwise allowed by law to be taken in that manner.

"SECTION 3. The equipment used in conducting the videoconference proceedings authorized by this act shall be used in a manner that ensures that the judicial official conducting the proceeding and the defendant can see and hear each other and that ensures that the defendant and his or her attorney may communicate during the proceeding in a manner that preserves the defendant's right to confidential communication with counsel.

"SECTION 4. The North Carolina Rural Courts Commission, in cooperation with the Department of Correction, shall study the effectiveness of the use of videoconferences for these proceedings and report its findings and recommendations for expansion or modification to the Chief Justice, the Secretary of Correction, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Chairs of the Senate and House Appropriations Committees. The study shall address the costs of implementing videoconferencing on a statewide basis for these purposes, as well as the cost savings obtained through the use of such equipment, the quality of the transmissions, the frequency of use, and any other relevant information the Commission deems appropriate. The report shall be submitted no later than May 1, 2010. The Administrative Office of the Courts and the Department of Correction may seek grant funds to offset any costs associated with the study that cannot be provided by appropriations to those agencies."

CASE NOTES

Power to Designate Places of Confinement. — This section gives the Director of Prisons (now the Secretary of Correction) or his duly authorized agents or representatives the authority to designate the places of confinement within the State prison system where the sentences of prisoners shall be served. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

Recommendation as to Confinement Held Not to Constitute Cruel and Unusual Punishment. — An attachment to commitment papers recommending "that the defendant not be placed upon work release or permitted to leave his place of confinement under this section or any other statute but be kept at all times in close security until the sentence is completed" was a mere recommendation and had no legal effect upon the type or place of incarceration of the petitioner, and it did not constitute cruel and unusual punishment. Harris v. North Carolina, 320 F. Supp. 770 (M.D.N.C. 1970), aff'd, 435 F.2d 1305 (4th Cir. 1971).

Instruction on Willfulness Under This Section Unnecessary in Prosecution Under § 148-45. — In a prosecution for felonious escape under G.S. 148-45, trial court was not required to instruct the jury pursuant to this section that one of the essential elements of felonious escape is that the failure to remain in or return to confinement must be willful, since defendant was not charged with escape while outside the place of his confinement pursuant to authorization by the Secretary of Correction under this section, but was charged under G.S. 148-45, which establishes the general escape offense, and that section does not contain the word "willful." State v. Rose, 53 N.C. App. 608, 281 S.E.2d 404 (1981).

Court's Sentencing Orders to be Followed by Department of Corrections. — Since the superior court was authorized by G.S. 15A-1417 to enter an appropriate sentence upon granting defendant's motion for appropriate relief, and since G.S. 148-4 provided that any sentencing order bound defendant to commitment with the North Carolina Department of Corrections under the terms of that appropriate sentence, the superior court's authority to order the Department to change its records to reflect entry of the appropriate sentence was unaffected by defendant's decision to file a motion for appropriate relief rather than a civil suit naming the Department as a party defendant; the Department could not refuse the superior court's order to change defendant's records to reflect concurrent instead of consecutive sentences simply because the sentencing order was entered following defendant's motion for appropriate relief. State v. Ellis, 167 N.C. App. 276, 605 S.E.2d 168, 2004 N.C. App. LEXIS 2161 (2004), rev'd 361 N.C. 200, 639 S.E.2d 425 (2007) (remanded to allow defendant to withdraw his guilty plea).

Evidence Held Sufficient to Support Finding of Escape. — Testimony of a sergeant with the North Carolina Department of Correction assigned to the prison camp in which defendant was confined that on the day in question defendant was given permission to leave the unit on a Community Volunteer Leave was sufficient to support the jury's finding, and it was not necessary that the State present evidence to show that the Secretary of Correction, after making a determination that there was reasonable cause to believe that defendant would honor his trust, had personally authorized defendant's release to participate in the community volunteer program and had personally prescribed the precise period of time during which the defendant was permitted to be absent from the prison unit. State v. Harris, 27 N.C. App. 15, 217 S.E.2d 729, cert. denied, 288 N.C. 512, 219 S.E.2d 347 (1975).

A State prisoner has no legal right to the mitigation of his punishment. Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980).

Question as to whether a particular inmate is entitled to honor grade status or parole involves policy decisions which should be made by the department and the Parole Board, not the courts. Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980).

Applied in Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972); State v. Eppley, 30 N.C. App. 217, 226 S.E.2d 675 (1976).

Cited in Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960); State v. Davis, 253 N.C. 86, 116 S.E.2d 365 (1960); State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969); State v. Stewart, 19 N.C. App. 112, 198 S.E.2d 30 (1973); Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984); Kandler v. Department of Cor., 80 N.C. App. 444, 342 S.E.2d 910 (1986).

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As to the status of a convicted person awaiting appeal, see opinion of the Attorney General to Mr. Martin R. Peterson, Director of Legal Services, N.C. Department of Correction, 40 N.C.A.G. 163 (1969).

§ 148-4.1. Release of inmates.

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable level or to meet the State's obligations under law, he shall direct the Post-Release Supervision and Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose. From the time the Secretary directs the Post-Release Supervision and Parole Commission until the prison population has been reduced to a more manageable level, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred. In order to meet the requirements of this section, the Parole Commission shall not parole any person convicted under Article 7A of Chapter

14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under G.S. 14-17, or any other violent felon as defined in subsection (a1) of this section. The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A.

(a1) Notwithstanding any other provision of this section, the Department of Correction shall at all times secure the necessary prison space to house any violent felon or habitual felon for the full active sentence imposed by the court. For purposes of this subsection, the term "violent felon" means any person convicted of the following felony offenses: first or second degree murder, voluntary manslaughter, first or second degree rape, first or second degree sexual offense, any sexual offense involving a minor, robbery, kidnapping, or assault, or attempting, soliciting, or conspiring to commit any of those offenses.

(b) Except as provided in subsection (c), only inmates who are otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of this Chapter may be released under this section.

(c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible for early parole under this section nine months prior to the discharge date otherwise applicable, and six months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2.

(c1) through (g). Repealed by 1995 Session Laws, c. 324, s. 19.9(e).

(g1) Expired July 1, 1996.

(h) A person sentenced under Article 81B of Chapter 15A of the General Statutes shall not be released pursuant to this section.

(i) This section does not apply to inmates released pursuant to G.S. 148-64.1. (1983, c. 557, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 197(a); 1987, c. 7, ss. 1, 3, 4; c. 879, s. 1.2; 1989, c. 1, s. 1; 1990, Ex. Sess., c. 1, ss. 1-3.3; 1989 (Reg. Sess., 1990), c. 933, ss. 10-13; 1991, c. 187, s. 2; c. 217, ss. 6, 7; c. 437, ss. 1-9; 1991 (Reg. Sess., 1992), c. 1036, ss. 5-7; 1993, c. 91, ss. 1-9; c. 538, s. 31; 1994, Ex. Sess., c. 14, s. 64; c. 15, ss. 1-4; c. 24, s. 14(b), (e); 1995, c. 324, s. 19.9(a)-(e); 2008-199, s. 1.)

Editor's Note. — Effective March 15, 1994, Session Laws 1993 (Reg. Sess., 1994), c. 15, s. 2 repealed Session Laws 1993, c. 91, ss. 7-9, which would have been effective April 1, 1994, and would have increased the figure "21,400" in subsections (d), (e), and (f) to 21,500, pursuant to ss. 7-9 of Session Laws 1993, c. 91.

This section was amended by Session Laws 1994, Extra Session, c. 15, s. 1, in the coded bill drafting format provided by G.S. 120-20.1. In this amendment, the section was set out in full and added a new (c1) but did not include (h). It has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-199, s. 1, effective August 8, 2008, added subsection (i).

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The Parole Commission has the authority to select fair-sentence inmates to be paroled pursuant to subsection (c) of this section. See opinion of Attorney General to Mr. Ben G. Irons, II, Senior Administrative Assistant, North Carolina Department of Correction, 53 N.C.A.G. 106 (1984).

§ 148-5. Secretary to manage prison property.

The Secretary of Correction shall manage and have charge of all the property and effects of the State prison system, and conduct all its affairs subject to the provisions of this Chapter and the rules and regulations legally adopted for the government thereof. (1933, c. 172, s. 4; 1955, c. 238, s. 3; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 18, s. 20.1 provides that in conjunction with the closing of small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located or any private for-profit or nonprofit firm about the possibility of converting that unit to other use. The Department may provide for the lease of any of these units to counties, municipalities, or private firms wishing to convert them to other use and the Department may also consider converting some of the units from medium security to minimum security, where that conversion would be cost-effective.

Furthermore, the Department of Correction shall report quarterly to the Joint Legislative Corrections Oversight Committee on the conversion of these units to other use.

CASE NOTES

Cited in Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960); North Carolina Council of Churches v. State, 120 N.C. App. 84, 461 S.E.2d 354 (1995).

§ 148-5.1. Confining inmates away from victims.

If a victim or immediate family member of a victim requests that, for the safety of the victim or family member, an inmate be confined outside the county where the victim or family member resides or is employed, the Department shall make a reasonable effort to house the inmate in a facility in another county. If the inmate is not so housed in another county, the Department shall notify the victim or family member in writing. (2001-433, s. 10; 2001-487, s. 120.)

§ 148-6. Custody, employment and hiring out of convicts.

The State Department of Correction shall provide for receiving, and keeping in custody until discharged by law, all such convicts as may be now confined in the prison and such as may be hereafter sentenced to imprisonment therein by the several courts of this State. The Department shall have full power and authority to provide for employment of such convicts, either in the prison or on farms leased or owned by the State of North Carolina, or elsewhere, or otherwise; and may contract for the hire or employment of any able-bodied convicts upon such terms as may be just and fair, but such convicts so hired, or employed, shall remain under the actual management, control and care of the Department. (1895, c. 194, s. 5; 1897, c. 270; 1901, c. 472, ss. 5, 6; Rev., s. 5391; C.S., s. 7707; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 2007-398, s. 2.)

Legal Periodicals. — For survey of 1996 developments in the law regarding prisoner rights, see 75 N.C.L. Rev. 2428 (1997).

CASE NOTES

Basis of Section. — This section and §§ 148-26 and 148-33.1, as well as provisions with reference to paroles contained in Article 4 of this Chapter, are predicated upon the idea that the ability as well as the disposition of released prisoners to engage in honest employment and become law-abiding members of society is calculated to serve the best interests of the State and of its citizens. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

Employers of work release inmates are not required to supervise and control inmate employees outside the scope of their work release employment. O'Connor v. Corbett Lumber Corp., 84 N.C. App. 178, 352 S.E.2d 267 (1987).

Treatment of Prisoner Whose Conviction Was Overturned. — Where the Court of Appeals reversed defendant's conviction, and where after receiving a copy of the Court of Appeals' certified judgment the Department of Correction released defendant to the custody of the county jail, and where, on the same day, the county jailer obtained a safekeeping order transferring defendant back to the custody of the Department of Correction, the Secretary of the Department of Correction was not responsible for failing to implement a policy directing Department of Correction employees as to the proper manner with which to deal with prisoners whose convictions had been overturned on appeal; the department personnel were not on notice of the circumstances leading to the issuance of the safekeeping order and had no reason to question its sufficiency, and given the lack of discretion allowed to the Department and state law, there was no reasonable way that the Secretary could have detailed a policy that would have avoided defendant's misfortunes. Allen v. Lowder, 875 F.2d 82 (4th Cir. 1989).

Cited in State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965); Harris v. Thompson Contractors, 148 N.C. App. 472, 558 S.E.2d 894, 2002 N.C. App. LEXIS 26 (2002).

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Department of Correction Has No Authority on Its Own to Correct an Invalid Sentence. — See opinion of Attorney General to Mr. Martin Peterson, Department of Correction, 41 N.C.A.G. 291 (1971).

§ 148-7: Repealed by Session Laws 1995, c. 233, s. 1.

§ 148-8: Transferred to § 66-58(b)(15) by Session Laws 1975, c. 730, s. 2.

§ 148-8.1: Transferred to § 66-58(b)(16) by Session Laws 1975, c. 730, s. 3.

§ 148-9: Repealed by Session Laws 1973, c. 476, s. 138.

§ 148-10. Department of Environment and Natural Resources to supervise sanitary and health conditions of prisoners.

The Department of Environment and Natural Resources shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the State Department of Correction, and shall make periodic examinations of the same and report to the State Department of Correction the conditions found there with respect to the sanitary and hygienic care of such prisoners. (1917, c. 286, s. 8; 1919, c. 80, s. 4; C.S., s. 7714; 1925, c. 163; 1933, c. 172, s. 22; 1943, c. 409; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1973, c. 476, s. 128; 1989, c. 727, s. 219(37); 1997-443, s. 11A.111.)

§ 148-10.1. Employment of clinical chaplains for inmates.

The Department of Correction is authorized and directed to employ clinical chaplains to provide moral, spiritual and social counselling and ministerial services to inmates in the custody of the Secretary of the Department of Correction. The Department of Correction shall seek to employ a diversity of qualified persons having differing faiths which are to the extent practicable reflective of the professed religious composition of the inmate population. (1977, c. 950, s. 1.)

§ 148-10.2. Policy: Certain inmates not to contact family members of victims.

(a) It shall be the policy of the Department of Correction to prohibit death row inmates from contacting the surviving family members of the victims without the written consent of the family members being contacted. For purposes of this subsection, the term "contact" includes arranging for a third party to forward communications from the inmate to the surviving family members of the victim.

(b) At the request of the victim or a family member of the victim, the Department of Correction shall prohibit an inmate convicted of an offense listed in G.S. 15A-830(a)(7) from contacting the requesting party. For purposes of this subsection, the term "contact" includes arranging for a third party to forward communications from the inmate to the victim or family member.

(c) The Department of Correction shall develop and impose sanctions against any inmate who violates the provisions of this section. (1999-358, s. 1; 2001-433, s. 9; 2001-487, s. 120.)

Editor's Note. — Session Laws 1999-358, s. 1 was codified as this section at the direction of the Revisor of Statutes.

§ 148-10.3. Electronic monitoring costs.

Personnel, equipment, and other costs of providing electronic monitoring of pretrial or sentenced offenders shall be reimbursed to the Department of Correction by the State or local agency requesting the service in an amount not exceeding the actual costs. (2002-126, s. 17.10(a).)

Editor's Note. — Session Laws 2005-276, ss. 17.19(a) and (b), provide: "The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on its efforts to increase the use of electronic monitoring of sentenced offenders in the community as an alternative to the incarceration of probation violators. The report shall also document the geographical distribution of electronic monitoring use compared to other intermediate sanctions. The Department shall also analyze the reasons for the underutilization of the electronic monitoring program and include its findings in the report.

"The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2005, on the following:

"(1) The Department's evaluation of its 2004 pilot program for monitoring sex offenders and domestic violence offenders using Global Positioning Systems (GPS) technology.

"(2) The results of the Request for Proposal issued in the 2004-2005 fiscal year for GPS monitoring of offenders supervised by the Division of Community Corrections.

"(3) The Department's recommendations for implementing GPS monitoring of sex offenders, including:

"a. An evaluation of the costs and benefits of passive versus active GPS technology.

"b. The proposed coverage areas for GPS monitoring and the location of any geographic or technological limitations that prevent statewide coverage.

"c. The size and characteristics of the targeted offender population and the proposed number of offenders to be monitored.

"d. The contractual and internal costs of the monitoring program.

"e. The proposed caseloads for probation officers who would supervise offenders using GPS technology.

"The Department shall also explore funding options through grants and other sources, including the possibility of charging a fee to offenders to partially offset the costs of the program. Funds made available for federal grant matching purposes by Section 17.9 of this act may be used to match grants for GPS supervision. The Department shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on any funds identified."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2009-451, s. 19.12(d), provides:

"The Department of Correction shall report by March 1 of each year to the Chairs of the House and Senate Appropriations Committees, the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the following:

"(1) The number of sex offenders enrolled on active and passive GPS monitoring.

"(2) The caseloads of probation officers assigned to GPS-monitored sex offenders.

"(3) The number of violations.

"(4) The number of absconders.

"(5) The projected number of offenders to be enrolled by the end of the 2009-2010 fiscal year and the end of the 2010-2011 fiscal year.

"(6) The total cost of the program, including a per-offender cost."

For prior similar provisions, see Session Laws 2007-323, s. 17.14.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

ARTICLE 2.

Prison Regulations.

§ 148-11. Authority to adopt rules; authority to designate uniforms.

(a) The Secretary shall adopt rules for the government of the State prison system. The Secretary shall have the rules that pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules made available to the prisoners.

(b) The Secretary of Correction has sole authority to designate the uniforms worn by inmates confined in the Division of Prisons. (1873-4, c. 158, s. 15; Code, s. 3444; Rev., s. 5401; C.S., s. 7721; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 4; 1957, c. 349, s. 4; 1967, c. 996, ss. 14, 15; 1973, c. 1262, s. 10; 1983, c. 147, s. 1; 1987, c. 827, s. 1; 1991, c. 418, s. 15; c. 477, ss. 6, 8; 1995, c. 507, s. 27.8(u); 1999-109, s. 2.)

Cross References. — As to the authority of agencies to adopt rules, see Article 2A of Chapter 150B.

Editor's Note. — Session Laws 1999-109, s. 2, was codified as subsection (b) of this section at the direction of the Revisor of Statutes.

CASE NOTES

This section is constitutional. State v. Revis, 193 N.C. 192, 136 S.E. 346, 50 A.L.R. 98 (1927); State v. Carpenter, 231 N.C. 229, 56 S.E.2d 713 (1949).

The prison rules authorized by this section are administrative and not judicial. State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968).

And Their Application Cannot Affect Sentences. — The administrative application of the rules authorized by this section by prison authorities cannot affect sentences imposed by the courts. State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968).

Courts are not authorized to deal with the giving or withholding of privileges or rewards under the rules authorized by this section. State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968).

Fact that disciplinary punishment inflicted on a prisoner by a prison official was administered in accordance with the rules and regulations of the former State Highway and Public Works Commission did not render the prison official immune to prosecution for assault unless the particular regulation relied on was within the statutory authority of the Commission. State v. Carpenter, 231 N.C. 229, 56 S.E.2d 713 (1949).

Public Official Immunity for Enforcement of Rules. — Prison officials acted within the scope of their authority and were therefore protected by public official immunity from prisoner's action claiming that officials violated this section and prison regulations by depriving him of pens and other materials. Price v. Davis, 132 N.C. App. 556, 512 S.E.2d 783 (1999).

Fair Sentencing Act. — Although the principal provisions of the Fair Sentencing Act are codified in Chapter 15A, Article 81A of the General Statutes, the act resulted in revisions to other portions of the General Statutes. See, e.g., Chapter 14, Articles 1, 2, 2A, 33; Chapter 15A, Articles 58, 81A, 82, 83, 85, 85A, 89, 91; Chapter 148, Article 2, and Chapter 162, Article 4. State v. Ahearn, 307 N.C. 584, 300 S.E.2d 689 (1983).

For discussion of the historical background, policies, purposes, and implementation of the new Fair Sentencing Act, see State v. Ahearn, 307 N.C. 584, 300 S.E.2d 689 (1983).

Obtaining Medical Care Outside of Prison. — North Carolina law bars all but minimum-security prisoners from exercising an option to go outside the prison and obtain medical care of their choice at their own expense or funded by family resources or private health insurance. West v. Atkins, 487 U.S. 42, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988).

Applied in State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968).

Cited in State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965); Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972); Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984).

§ 148-12. Diagnostic and classification programs.

(a) The Department of Correction shall, as soon as practicable, establish diagnostic centers to make social, medical, and psychological studies of persons committed to the Department. Full diagnostic studies shall be made before initial classification in cases where such studies have not been made.

(b) Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

(c) Any prisoner confined in the State prison system while under a sentence of imprisonment imposed upon conviction of a felony shall be classified and treated as a convicted felon even if, before beginning service of the felony sentence, such prisoner has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors. (1917, c. 278, s. 2; 1919, c. 191, s. 2; C.S., s. 7750; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 5; 1959, c. 50; 1967, c. 996, s. 2; 1973, c. 1446, s. 27; 1977, c. 711, s. 33; 1977, 2nd Sess., c. 1147, s. 32.)

Editor's Note. — Session Laws 1977, c. 711, s. 34, provided: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provided: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 732, s. 6, provided that all commitments to the Department of Correction under former G.S. 148-49.3 should be treated as commitments under subsection (b) of this section. However, subsection (b) was repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1973, c. 803, s. 44, purported to repeal "the third unnumbered paragraph" of this section. The 1973 act apparently intended to amend G.S. 158-12.

Legal Periodicals. — For article discussing the presentence diagnostic program in North Carolina, see 9 N.C. Cent. L.J. 133 (1978).

CASE NOTES

Power of Judge Other Than Trial Judge to Impose Sentence. — Where sentencing was delayed for the purpose of a diagnostic evaluation of the defendant under this section, it was not error for a judge other than the trial judge to impose sentence upon the defendant. State v. Sampson, 34 N.C. App. 305, 237 S.E.2d 883 (1977), cert. denied, 294 N.C. 185, 241 S.E.2d 520 (1978).

Applied in State v. Powell, 11 N.C. App. 194, 180 S.E.2d 490 (1971); State v. Streeter, 17 N.C. App. 48, 193 S.E.2d 347 (1972), aff'd, 283 N.C. 203, 195 S.E.2d 502 (1973).

Cited in State v. Davis, 8 N.C. App. 99, 173 S.E.2d 490 (1970).

§ 148-13. Regulations as to custody grades, privileges, gain time credit, etc.

(a) The Secretary of Correction may issue regulations regarding the grades of custody in which State prisoners are kept, the privileges and restrictions applicable to each custody grade, and the amount of cash, clothing, etc., to be awarded to State prisoners after their discharge or parole. The amount of cash awarded to a prisoner upon discharge or parole after being incarcerated for two years or longer shall be at least forty-five dollars ($45.00).

(a1) The Secretary of Correction shall adopt rules to specify the rates at, and circumstances under, which earned time authorized by G.S. 15A-1340.13(d) and G.S. 15A-1340.20(d) may be earned or forfeited by persons serving activated sentences of imprisonment for felony or misdemeanor convictions.

(b) With respect to prisoners who are serving prison or jail terms for impaired driving offenses under G.S. 20-138.1, the Secretary of Correction may, in his discretion, issue regulations regarding deductions of time from the terms of such prisoners for good behavior, meritorious conduct, work or study, participation in rehabilitation programs, and the like.

(c), (d) Repealed by Session Laws 1993, c. 538, s. 32, effective January 1, 1995.

(e) The Secretary's regulations concerning earned time credits authorized by this section shall be distributed to and followed by local jail administrators with regard to sentenced jail prisoners.

(f) The provisions of this section do not apply to persons sentenced to a term of special probation under G.S. 15A-1344(e) or G.S. 15A-1351(a). (1933, c. 172, s. 23; 1935, c. 414, s. 15; 1937, c. 88, s. 1; 1943, c. 409; 1955, c. 238, s. 6; 1979, c. 760, s. 4; 1979, 2nd Sess., c. 1316, ss. 43-47; 1981, c. 63, s. 1; c. 179, s. 14; c. 662, ss. 8, 9; 1983, c. 560, s. 3; 1985, c. 310, ss. 1-4; 1987 (Reg. Sess., 1988), c. 1086, s. 120(a); 1991, c. 187, s. 3; 1993, c. 538, s. 32; 1994, Ex. Sess., c. 24, s. 14(b).)

CASE NOTES

Editor's Note. *— Most of the cases cited below were decided under this section as it read prior to the 1979 amendment thereto.*

Rules as to "Good Time" Rewards Are Strictly Administrative. — Prison rules and regulations respecting rewards and privileges for good conduct ("good time") are strictly administrative and not judicial. State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965); State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968); Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

As Are Grades Established for "Gain Time." — The grades established for "gain time" based on differences in work assignment are matters of prison administration, to be disturbed only if clearly arbitrary or capricious. Ham v. North Carolina, 471 F.2d 406 (4th Cir. 1973).

And Allowance of Gained Time. — Allowance of gained time is a discretionary act of the State prison administrative body, and decisions as to its allowance will not be upset by the federal courts unless clearly arbitrary or capricious. Kelly v. North Carolina, 276 F. Supp. 200 (E.D.N.C. 1967).

Courts Are Not Authorized to Deal with Giving or Withholding Such Rewards. — Giving or withholding of the rewards and privileges under these rules is not a matter with which the courts are authorized to deal. State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965); Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

The giving or withholding of the rewards and privileges under rules and regulations authorized by § 148-11 is not a matter with which the courts are authorized to deal. State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968).

Discretion of Secretary to Determine Allowance and Forfeiture of Gained Time. — State law vests authority to determine allowance and forfeiture of gained time in the Director of Prisons (now Secretary of Correction) to be exercised in his sound discretion. Patton v. Ross, 267 F. Supp. 387 (E.D.N.C. 1967).

Service on a vacated sentence must be considered in determining defendant's gained time, if any, on account of good behavior. Patton v. Ross, 267 F. Supp. 387 (E.D.N.C. 1967).

Benefits Depend on Conduct. — Whether a prisoner shall benefit by the rules and regulations authorized by § 148-11 depends on his own conduct. State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968).

Honor-Grade Status, Work-Release Privilege and Parole Are Discretionary Acts of Clemency. — Honor-grade status, work-release privilege, and parole are discretionary acts of grace or clemency extended by the State as a reward for good behavior, conferring no vested rights upon the convicted person. An accused person must be given full constitutional protection before and during his trial, but procedures of constitutional dimension are not appropriate in subsequent determinations of rewards for good behavior while serving a validly imposed sentence of confinement. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

In Mitigation of Terms of Judgment. — The grant of honor-grade status, work release, and parole is by way of mitigating the terms of the judgment which the court has entered. The legality and propriety of the trial and sentence have already been determined after the prisoner has been heard and his constitutional rights have been accorded him. The merits of the trial and the validity of the judgment may not again be raised before the Department of Correction and the Board of Paroles (now Parole Commission). Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

Involving Policy Decisions. — Whether a prisoner is entitled to honor-grade status, work release, or parole involves policy decisions which should be decided by the Department of Correction and the Board of Paroles (Parole Commission). These agencies are charged with the duty of making such decisions and are properly given means of discharging it not available to the courts. Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

And Not the Right of the Prisoner. — While a prisoner takes with him into the prison certain rights which may not be denied him, the legal right to the mitigation of his punishment is not one of them. It is contemplated as a part of his rehabilitation that he earn his right to honor-grade status, work release, or parole. The decision is not in the nature of an adversary proceeding under rules of evidence. Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

And Inmate Being Considered for Honor-Grade Status or Work Release Is Not Entitled to Procedural Due Process. — An inmate being considered for honor-grade status or work release is not entitled, either under the State or federal Constitutions, to procedural due process rights. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

Judges still have discretion to increase or reduce sentences from the presumptive term upon findings of aggravating or mitigating factors, the weighing of which is a matter within their sound discretion. The balance struck by the trial judge will not be disturbed if there is support in the record for his determination. State v. Stone, 71 N.C. App. 417, 322 S.E.2d 413 (1984).

Trial judge's remarks concerning the effect of "good time" and "gain time", which were not an expression of dissatisfaction with the length of time convicted criminals must serve in prison, but were made in an effort to respond to defense counsel's impassioned argument concerning the fact that the defendant would be required to serve other sentences totalling four years at the expiration of the sentence at issue, could not be said to indicate that the trial court was using the sentencing process to thwart the Fair Sentencing Act. State v. Swimm, 316 N.C. 24, 340 S.E.2d 65 (1985).

Life Sentences. — Trial court erred in finding that two inmates were eligible to reduce their Class C life sentences by gain and meritorious time credits for the purpose of determining their parole eligibility dates, as (1) sentence reduction credit regulations promulgated under former G.S. 148-13(c) and (d) did not apply to Class C life sentences, and (2) the Secretary of Correction had not passed regulations under former G.S. 148-13(b) to apply good, gain, and meritorious time credits to life sentences. Teasley v. Beck, 155 N.C. App. 282, 574 S.E.2d 137, 2002 N.C. App. LEXIS 1600 (2002), cert. denied, 357 N.C. 169, 581 S.E.2d 755 (2003).

Cited in In re Swink, 243 N.C. 86, 89 S.E.2d 792 (1955); State v. Weaver, 264 N.C. 681, 142 S.E.2d 633 (1965); Robbins v. Freeman, 127 N.C. App. 162, 487 S.E.2d 771 (1997).

§§ 148-14 through 148-17: Repealed by Session Laws 1943, c. 409.

§ 148-18. Wages, allowances and loans.

(a) Prisoners employed by Correction Enterprises shall be compensated as set forth in Article 14 of this Chapter. Prisoners participating in work assignments established by the Division of Prisons shall be compensated at rates fixed by the Department of Correction's rules and regulations; provided, that no prisoner so paid shall receive more than one dollar ($1.00) per day, unless the Secretary determines that the work assignment requires special skills or training. Upon approval of the Secretary, inmates working in job assignments requiring special skills or training may be paid up to three dollars ($3.00) per day. The Correction Enterprises Fund shall be the source of wages and allowances provided to inmates who are employed by the Department of Correction in work assignments established by the Division of Prisons.

(b) A prisoner shall be required to contribute to the support of any of his dependents residing in North Carolina who may be receiving public assistance during the period of commitment if funds available to the prisoner are adequate for such purpose. The dependency status and need shall be determined by the department of social services in the county of North Carolina in which such dependents reside.

(c) Repealed by Session Laws 1995, c. 233, s. 2. (1935, c. 414, s. 19; 1967, c. 996, s. 3; 1969, c. 982; 1973, c. 1262, s. 10; 1975, c. 506, s. 3; c. 716, s. 7; 1991 (Reg. Sess., 1992), c. 902, s. 5; 1993, c. 321, s. 175; 1995, c. 233, s. 2; 2007-280, s. 3.)

Editor's Note. — Session Laws 1975, c. 682, which amended G.S. 148-26 and added G.S. 148-26.1 through 148-26.5, provided in s. 4: "Nothing in this act shall be construed as altering or amending G.S. 148-26(b) or G.S. 148-18(a) as set out in Chapter 506 of the 1975 Session Laws."

Legal Periodicals. — For survey of 1996 developments in the law regarding prisoner rights, see 75 N.C.L. Rev. 2428 (1997).

§ 148-18.1. Confiscation of unauthorized articles.

Any item of personal property which a prisoner in any correctional facility is prohibited from possessing by State law or which is not authorized by rules adopted by the Secretary of Correction shall, when found in the possession of a prisoner, be confiscated and destroyed or otherwise disposed of as the Secretary may direct. Any unauthorized funds confiscated under this section or funds from the sale of confiscated property shall be deposited to Inmate Welfare Fund maintained by the Department of Correction. (1983, c. 289, s. 1.)

CASE NOTES

Constitutionality. — This section and the regulations of the North Carolina Department of Correction which implement the statute do not violate petitioner's rights under U.S. Const., Amend. XIV or the law of the land clause of N.C. Const., Art. I, § 19. In re Smith, 82 N.C. App. 107, 345 S.E.2d 423 (1986).

This section and the Department of Correction regulations implementing the statute provide necessary due process procedural safeguards and meet substantive due process requirements. In re Smith, 82 N.C. App. 107, 345 S.E.2d 423 (1986).

Cited in Price v. Davis, 132 N.C. App. 556, 512 S.E.2d 783 (1999).

§ 148-19. Health services.

(a) The general policies, rules and regulations of the Department of Correction shall prescribe standards for health services to prisoners, which shall include preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis, for all types of patients. A prisoner may be taken, when necessary, to a medical facility outside the State prison system. The Department of Correction shall seek the cooperation of public and private agencies, institutions, officials and individuals in the development of adequate health services to prisoners.

(b) Upon request of the Secretary of Correction, the Secretary of Health and Human Services may detail personnel employed by the Department of Health and Human Services to the Department of Correction for the purpose of supervising and furnishing medical, psychiatric, psychological, dental, and other technical and scientific services to the Department of Correction. The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations to the Department of Health and Human Services, and reimbursed from applicable appropriations to the Department of Correction. The Secretary of Correction may make similar arrangements with any other agency of State government able and willing to aid the Department of Correction to meet the needs of prisoners for health services.

(c) Each prisoner committed to the State Department of Correction shall receive a physical and mental examination by a health care professional authorized by the North Carolina Medical Board to perform such examinations as soon as practicable after admission and before being assigned to work. The prisoner's work and other assignments shall be made with due regard for the prisoner's physical and mental condition.

(d) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt standards for the delivery of mental health and mental retardation services to inmates in the custody of the Department of Correction. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall give the Secretary of Correction an opportunity to review and comment on proposed standards prior to promulgation of such standards; however, final authority to determine such standards remains with the Commission. The Secretary of the Department of Health and Human Services shall designate an agency or agencies within the Department of Health and Human Services to monitor the implementation by the Department of Correction of these standards and of substance abuse standards adopted by the Department of Correction upon the advice of the Substance Abuse Advisory Council established pursuant to G.S. 143B-270. The Secretary of Health and Human Services shall send a written report on the progress which the Department of Correction has made on the implementation of such standards to the Governor, the Lieutenant Governor, and the Speaker of the House. Such reports shall be made on an annual basis beginning January 1, 1978. (1917, c. 286, s. 22; C.S., s. 7727; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 4; 1973, c. 476, s. 133; c. 1262, s. 10; 1977, c. 332; c. 679, s. 7; 1981, c. 51, s. 6; c. 707, ss. 1, 2; 1985, c. 589, s. 55.1; 1991, c. 405, s. 1; 1995, c. 94, s. 36; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 2005-276, s. 17.7, as amended by Session Laws 2006-66, s. 16.2, provides: "(a) The Department of Correction may convert contract medical positions to permanent State medical positions if the Department can document in each request submitted to the Office of State Budget and Management that the total savings generated will exceed the total cost of the new positions.

"(b) The Department of Correction shall report by April of each year to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on all conversions made pursuant to this section, by type of position and location, and on the savings generated."

CASE NOTES

Basic Health Services for Prisoners. — In compliance with this section, 5 N.C. Admin. Code § 02E.0201 (1987) charges the director, division of prisons, with the responsibility of providing each prisoner the services necessary to maintain basic health. West v. Atkins, 487 U.S. 42, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988).

Prison Health Clinician Was Agent of Sheriff. — Because a sheriff had a nondelegable duty to provide medical care to inmates, defendant, who was employed by prison health services as a mental health clinician, was an agent of the sheriff as a matter of law; in a prosecution for sexual activity by a custodian, the trial court did not err in barring in limine the introduction of a contract, which according to defendant showed that he was an independent contractor and not an agent or employee of the sheriff's office, because as a matter of law defendant was acting as an agent of the sheriff when the crimes were allegedly committed. State v. Wilson, 183 N.C. App. 100, 643 S.E.2d 620, 2007 N.C. App. LEXIS 844 (2007), aff'd, 362 N.C. 162, 655 S.E.2d 359 (2008), State v. Wilson, 183 N.C. App. 100, 643 S.E.2d 620, 2007 N.C. App. LEXIS 844 (2007).

The Department of Correction has a duty to provide adequate medical care to inmates in its custody, and the duty is of such great importance that the state cannot avoid liability by contracting with someone else to perform it. Medley v. North Carolina Dep't of Cor., 330 N.C. 837, 412 S.E.2d 654 (1992).

Additional Examinations. — Whenever there is a change of physical or mental condition, it would seem to logically follow that a further examination is required under this section; however, the frequency of such examinations must, as a practical matter, be left to the sound discretion of prison authorities. Threatt v. North Carolina, 221 F. Supp. 858 (W.D.N.C. 1963).

Cited in Price v. Dixon, 961 F. Supp. 894 (E.D.N.C. 1997).

OPINIONS OF ATTORNEY GENERAL

Legislative Intent. — Although Substance Abuse Advisory Council was not given any rule making authority of its own, the clear intent of the General Assembly was to give Council an active role in the formulation of policy governing the substance abuse program. Thus, Council was directed to give advice to Secretary of Correction as to any rules and regulations and on any other matters pertaining to program; however, 1987 legislation did not impose a duty upon the Commission for Mental Health, Mental Retardation and Substance Abuse Services to consult directly with Council; the Commission's responsibility as set out in subsection (d) of this section was left untouched and is fulfilled by giving Secretary of Correction opportunity to review and comment on proposed standards for delivery of substance abuse services to inmates. Secretary of Correction should then consult with the Council under G.S. 143B-270 and 143B-271 in order to effectuate the legislatively intended role of the Council. See opinion of Attorney General to Substance Abuse Council, 60 N.C.A.G. 27 (1990).

§ 148-19.1. Exemption from licensure and certificate of need.

(a) Inpatient chemical dependency or substance abuse facilities that provide services exclusively to inmates of the Department of Correction shall be exempt from licensure by the Department of Health and Human Services under Chapter 122C of the General Statutes. If an inpatient chemical dependency or substance abuse facility provides services both to inmates of the Department of Correction and to members of the general public, the portion of the facility that serves inmates shall be exempt from licensure.

(b) Any person who contracts to provide inpatient chemical dependency or substance abuse services to inmates of the Department of Correction may construct and operate a new chemical dependency or substance abuse facility for that purpose without first obtaining a certificate of need from the Department of Health and Human Services pursuant to Article 9 of Chapter 131E of the General Statutes. However, a new facility or addition developed for that purpose without a certificate of need shall not be licensed pursuant to Chapter 122C of the General Statutes and shall not admit anyone other than inmates unless the owner or operator first obtains a certificate of need. (2001-424, s. 25.19(a).)

§ 148-20. Corporal punishment of prisoners prohibited.

It is unlawful for the Secretary of Correction or any other person having the care, custody, or control of any prisoner in this State to make or enforce any rule or regulation providing for the whipping, flogging, or administration of any similar corporal punishment of any prisoner, or to give any specific order for or cause to be administered or personally to administer or inflict any such corporal punishment. (1917, c. 286, s. 7; C.S., s. 7728; 1925, c. 163; 1933, c. 172,

s. 18; 1955, c. 238, s. 9; 1963, c. 1174, s. 1; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

CASE NOTES

Striking Prisoner with Key Ring and Kicking Him into Cell Not Countenanced. — Nothing contained in this section can be said to countenance striking the prisoner with a key ring or kicking him into his cell. Threatt v. North Carolina, 221 F. Supp. 858 (W.D.N.C. 1963).

For construction of section prior to 1963 as permitting whipping, see State v. Nipper, 166 N.C. 272, 81 S.E. 164 (1914); State v. Mincher, 172 N.C. 895, 90 S.E. 429 (1916); State v. Revis, 193 N.C. 192, 136 S.E. 346 (1927).

Cited in Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984); Price v. Dixon, 961 F. Supp. 894 (E.D.N.C. 1997).

§ 148-21: Repealed by Session Laws 1963, c. 1174, s. 5.

§ 148-22. Treatment programs.

(a) The general policies, rules and regulations of the Department of Correction shall provide for humane treatment of prisoners and for programs to effect their correction and return to the community as promptly as practicable. Visits and correspondence between prisoners and approved friends shall be authorized under reasonable conditions, and family members shall be permitted and encouraged to maintain close contact with the prisoners unless such contacts prove to be hurtful. Casework, counseling, and psychotherapy services provided to prisoners may be extended to include members of the prisoner's family if practicable and necessary to achieve the purposes of such programs. Education, library, recreation, and vocational training programs shall be developed so as to coordinate with corresponding services and opportunities which will be available to the prisoner when he is released. Programs may be established for the treatment and training of mentally retarded prisoners and other special groups. These programs may be operated in segregated sections of facilities housing other prisoners or in separate facilities.

(b) The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs designed to give persons committed to the Department opportunities for physical, mental and moral improvement. The Department may enter into agreements with other agencies of federal, State or local government and with private agencies to promote the most effective use of available resources.

Specifically the Secretary of Correction may enter into contracts or agreements with appropriate public or private agencies offering needed services including health, mental health, mental retardation, substance abuse, rehabilitative or training services for such inmates of the Department of Correction as the Secretary may deem eligible. These agencies shall be reimbursed from applicable appropriations to the Department of Correction for services rendered at a rate not to exceed that which such agencies normally receive for serving their regular clients.

The Secretary may contract for the housing of work-release inmates at county jails and local confinement facilities. Inmates may be placed in the care of such agencies but shall remain the responsibility of the Department and shall be subject to the complete supervision of the Department. The Department may reimburse such agencies for the support of such inmates at a rate not in excess of the average daily cost of inmate care in the corrections unit to which the inmate would otherwise be assigned. (1917, c. 286, s. 15; C.S., s. 7732; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 5; 1975, c. 679, ss. 1, 2; 1977, c. 297; 1983, c. 376; 1985, c. 589, s. 55.)

CASE NOTES

Cited in Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980).

§ 148-22.1. Educational facilities and programs for selected inmates.

(a) The State Department of Correction is authorized to take advantage of aid available from any source in establishing facilities and developing programs to provide inmates of the State prison system with such academic and vocational and technical education as seems most likely to facilitate the rehabilitation of these inmates and their return to free society with attitudes, knowledge, and skills that will improve their prospects of becoming law-abiding and self-supporting citizens. The State Department of Public Instruction is authorized to cooperate with the State Department of Correction in planning academic and vocational and technical education of prison system inmates, but the State Department of Public Instruction is not authorized to expend any funds in this connection.

(b) In expending funds that may be made available for facilities and programs to provide inmates of the State prison system with academic and vocational and technical education, the State Department of Correction shall give priority to meeting the needs of inmates who are less than 21 years of age when received in the prison system with a sentence or sentences under which they will be held for not less than six months nor more than five years before becoming eligible to be considered for a parole or unconditional release. These inmates shall be given appropriate tests to determine their educational needs and aptitudes. When the necessary arrangements can be made, they shall receive such instruction as may be deemed practical and advisable for them.

(c) The Secretary of Correction, in consultation with the Office of State Personnel, shall set the salary supplement paid to teachers, instructional support personnel, and school-based administrators who are Division of Prison employees and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the local school administrative unit where the job site is located. These salary supplements shall not be paid to central office staff. Nothing in this subsection shall be construed to include "merit pay" under the term "salary supplement". (1959, c. 431; 1967, c. 996, s. 13; 1985, c. 226, s. 1; 1993, c. 180, s. 8; 2005-276, s. 29.19(c).)

Editor's Note. — Session Laws 1995, c. 269, s. 1, provides that a pilot correction education program that would allow prison inmates to participate in community college capital construction projects is established. The State Board of Community Colleges shall report to the General Assembly prior to January 1, 1997, on the progress of the program.

§ 148-22.2. Procedure when surgical operations on inmates are necessary.

The medical staff of any penal institution of the State of North Carolina is hereby authorized to perform or cause to be performed by competent and skillful surgeons surgical operations upon any inmate when such operation is necessary for the improvement of the physical condition of the inmate. The decision to perform an operation shall be made by the chief medical officer of the institution, with the approval of the superintendent of the institution, and with the advice of the medical staff of the institution. No operation shall be performed without the consent of the inmate; or, if the inmate is a minor, without the consent of a responsible member of the inmate's family, a guardian, or one having legal custody of the minor; or, if the inmate be non compos mentis, then the consent of a responsible member of the inmate's family or of a guardian shall be obtained. Any surgical operations on inmates of State penal institutions shall also be subject to the provisions of Article 1A of Chapter 90 of the General Statutes, G.S. 90-21.13, and G.S. 90-21.16.

If the operation on the inmate is determined by the chief medical officer to be an emergency situation in which immediate action is necessary to preserve the life or health of the inmate, and the inmate, if sui juris, is unconscious or otherwise incapacitated so as to be incapable of giving consent or in the case of a minor or inmate non compos mentis, the consent of a responsible member of the inmate's family, guardian, or one having legal custody of the inmate cannot be obtained within the time necessitated by the nature of the emergency situation, then the decision to proceed with the operation shall be made by the chief medical officer and the superintendent of the institution with the advice of the medical staff of the institution.

In all cases falling under this section, the chief medical officer of the institution and the medical staff of the institution shall keep a careful and complete record of the measures taken to obtain the permission for the operation and a complete medical record signed by the medical superintendent or director, the surgeon performing the operation and all surgical consultants of the operation performed. (1919, c. 281, ss. 1, 2; C.S., ss. 7221, 7222; 1947, c. 537, s. 24; 1951, c. 775; 1957, c. 1357, s. 1; 1981, c. 307, ss. 2, 3; 2003-13, s. 8; 2004-203, s. 53(a).)

Cross References. — As to procedure for sterilization of mentally ill or mentally retarded in case of medical necessity, see G.S. 35A-1245.

Editor's Note. — This section was formerly G.S. 130-191. It was amended and transferred to Chapter 148 by Session Laws 1981, c. 307, s. 8, which originally designated the transferred section as G.S. 148-22.1; since that number had already been assigned, the section was renumbered as G.S. 148-22.2.

§ 148-23. Prison employees not to use intoxicants, narcotic drugs or profanity.

No one addicted to the use of alcoholic beverages, or narcotic drugs, shall be employed as superintendent, warden, guard, or in any other position connected with the State Department of Correction, where such position requires the incumbent to have any charge or direction of the prisoners; and anyone holding such position, or anyone who may be employed in any other capacity in the State prison system, who shall come under the influence of alcoholic beverages during hours of employment, or reports for duty under the effect of intoxicants, or narcotic drugs, or who shall become intoxicated, or uses narcotic drugs, under circumstances that bring discredit on the State Department of Correction, shall be subject to immediate dismissal from employment by any of the institutions and shall not be eligible for reinstatement to such position or be employed in any other position in any of the institutions. Any superintendent, warden, guard, supervisor, or other person holding any position in the State Department of Correction who curses a prisoner under his charge shall be subject to immediate dismissal from employment and shall not be eligible for reinstatement. (1917, c. 286, s. 16; 1919, c. 80, s. 8; C.S., s. 7733; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1969, c. 382; 1981, c. 412, s. 4(4); c. 747, s. 66.)

§ 148-23.1. (Effective until March 1, 2010) Smoking prohibited in State correctional facilities.

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco products inside State correctional facilities and to ensure that employees and visitors do not use tobacco products inside those facilities.

(b) No person may use tobacco products inside of a State correctional facility, except for authorized religious purposes.

(c) The Department of Correction may adopt rules to implement the provisions of this section. Inmates in violation of this section are subject to disciplinary measures to be determined by the Department, including the potential loss of sentence credits earned prior to that violation. Employees in violation of this section are subject to disciplinary action by the Department. Visitors in violation of this section are subject to removal from the facility and loss of visitation privileges.

(d) As used in this section, the following terms mean:

(1) State correctional facility. — All buildings of a State correctional institution operated by the Department of Correction.

(2) Tobacco products. — Cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use. (2005-372, s. 2.)

Section Set Out Twice. — The section above is effective until March 1, 2010. For the section as amended March 1, 2010, see the following section, also numbered G.S. 148-23.1.

Editor's Note. — Session Laws 2005-372, s. 5, made this section effective January 1, 2006.

Session Laws 2005-372, s. 3, provides: "The Department of Correction shall conduct one or more pilot programs banning smoking both inside buildings and on the grounds of State correctional institutions and administering smoking cessation programs for staff and inmates. The pilot smoking cessation programs shall be available to inmates and staff on a volunteer basis, and no person shall be compelled or coerced to participate. The smoking cessation program shall include instructions and education that will help inmates and staff cease the use of tobacco products and remain smoke free. The cost of administering the pilot smoking cessation program shall be paid from existing funds available to the Department of Correction. The Department of Correction may use services, personnel, and resources donated by nongovernmental agencies and organizations to implement this program. The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on or before April 1, 2006, on the progress and status of the pilot programs."

Session Laws 2005-372, s. 4, provides: "The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall study and make legislative recommendations on the feasibility and implementation of a two-year phase-in program banning smoking by all inmates, personnel, and visitors in all buildings and on all grounds of State correctional institutions operated by the Department of Correction. This study shall examine methods to assist with smoking cessation, including the use of nongovernmental agencies, organizations, and corporations for counseling, training, cessation aids, and interventions. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall report the results of this study to the General Assembly prior to the convening of the 2006 Session of the 2005 General Assembly."

§ 148-23.1. (Effective March 1, 2010) Tobacco products prohibited on State correctional facilities premises.

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from

G.S. 148-23.1 is set out twice. See notes.

using tobacco products on the premises of State correctional facilities and to ensure that employees and visitors do not use tobacco products on the premises of those facilities.

(b) No person may use tobacco products on the premises of a State correctional facility, except for authorized religious purposes. Notwithstanding any other provision of law, inmates in the custody of the Department of Correction and persons facilitating religious observances may use and possess tobacco products for religious purposes consistent with the policies of the Department.

(b1) Except as provided in subsection (b) of this section, no person may possess tobacco products on the premises of a State correctional facility. Notwithstanding the provisions of this subsection, an employee or visitor may possess tobacco products within the confines of a motor vehicle located in a designated parking area of a correctional facility's premises if the tobacco product remains in the vehicle and the vehicle is locked when the employee or visitor has exited the vehicle.

(c) The Department of Correction may adopt rules to implement the provisions of this section. Inmates in violation of this section are subject to disciplinary measures to be determined by the Department, including the potential loss of sentence credits earned prior to that violation. Employees in violation of this section are subject to disciplinary action by the Department. Visitors in violation of this section are subject to removal from the facility and loss of visitation privileges.

(d) As used in this section, the following terms mean:

(1) State correctional facility. — All buildings and grounds of a State correctional institution operated by the Department of Correction.

(2) Tobacco products. — Cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use. (2005-372, s. 2; 2009-560, s. 1.)

Section Set Out Twice. — The section above is effective March 1, 2010. For the section as in effect until March 1, 2010, see the preceding section, also numbered G.S. 148-23.1.

Editor's Note. — Session Laws 2005-372, s. 3, provides: "The Department of Correction shall conduct one or more pilot programs banning smoking both inside buildings and on the grounds of State correctional institutions and administering smoking cessation programs for staff and inmates. The pilot smoking cessation programs shall be available to inmates and staff on a volunteer basis, and no person shall be compelled or coerced to participate. The smoking cessation program shall include instructions and education that will help inmates and staff cease the use of tobacco products and remain smoke free. The cost of administering the pilot smoking cessation program shall be paid from existing funds available to the Department of Correction. The Department of Correction may use services, personnel, and resources donated by nongovernmental agencies and organizations to implement this program. The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on or before April 1, 2006, on the progress and status of the pilot programs."

Session Laws 2005-372, s. 4, provides: "The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall study and make legislative recommendations on the feasibility and implementation of a two-year phase-in program banning smoking by all inmates, personnel, and visitors in all buildings and on all grounds of State correctional institutions operated by the Department of Correction. This study shall examine methods to assist with smoking cessation, including the use of nongovernmental agencies, organizations, and corporations for counseling, training, cessation aids, and interventions. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall report the results of this study to the General Assembly prior to the convening of the 2006 Session of the 2005 General Assembly."

Session Laws 2009-560, s. 4, provides: "The Department of Correction and local confinement facilities shall ensure that sufficient notice is provided to inmates, staff, and the public of the prohibitions and penalties established in this act through the posting of signs in prominent places at all State correctional facilities and local confinement facilities and any other measures the Department and local confinement facilities deem necessary to sufficiently publicize those prohibitions and penalties."

Effect of Amendments. — Session Laws 2009-560, s. 1, effective March 1, 2010, and applicable to acts committed on or after that date, rewrote the section heading; substituted "on the premises of" for "inside" throughout subsections (a) and (b); added the second sentence in subsection (b); added subsection (b1); and inserted "and grounds" in subdivision (d)(1).

§ 148-23.2. (Effective March 1, 2010) Mobile phones prohibited on State correctional facilities premises.

Except as authorized by Department of Correction policy, no person shall possess a mobile telephone or other wireless communications device on the premises of a State correctional facility. Notwithstanding the provisions of this section, an employee or visitor may possess a mobile telephone or other wireless communications device within the confines of a motor vehicle located in a designated parking area of a correctional facility's premises if the mobile telephone or other wireless communications device remains in the vehicle and the vehicle is locked when the employee or visitor has exited the vehicle. (2009-560, s. 2.)

Cross References. — As to furnishing tobacco products or mobile phones to inmates, see G.S. 14-258.1.

Editor's Note. — Session Laws 2009-560, s. 5, makes this section effective March 1, 2010, and applicable to acts committed on or after that date.

Session Laws 2009-560, s. 4, provides: "The Department of Correction and local confinement facilities shall ensure that sufficient notice is provided to inmates, staff, and the public of the prohibitions and penalties established in this act through the posting of signs in prominent places at all State correctional facilities and local confinement facilities and any other measures the Department and local confinement facilities deem necessary to sufficiently publicize those prohibitions and penalties."

§ 148-24. Religious services.

The general policies, rules and regulations of the Department of Correction shall provide for religious services to be held in all units of the State prison system on Sunday and at such other times as may be deemed appropriate. Attendance of prisoners at religious services shall be voluntary. The Secretary of Correction shall if possible secure the visits of some minister at the prison hospitals to administer to the spiritual wants of the sick. (1873-4, c. 158, s. 18; 1883, c. 349; Code, s. 3446; Rev., s. 5405; 1915, c. 125, ss. 1, 2; 1917, c. 286, s. 15; C.S., s. 7735; 1925, c. 163; c. 275, s. 6; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 6; 1973, c. 1262, s. 10.)

§ 148-25. Secretary to investigate death of convicts.

The Secretary of Correction, upon information of the death of a convict other than by natural causes, shall investigate the cause thereof and report the result of such investigation to the Governor, and for this purpose the Secretary may administer oaths and send for persons and papers. (1885, c. 379, s. 2; Rev., s. 5409; C.S., s. 7746; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

ARTICLE 3.

Labor of Prisoners.

§ 148-26. State policy on employment of prisoners.

(a) It is declared to be the public policy of the State of North Carolina that all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them. The failure of any inmate to perform such a work assignment may result in disciplinary action. Work assignments and employment shall be for the public benefit to reduce the cost of maintaining the inmate population while enabling inmates to acquire or retain skills and work habits needed to secure honest employment after their release.

In exercising his power to enter into contracts to supply inmate labor as provided by this section, the Secretary of Correction shall not assign any inmate to work under any such contract who is eligible for work release as provided in this Article, study release as provided by G.S. 148-4(4), or who is eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, unless suitable work release employment or educational opportunity cannot be found for the inmate, and the inmate is not eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, and shall not agree to supply inmate labor for any project or service unless it meets all of the following criteria:

(1) The project or service involves a type of work by which inmates can develop a skill to better equip themselves to return to society;

(2) The project or service is of benefit to the citizens of North Carolina or units of State or local government thereof, regardless of whether the project or service is performed on public or private property;

(3) Repealed by Session Laws 1977, c. 824, s. 2.

(4) Wages shall be paid in an amount not exceeding one dollar ($1.00) per day per inmate by the local or State contracting agency.

(b) As many minimum custody prisoners as are available and fit for road work, who cannot appropriately be placed on work release, study release, or other full-time programs, and as many medium custody prisoners as are available, fit for road work and can be adequately guarded during such work without reducing security levels at prison units, shall be employed in the maintenance and construction of public roads of the State. The number and location of prisoners to be kept available for work on the public roads shall be agreed upon by the governing authorities of the Department of Transportation and the State Department of Correction far enough in advance of each budget to permit proper provisions to be made in the request for appropriations submitted by the Department of Transportation. Any dispute between the Departments will be resolved by the Governor. Prisoners so employed shall be compensated, at rates fixed by the Department of Correction's rules and regulations for work performed; provided, that no prisoner working on the public roads under the provisions of this section shall be paid more than one dollar ($1.00) per day from funds provided by the Department of Transportation to the Department of Correction for this purpose. The Department of Correction and the Department of Transportation shall develop a program to be implemented no later than July 1, 1982, to the extent money is herein appropriated, which shall include:

(1) The use of portable toilets for inmate road crews.

(c) As many of the male prisoners available and fit for forestry work shall be employed in the development and improvement of state-owned forests as can be used for this purpose by the agencies controlling these forests.

(d) The remainder of the able-bodied inmates of the State prison system shall be employed so far as practicable in prison industries and agriculture, giving preference to the production of food supplies and other articles needed by state-supported institutions or activities.

(e) The State Department of Correction may make such contracts with departments, institutions, agencies, and political subdivisions of the State for the hire of prisoners to perform other appropriate work as will help to make the prisons as nearly self-supporting as is consistent with the purposes of their creation. The Department of Correction may contract with any person or any group of persons for the hire of prisoners for forestry work, soil erosion control, water conservation, hurricane damage prevention, or any similar work certified by the Secretary of Environment and Natural Resources as beneficial in the conservation of the natural resources of this State. All contracts for the employment of prisoners shall provide that they shall be fed, clothed, quartered, guarded, and otherwise cared for by the Department of Correction. Such work may include but is not limited to work with State or local government agencies in cleaning, construction, landscaping and maintenance of roads, parks, nature trails, bikeways, cemeteries, landfills or other government-owned or operated facilities.

(e1) The Department of Correction may establish work assignments for inmates or allow inmates to volunteer in service projects that benefit units of State or local government or 501(c)(3) entities that serve the citizens of this State. The work assignments may include the use of inmate labor and the use of Department of Correction resources in the production of finished goods. Any products made pursuant to this section shall not be subject to the provisions of Article 3A of Chapter 143 of the General Statutes and may be donated to the government unit or 501(c)(3) organization at no cost.

(f) Adult inmates of the State prison system shall be prohibited from working at or being on the premises of any schools or institutions operated or administered by the Youth Development Division of the Department of Juvenile Justice and Delinquency Prevention. (1933, c. 172, ss. 1, 14; 1957, c. 349, s. 5; 1967, c. 996, s. 13; 1971, c. 193; 1973, c. 1262, s. 86; 1975, c. 278; c. 506, ss. 1, 2; c. 682, s. 2; c. 716, s. 7; 1977, c. 771, s. 4; c. 802, s. 25.36; c. 824, ss. 1-3; 1981, c. 516; 1981 (Reg. Sess., 1982), c. 1400; 1989, c. 727, s. 218(156); 1997-443, s. 11A.123; 1999-237, s. 18.21; 2001-95, s. 8; 2007-398, s. 1.)

Editor's Note. — Session Laws 1975, c. 682, s. 4, provided: "Nothing in this act shall be construed as altering or amending G.S. 148-26(b) or G.S. 148-18(a) as set out in Chapter 506 of the 1975 Session Laws."

Session Laws 2007-323, s. 17.4, provides: "Funding authorized in this act is intended to increase participation in the Inmate Construction Program in order to improve inmate job skills and reduce recidivism. By April 1, 2008, the Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the House and Senate Appropriations Subcommittees on Justice and Public Safety on the Inmate Construction Program. The report shall summarize the 2007-2008 Inmate Construction Program projects, including a description of each project, the number of inmate workers, and the estimated total cost of the project compared to the cost if the project was conducted without inmate workers. The report shall also estimate the number of inmate workers that will be used in the program during the 2008-2009 fiscal year."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 19.1, provides: "Of the funds appropriated to the Department of Transportation in this act, the sum of nine million forty thousand dollars ($9,040,000) per year shall be transferred by the Department to the Department of Correction during the 2009-2010 and 2010-2011 fiscal years for the cost of operating medium custody inmate road squads, as authorized by G.S. 148-26.5, and minimum custody inmate litter crews. This transfer shall be made quarterly in the amount of two million two hundred sixty thousand dollars ($2,260,000). The Department of Transportation may use funds appropriated in this act to pay an additional amount exceeding the nine million forty thousand dollars ($9,040,000), but those payments shall be subject to negotiations among the Department of Transportation, the Department of Correction, and the Office of State Budget and Management prior to payment by the Department of Transportation.

"The Office of State Budget and Management shall conduct a study, in consultation with the Department of Correction and the Department of Transportation, to determine the actual cost and cost/benefit of operating medium custody road squads and minimum custody litter crews. The Office of State Budget and Management shall report the results of this study to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Joint Legislative Transportation Oversight Committee by March 1, 2010. The study shall include a recommendation on whether or not the amount transferred from the Department of Transportation to the Department of Correction for this work is adequate."

For prior similar provisions, see Session Laws 2007-323, s. 17.2.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Legal Periodicals. — For review of this section and those following, see 11 N.C.L. Rev. 252 (1933).

For a survey of 1996 developments in the law regarding prisoner rights, see 75 N.C.L. Rev. 2428 (1997).

CASE NOTES

Basis of Section. — This section and G.S. 148-6 and 148-33.1, as well as provisions with reference to paroles contained in Article 4 of this Chapter, are predicated upon the idea that the ability as well as the disposition of released prisoners to engage in honest employment and become law-abiding members of society is calculated to serve the best interests of the State and of its citizens. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

Applied in State v. Cooper, 238 N.C. 241, 77 S.E.2d 695 (1953); State v. Frazier, 142 N.C. App. 207, 541 S.E.2d 800 (2001).

Cited in State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965); Harris v. Thompson Contractors, 148 N.C. App. 472, 558 S.E.2d 894, 2002 N.C. App. LEXIS 26 (2002).

OPINIONS OF ATTORNEY GENERAL

Employment of Prisoners Is Not Prohibited by Constitution Rewrite. — See opinion of Attorney General to Senator Julian Allsbrook, 41 N.C.A.G. 440 (1971).

§ 148-26.1. Definitions.

The following definitions apply:

(1) through (3) Repealed by Session Laws 1983, c. 709, s. 1.

(4) through (7) Repealed by Session Laws 1985, c. 226.

(8) "State public work project" or "State public work": A useful service other than the construction of buildings performed on any land, or any structure thereon, belonging to any principal department of State government as defined in subdivision (6) above, including, but not limited to, State parks, campuses, playgrounds, highways, roads, lakes, forests and waterways.

(9) Repealed by Session Laws 1985, c. 226, s. 2. (1975, c. 682, s. 3; 1983, c. 709, s. 1; 1985, c. 226, s. 2.)

Editor's Note. — Session Laws 1975, c. 682, s. 4, provided: "Nothing in this act shall be construed as altering or amending G.S. 148-26(b) or G.S. 148-18(a) as set out in Chapter 506 of the 1975 Session Laws."

§§ 148-26.2 through 148-26.4: Repealed by Session Laws 1983, c. 709, s. 1.

§ 148-26.5. Pay and time allowances for work.

The provisions of G.S. 148-18 and 148-13 shall be applicable to inmate work on local or State public work projects contracted for by the Secretary of Correction as provided by G.S. 148-26 through 148-26.4. Travel, cost of inmate wages and custodial supervision expenses incurred by the Department of Correction and arising out of a local or State public work project shall be reimbursed on a cost basis to the Department of Correction by the local or State contracting agency. (1975, c. 682, s. 3.)

Editor's Note. — Session Laws 1975, c. 682, s. 4, provided: "Nothing in this act shall be construed as altering or amending G.S. 148-26(b) or G.S. 148-18(a) as set out in Chapter 506 of the 1975 Session Laws."

Sections 148-26.2 to 148-26.4, referred to in this section, were repealed by Session Laws 1983, c. 709, s. 1.

Session Laws 2007-323, s. 17.4, provides: "Funding authorized in this act is intended to increase participation in the Inmate Construction Program in order to improve inmate job skills and reduce recidivism. By April 1, 2008, the Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the House and Senate Appropriations Subcommittees on Justice and Public Safety on the Inmate Construction Program. The report shall summarize the 2007-2008 Inmate Construction Program projects, including a description of each project, the number of inmate workers, and the estimated total cost of the project compared to the cost if the project was conducted without inmate workers. The report shall also estimate the number of inmate workers that will be used in the program during the 2008-2009 fiscal year."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 19.1, provides: "Of the funds appropriated to the Department of Transportation in this act, the sum of nine million forty thousand dollars ($9,040,000) per year shall be transferred by the Department to the Department of Correction during the 2009-2010 and 2010-2011 fiscal years for the cost of operating medium custody inmate road squads, as authorized by G.S. 148-26.5, and minimum custody inmate litter crews. This transfer shall be made quarterly in the amount of two million two hundred sixty thousand dollars ($2,260,000). The Department of Transportation may use funds appropriated in this act to pay an additional amount exceeding the nine million forty thousand dollars ($9,040,000), but those payments shall be subject to negotiations among the Department of Transportation, the Department of Correction, and the Office of State Budget and Management prior to payment by the Department of Transportation.

"The Office of State Budget and Management shall conduct a study, in consultation with the Department of Correction and the Department of Transportation, to determine the actual cost and cost/benefit of operating medium custody road squads and minimum custody litter crews. The Office of State Budget and Management shall report the results of this study to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Joint Legislative Transportation Oversight Committee by March 1, 2010. The study shall include a recommendation on whether or not the amount transferred from the Department of Transportation to the Department of Correction for this work is adequate."

For prior similar provisions, see Session Laws 2007-323, s. 17.2.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provi-

sions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 148-27: Repealed by Session Laws 2007-398, s. 3, effective August 21, 2007.

§ 148-28. Sentencing prisoners to Central Prison; youthful offenders.

When a sentenced offender is to be taken to the Central Prison at Raleigh, a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the Central Prison. A person under 16 years of age convicted of a felony shall not be imprisoned in the Central Prison at Raleigh unless:

(1) The person was convicted of a capital felony; or
(2) He has previously been imprisoned in a county jail or under the authority of the Department of Correction upon conviction of a felony.

This provision shall not limit the authority of the Secretary of Correction from transferring a person under 16 years of age to Central Prison when in the Secretary's determination this person would not benefit from confinement in separate facilities for youthful offenders or when it has been determined that his presence would be detrimental to the implementation of programs designed for the benefit of other youthful offenders. Nor shall this provision limit the authority of the judges of the superior courts of this State or the Secretary of Correction from committing or transferring a person under 16 years of age to Central Prison for medical or psychiatric treatment. (1933, c. 172, s. 7; 1971, c. 691; 1973, c. 1262, s. 10; 1977, c. 711, s. 27; 1977, 2nd Sess., c. 1147, s. 32.)

Editor's Note. — Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provided: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

CASE NOTES

Transfer by Court Pursuant to § 162-39. — Under G.S. 162-39, the trial court, upon making an appropriate finding that it is necessary for the safety of the defendant, may order a defendant transferred to "a unit of the State Prison System designated by the Commissioner of Correction [now Secretary of Correction] or his authorized representative," but the court should not order defendant transferred directly to Central Prison absent a finding that the Central Prison has been properly designated for that purpose by the Commissioner of Correction [now Secretary of Correction] or his authorized representative. State v. Sherron, 4 N.C. App. 386, 166 S.E.2d 836 (1969).

As to who could be sentenced to Central Prison prior to 1977 amendment, see State v. Cagle, 241 N.C. 134, 84 S.E.2d 649 (1954); State v. Floyd, 246 N.C. 434, 98 S.E.2d 478 (1957); State v. Sherron, 4 N.C. App. 386, 166 S.E.2d 836 (1969).

§ 148-29. Transportation of convicts to prison; reimbursement to counties; sheriff's expense affidavit.

(a) The sheriff having in charge any prisoner to be taken to the State prison system shall send the prisoner to the custody of the Department of Correction after sentencing and the disposal of all pending charges against the prisoner, if no appeal has been taken. Beginning on the day after the Division of Prisons has been notified by the sheriff that a prisoner is ready for transfer and the Division has informed the sheriff that bedspace is not available for that prisoner, and continuing through the day the prisoner is received by the Division of Prisons, the Department of Correction shall pay the county:

(1) A standard sum set by the General Assembly in its appropriations acts for the cost of providing food, clothing, personal items, supervision, and necessary ordinary medical services to the prisoner awaiting transfer to the State prison system; and

(2) Extraordinary medical costs, as defined in G.S. 148-32.1(a), incurred by prisoners awaiting transfer to the State prison system.

If the Division of Prisons determines that bedspace is not available for a prisoner after the sheriff has notified the Division that the prisoner is ready for transfer, reimbursement under this subsection shall be made beginning on the day after the sheriff gave the notification.

(b) The sheriff having in charge any parolee or post-release supervisee to be taken to the State prison system shall send the prisoner to the custody of the Department of Correction after preliminary hearing held under G.S. 15A-1368.6(b) or G.S. 15A-1376(b). Beginning on the day after the Division of Prisons has been notified by the sheriff that a prisoner is ready for transfer and the Division has informed the sheriff that bedspace is not available for that prisoner, and continuing through the day the prisoner is received by the Division of Prisons, the Department of Correction shall pay the county:

(1) A standard sum set by the General Assembly in its appropriations acts for the cost of providing food, clothing, personal items, supervision, and necessary ordinary medical services to the parolee or post-release supervisee awaiting transfer to the State prison system; and

(2) Extraordinary medical costs, as defined in G.S. 148-32.1(a), incurred by parolees or post-release supervisees awaiting transfer to the State prison system.

If the Division of Prisons determines that bedspace is not available for a prisoner after the sheriff has notified the Division that the prisoner is ready for transfer, reimbursement under this subsection shall be made beginning on the day after the sheriff gave the notification.

(c) The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by him as true copies of those on file in his office. (1869-70, c. 180, s. 3; 1870-1, c. 124, s. 3; 1874-5, c. 107, s. 3; Code, ss. 3432, 3437, 3438; Rev., ss. 5398, 5399, 5400; C. S., ss. 7718, 7719, 7720; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1977, c. 711, s. 28; 1977, 2nd Sess., c. 1147, s. 32; 1993, c. 257, s. 18; 1996, 2nd Ex. Sess., c. 18, s. 20.2(a); 1997-443, s. 19(a); 1999-237, s. 18.10(b).)

Editor's Note. — G.S. 148-32.1(a), referred to above, was repealed by Session Laws 2009-451, s. 19.22A, effective July 1, 2009.

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provided: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Session Laws 2009-451, s. 19.3, provides: "Notwithstanding G.S. 143C-6-9, the Department of Correction may use funds available to the Department for the 2009-2011 biennium to pay the sum of forty dollars ($40.00) per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog."

For prior similar provisions, see Session Laws 2001-424, s. 25.4, Session Laws 2005-276, s. 17.2, and Session Laws 2007-323, s. 17.6.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

CASE NOTES

Expense of Conveying Convicts. — The last sentence of this section only applies to the expense of maintenance and does not apply to the expense of conveying convicts to the penitentiary. By the acts of 1869-70 it was especially provided that the expense of conveying should be paid by the State and this section did not repeal that act. Taylor v. Adams, 66 N.C. 338 (1872).

§ 148-30: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provided: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provided: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provided: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-31. Maintenance of Central Prison; warden; powers and duties.

The Central Prison shall be maintained in such a manner as to conform to all the requirements of Article XI of the State Constitution, relating to a State's prison. A suitable person shall be appointed warden of the Central Prison, and he shall succeed to and be vested with all the rights, duties, and powers heretofore vested by law in the superintendent of the State's prison or the warden thereof with respect to capital punishment, or any matter of discipline of the inmates of the prison not otherwise provided for in this Article. (1933, c. 172, s. 14.)

§ 148-32: Repealed by Session Laws 1977, c. 450, s. 2.

Editor's Note. — This section was also repealed by Session Laws 1977, c. 711, s. 33.

§ 148-32.1. Local confinement, costs, alternate facilities, parole, work release.

(a) Repealed by Session Laws 2009-451, s. 19.22A, effective July 1, 2009.

(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred prisoner, if the prison population has exceeded a manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility.

(c) When a prisoner sentenced for a conviction of impaired driving under G.S. 20-138.1 is assigned to a local confinement facility pursuant to this section, the clerk of the superior court in the county in which the sentence was imposed shall immediately forward a copy of the commitment order to the Post-Release Supervision and Parole Commission so that the prisoner will be eligible for parole pursuant to G.S. 15A-1371.

(d) When a prisoner serving a sentence of 30 days or more in a local confinement facility is placed on work release pursuant to a recommendation of the sentencing court, the custodian of the facility shall forward the prisoner's work-release earnings to the Department of Correction, which shall disburse the earnings as determined under G.S. 148-33.1(f). When a prisoner serving a sentence of 30 days or more in a local confinement facility is placed on work release pursuant to an order of the sentencing court, the custodian of the facility shall forward the prisoner's work-release earnings to the clerk of the court that sentenced the prisoner or to the Department of Correction, as provided in the prisoner's commitment order. The clerk or the Department, as appropriate, shall disburse the earnings as provided in the prisoner's commitment order. Upon agreement between the Department of Correction and the custodian of the local confinement facility, however, the clerk may disburse to the local confinement facility the amount of the earnings to be paid for the cost of the prisoner's keep, and that amount shall be set off against the reimbursement to be paid by the Department to the local confinement facility pursuant to G.S. 148-32.1(a).

(e) Upon entry of a prisoner serving a sentence of imprisonment for impaired driving under G.S. 20-138.1 into a local confinement facility pursuant to this section, the custodian of the local confinement facility shall forward to the Post-Release Supervision and Parole Commission information pertaining to the prisoner so as to make him eligible for parole consideration pursuant to G.S. 15A-1371. Such information shall include date of incarceration, jail credit, and such other information as may be required by the Post-Release Supervision and Parole Commission. The Post-Release Supervision and Parole Commission shall approve a form upon which the custodian shall furnish this information, which form will be provided to the custodian by the Department of Correction. (1977, c. 450, s. 3; c. 925, s. 2; 1981, c. 859, s. 25; 1985, c. 226, s. 3(1), (2); 1985 (Reg. Sess., 1986), c. 1014, ss. 199, 201(e); 1987, c. 7, ss. 2, 6; 1987 (Reg. Sess., 1988), c. 1037, s. 120; c. 1100, s. 17.4(a); 1989, c. 1, s. 2; c. 761, s. 3; 1991, c. 217, s. 6; 1993, c. 538, s. 33; 1994, Ex. Sess., c. 14, s. 65; c. 24, s. 14(b);

1995, c. 324, s. 19.9(f); 1997-456, s. 23; 2004-199, s. 48; 2004-203, s. 54; 2009-451, s. 19.22A.)

Editor's Note. — Session Laws 1987, c. 7, s. 6 as amended by Session Laws 1989, c. 1, s. 2, had provided that the amendment to subsection (b) of this section by s. 2 of the act would expire July 1, 1991, unless reenacted by the General Assembly. However, the expiration provision was deleted by Session Laws 1991, c. 217, s. 6.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 19.22A, effective July 1, 2009, deleted subsection (a).

OPINIONS OF ATTORNEY GENERAL

Misdemeanants with sentences of 180 days or less are not to be sent to the Department of Correction, but must be jailed in a "local confinement facility" (subject to the limited exception found at G.S. 148-32.1). See opinion of Attorney General to Mr. Bruce E. Colvin, Assistant County Attorney, Forsyth County, 55 N.C.A.G. 21 (1985).

§ 148-32.2. Community work crew fee.

The Department of Correction may charge a fee to any unit of local government to which it provides, upon request, a community work crew. The amount of the fee shall be no more than the cost to the Department to provide the crew to the unit of local government, not to exceed a daily rate of one hundred fifty dollars ($150.00) per work crew. (2009-451, s. 19.24.)

Editor's Note. — Session Laws 2009-451, s. 28.6, made this section effective July 1, 2009.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 148-33. Prison labor furnished other State agencies.

The State Department of Correction may furnish to any of the other State departments, State institutions, or agencies, upon such conditions as may be agreed upon from time to time between the Department and the governing authorities of such Department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison labor in the furtherance of the purposes of any State department, institution or agency, and such other employment as is now provided by law for inmates of the State's prison under the provisions of G.S. 148-6: Provided that such prisoners shall at all times be under the custody of and controlled by the duly authorized agent of such Department. Provided, further, that notwithstanding any provisions of law contained in this Article or in this Chapter, no prisoner or group of prisoners may be assigned to work in any building utilized by any State department, agency, or institution unless a duly designated custodial agent of the Secretary of Correction is assigned to the building to maintain supervision and control of the prisoner or prisoners working there. (1933, c. 172, s. 30; 1957, c. 349, s. 10; 1961, c. 966; 1967, c. 996, ss. 13, 15; 1973, c. 1262, s. 10; 2007-398, s. 4.)

CASE NOTES

Cited in State v. Kimball, 261 N.C. 582, 135 S.E.2d 568 (1964); Harris v. Thompson Contractors, 148 N.C. App. 472, 558 S.E.2d 894, 2002 N.C. App. LEXIS 26 (2002).

§ 148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges.

(a) Whenever a person is sentenced to imprisonment for a term to be served in the State prison system or a local confinement facility, the Secretary of the Department of Correction may authorize the Director of Prisons or the custodian of the local confinement facility to grant work-release privileges to any inmate who is eligible for work release and who has not been granted work-release privileges by order of the sentencing court. The Secretary of Correction shall authorize immediate work-release privileges for any person serving a sentence not exceeding five years in the State prison system and for whom the presiding judge shall have recommended work-release privileges when (i) it is verified that appropriate employment for the person is available in an area where, in the judgment of the Secretary, the Department of Correction has facilities to which the person may suitably be assigned, and (ii) custodial and correctional considerations would not be adverse to releasing the person without supervision into the free community.

(b) Repealed by Session Laws 1981, c. 541, s. 2.

(c) The State Department of Correction shall from time to time, as the need becomes evident, designate and adapt facilities in the State prison system for quartering prisoners with work-release privileges. No State or county prisoner shall be granted work-release privileges by the Director of Prisons or the custodian of a local confinement facility until suitable facilities for quartering him have been provided in the area where the prisoner has employment or the offer of employment.

(d) The Secretary of Corrections is authorized and directed to establish a work-release plan under which an eligible prisoner may be released from actual custody during the time necessary to proceed to the place of his employment, perform his work, and return to quarters designated by the prison authorities. If the prisoner shall violate any of the conditions prescribed by prison rules and regulations for the administration of the work-release plan, then such prisoner may be withdrawn from work-release privileges, and the prisoner may be transferred to the general prison population to serve out the remainder of his sentence. Rules and regulations for the administration of the work-release plan shall be established in the same manner as other rules and regulations for the government of the State prison system.

(e) The State Department of Labor shall exercise the same supervision over conditions of employment for persons working in the free community while serving sentences imposed under this section as the Department does over conditions of employment for free persons.

(f) A prisoner who is convicted of a felony and who is granted work-release privileges shall give his work-release earnings, less standard payroll deductions required by law, to the Department of Correction. A prisoner who is convicted of a misdemeanor, is committed to a local confinement facility, and is granted work-release privileges by order of the sentencing court shall give his work-release earnings, less standard payroll deductions required by law, to the custodian of the local confinement facility. Other misdemeanants granted work-release privileges shall give their work-release earnings, less standard payroll deductions required by law, to the Department of Correction. The Department of Correction or the sentencing court, as appropriate, shall determine the amount to be deducted from a prisoner's work-release earnings to pay for the cost of the prisoner's keep and to accumulate a reasonable sum to be paid the prisoner when he is paroled or discharged from prison. The Department or sentencing court shall also determine the amount to be disbursed by the Department or clerk of court, as appropriate, for each of the following:

(1) To pay travel and other expenses of the prisoner made necessary by his employment;

(2) To provide a reasonable allowance to the prisoner for his incidental personal expenses;

(3) To make payments for the support of the prisoner's dependents in accordance with an order of a court of competent jurisdiction, or in the absence of a court order, in accordance with a determination of dependency status and need made by the local department of social services in the county of North Carolina in which such dependents reside;

(3a) To make restitution or reparation as provided in G.S. 148-33.2.

(4) To comply with an order from any court of competent jurisdiction regarding the payment of an obligation of the prisoner in connection with any judgment rendered by the court.

(5) To comply with a written request by the prisoner to withhold an amount, when the request has been granted by the Department or the sentencing court, as appropriate.

Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The Social Services Commission is authorized to promulgate uniform rules and regulations governing the duties of county social services departments under this section.

(g) No prisoner employed in the free community under the provisions of this section shall be deemed to be an agent, employee, or involuntary servant of the State prison system while working in the free community or going to or from such employment.

(h) Any prisoner employed under the provisions of this section shall not be entitled to any benefits under Chapter 96 of the General Statutes entitled "Employment Security" during the term of the sentence.

(i) No recommendation for work release shall be made at the time of sentencing in any case in which the presiding judge shall suspend the imposition of sentence and place a convicted person on probation; however, if probation be subsequently revoked and the active sentence of imprisonment executed, the court may at that time recommend work release. Neither a recommendation for work release by the court or the decision of the Secretary of Correction to place a person on work release shall give rise to any vested statutory right to an individual to be placed on or continued on work release.

(j) The provisions of subsections (f), (g), and (h) of this section shall also apply to prisoners employed in private prison enterprises conducted pursuant to G.S. 148-70. (1957, c. 540; 1959, c. 126; 1961, c. 420; 1963, c. 469, ss. 1, 2; 1967, c. 684; c. 996, s. 13; 1969, c. 982; 1973, c. 476, s. 138; c. 1262, s. 10; 1975, c. 22, ss. 1-3; c. 679, s. 3; 1977, c. 450, ss. 4, 5; c. 614, s. 6; c. 623, ss. 1, 2; c. 711, s. 29; 1977, 2nd Sess., c. 1147, s. 32; 1981, c. 541, ss. 1-3; 1985, c. 474, s. 3; 1985 (Reg. Sess., 1986), c. 1014, s. 201(f)-(i); 1991 (Reg. Sess., 1992), c. 902, s. 6.)

Editor's Note. — Session Laws 1977, c. 711, which amended subsection (b), provided in s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Legal Periodicals. — For note on prisoners' rights and an inmate's liberty interest in work release programs, see 17 Wake Forest L. Rev. 273 (1981).

For article on plea bargaining statutes and practices in North Carolina, see 59 N.C.L. Rev. 477 (1981).

CASE NOTES

As to constitutionality of this section, see Advisory Opinion in In re Work-Release Statute, 268 N.C. 727, 152 S.E.2d 225 (1966).

Basis of Section. — This section and G.S. 146-6 and 146-26, as well as provisions with reference to paroles contained in Article 4 of this Chapter, are predicated upon the idea that the ability as well as the disposition of released prisoners to engage in honest employment and become law-abiding members of society is calculated to serve the best interests of the State and of its citizens. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

Honor-Grade Status, Work-Release Privilege and Parole Are Discretionary Acts of Clemency. — Honor-grade status, work-release privilege, and parole are discretionary acts of grace or clemency extended by the State as a reward for good behavior, conferring no vested rights upon the convicted person. An accused person must be given full constitutional protection before and during his trial, but procedures of constitutional dimension are not appropriate in subsequent determinations of rewards for good behavior while serving a validly imposed sentence of confinement. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

In Mitigation of Terms of Judgment. — The granting of honor-grade status, work release, and parole is by way of mitigating the terms of the judgment which the court has entered. The legality and propriety of the trial and sentence have already been determined after the prisoner has been heard and his constitutional rights have been accorded him. The merits of the trial and the validity of the judgment may not again be raised before the Department of Correction and the Board of Paroles (now Parole Commission). Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

Cited in Hoover v. James, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 26290 (M.D.N.C. Dec. 20, 2004); Easton v. J.D. Denson Mowing, 173 N.C. App. 439, 620 S.E.2d 201, 2005 N.C. App. LEXIS 2014 (2005).

§ 148-33.2. Restitution by prisoners with work-release privileges.

(a) Repealed by Session Laws 1985, c. 474, s. 4.

(b) As a rehabilitative measure, the Secretary of the Department of Correction is authorized to require any prisoner granted work-release privileges to make restitution or reparation to an aggrieved party from any earnings gained by the defendant while on work release when the sentencing court recommends that restitution or reparation be paid by the defendant out of any earnings gained by the defendant if he is granted work-release privileges and out of other resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property. The Secretary shall not be bound by such recommendation, but if they elect not to implement the recommendation, they shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Secretary of Correction that restitution or reparation be made by the defendant out of any earnings gained by the defendant if he is granted work-release privileges and out of other resources of the defendant, including all real and personal property owned by the defendant, and income derived from such property. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d) and Article 81C of Chapter 15A of the General Statutes. If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order the defendant to pay from work release earnings the cost of rehabilitative treatment for the minor. The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

(d) The Secretary of the Department of Correction shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that the payment of restitution or reparation from any earnings gained by the prisoner while on work release is being considered as a condition of any work-release privileges granted the prisoner, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the recommendation of the sentencing court. (1977, c. 614, s. 7; 1977, 2nd Sess., c. 1147, s. 33; 1981, c. 541, ss. 4-9; 1985, c. 474, s. 4; 1987, c. 397, ss. 2, 3; c. 598, s. 5; 1998-212, s. 19.4(g).)

CASE NOTES

Constitutionality. — Since the decision to impose restitution or reparation is discretionary with the trial court and the Secretary, and since indigency could be considered in making that decision, subsection (c) of this section and G.S. 148-57.1(c) are not unconstitutional as a denial of equal protection discriminating against indigent defendants. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

The requirement that a defendant pay restitution under subsection (c) of this section or G.S. 148-57.1(c) as a condition of obtaining work-release or parole is not inherently unconstitutional. Whether the restitution requirement is unconstitutional as applied to a particular defendant may only be determined by considering the defendant's financial status and other relevant circumstances at the time when the restitution must be paid, that is, after a defendant becomes eligible for work-release privileges or parole. State v. Parton, 303 N.C. 55, 277 S.E.2d 410 (1981).

Restitution is intended to be compensatory, not punitive. State v. Easter, 101 N.C. App. 36, 398 S.E.2d 619 (1990).

The purpose of this section and § 15A-1343(b)(6) is rehabilitation and not additional penalty or punishment, and the sum ordered or recommended must be reasonably related to the damages incurred. If the trial evidence does not support the amount ordered or recommended, then supporting evidence should be required in the sentencing hearing. State v. Killian, 37 N.C. App. 234, 245 S.E.2d 812 (1978).

And Court's Order or Recommendation for Restitution or Restoration Must Be Supported by Evidence. — Together subsection (c) of this section and G.S. 15A-1343(b)(6) require that any order or recommendation of the sentencing court for restitution or restoration to the aggrieved party as a condition of attaining work-release privileges must be supported by the evidence. State v. Killian, 37 N.C. App. 234, 245 S.E.2d 812 (1978); State v. Wilson, 340 N.C. 720, 459 S.E.2d 192 (1995).

An order of restitution as a condition of work-release must be supported by evidence adduced at trial or at sentencing. State v. Daye, 78 N.C. App. 753, 338 S.E.2d 557, aff'd, 318 N.C. 502, 349 S.E.2d 576 (1986).

Amount of Restitution Must Be Supported by Evidence. — Regardless of whether restitution is ordered or recommended by the trial court, the amount must be supported by the evidence. State v. Daye, 78 N.C. App. 753, 338 S.E.2d 557, aff'd, 318 N.C. 502, 349 S.E.2d 576 (1986).

There must be something more than a guess or conjecture as to an appropriate amount of restitution, as restitution is not intended to punish defendants, but to compensate victims. State v. Daye, 78 N.C. App. 753, 338 S.E.2d 557, aff'd, 318 N.C. 502, 349 S.E.2d 576 (1986).

Court Not Required to Consider Ability to Pay. — Trial court did not err in failing to consider defendant's ability to pay restitution, as the potentially binding determination at a later date requiring defendant to pay restitution as a condition of work release or parole by either the Department of Correction or the Parole Commission would by necessity require sufficient evidence of defendant's ability to pay at that time. State v. Wilson, 340 N.C. 720, 459 S.E.2d 192 (1995).

Duty of Sentencing Court to Consider Restitution or Restoration as Prerequisite to Work-Release. — The sentencing court is not only authorized but is required by subsection (c) of this section, when an active sentence is imposed, to consider whether, as a further rehabilitative measure, restitution or restoration should be ordered or recommended to the Secretary of Correction to be imposed as a condition of attaining work-release privileges. State v. Killian, 37 N.C. App. 234, 245 S.E.2d 812 (1978).

But the decision to recommend restitution or reparation is discretionary, and the trial court is not required to impose such a condition. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

A recommendation of restitution as a condition of work-release is not binding on the Parole Commission or Department of Corrections. State v. Daye, 78 N.C. App. 753, 338 S.E.2d 557, aff'd, 318 N.C. 502, 349 S.E.2d 576 (1986).

Restitution or reparation may only be recommended as a condition of work-release, and the trial court is without authority to "order" restitution as a condition of work release. State v. Easter, 101 N.C. App. 36, 398 S.E.2d 619 (1990).

Restitution Cannot Be Imposed with Active Prison Sentence. — When a court imposes an active sentence, it may recommend restitution as a condition of work-release, as a condition of post-release supervision and parole, or as a condition of probation, but it may not require the defendant to make restitution while serving an active sentence. State v. Hughes, 136 N.C. App. 92, 524 S.E.2d 63, 1999 N.C. App. LEXIS 1302 (1999).

Imposition of Fine Is Not Restitution. — When an active sentence is imposed, the judge should consider whether, as a further rehabilitative measure, restitution or reparation should be ordered or recommended to the Secretary of Correction to be imposed as a condition of attaining work-release privileges; however, the imposition of a fine is not restitution or reparation within the meaning of this section and should not be included in a judgment under this section. State v. Alexander, 47 N.C. App. 502, 267 S.E.2d 396 (1980).

State as "Aggrieved Party." — Although the North Carolina Supreme Court has never definitively decided the issue, there is persuasive authority in North Carolina law supporting the State's right to claim the status of an "aggrieved party" for the expenses associated with providing court-appointed counsel. Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

Order of Restitution Vacated. — Order requiring defendant to pay one-third of his income to the clerk was vacated where the record revealed only that the victim was separated from his wife, and that they had two children who lived with their mother at the time the victim died. State v. Easter, 101 N.C. App. 36, 398 S.E.2d 619 (1990).

Applied in State v. Simpson, 61 N.C. App. 151, 300 S.E.2d 412 (1983); State v. Stallings, 316 N.C. 535, 342 S.E.2d 519 (1986).

Cited in State v. Bunn, 66 N.C. App. 187, 310 S.E.2d 792 (1984); State v. Buchanan, 108 N.C. App. 338, 423 S.E.2d 819 (1992); State v. Ray, 125 N.C. App. 721, 482 S.E.2d 755 (1997).

§§ 148-34, 148-35: Repealed by Session Laws 1957, c. 349, s. 11.

§ 148-36. Secretary of Correction to control classification and operation of prison facilities.

All facilities established or acquired by the State Department of Correction shall be under the administrative control and direction of the Secretary of Correction, and operated under rules and regulations proposed by the Secretary and adopted by the Department of Correction as provided in G.S. 148-11. Subject to such rules and regulations, the Secretary shall classify the facilities of the State prison system and develop a variety of programs so as to permit proper segregation and treatment of prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and correctional treatment of persons committed to the Department. The Secretary of Correction, or his authorized representative, shall designate the places of confinement where sentences to imprisonment in the State's prison system shall be served. The Secretary or his representative may designate any available facility appropriate for the individual in view of custodial and correctional considerations. (1931, c. 145, s. 28; c. 277, s. 8; 1933, c. 46, ss. 3, 4; c. 172, ss. 4, 17; 1943, c. 409; 1955, c. 238, s. 7; 1957, c. 349, s. 10; 1967, c. 996, s. 7; 1973, c. 1262, s. 10.)

CASE NOTES

A State prisoner has no legal right to the mitigation of his punishment. Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980).

The question as to whether a particular inmate is entitled to honor grade status or parole involves policy decisions which should be made by the department and the Parole Board, not the courts. Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980).

Cited in Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984).

§ 148-37. Additional facilities authorized; contractual arrangements.

(a) Subject to the provisions of G.S. 143-341, the State Department of Correction may establish additional facilities for use by the Department, such facilities to be either of a permanent type of construction or of a temporary or movable type as the Department may find most advantageous to the particular needs, to the end that the prisoners under its supervision may be so distributed throughout the State as to facilitate individualization of treatment designed to prepare them for lawful living in the community where they are most likely to reside after their release from prison. For this purpose, the Department may purchase or lease sites and suitable lands adjacent thereto and erect necessary buildings thereon, or purchase or lease existing facilities, all within the limits of allotments as approved by the Department of Administration.

(b) The Secretary of Correction may contract with the proper official of the United States or of any county or city of this State for the confinement of federal prisoners after they have been sentenced, county, or city prisoners in facilities of the State prison system or for the confinement of State prisoners in any county or any city facility located in North Carolina, or any facility of the United States Bureau of Prisons, when to do so would most economically and effectively promote the purposes served by the Department of Correction. Except as otherwise provided, any contract made under the authority of this subsection shall be for a period of not more than two years, and shall be renewable from time to time for a period not to exceed two years. Contracts made under the authority of this subsection for the confinement of State prisoners in local or district confinement facilities may be for a period of not more than 10 years and renewable from time to time for a period not to exceed 10 years, and shall be subject to the approval of the Council of State and the Department of Administration after consultation with the Joint Legislative Commission on Governmental Operations. Contracts for receiving federal, county and city prisoners shall provide for reimbursing the State in full for all costs involved. The financial provisions shall have the approval of the Department of Administration before the contract is executed. Payments received under such contracts shall be deposited in the State treasury for the use of the State Department of Correction. Such payments are hereby appropriated to the State Department of Correction as a supplementary fund to compensate for the additional care and maintenance of such prisoners as are received under such contracts.

(b1) Recodified as G.S. 148-37.2 by Session Laws 2001-84, s. 1, effective May 17, 2001.

(c) In addition to the authority contained in subsections (a) and (b) of this section, and in addition to the contracts ratified by subsection (f) of this section, the Secretary of Correction may enter into contracts with any public entity or any private nonprofit or for-profit firms for the confinement and care of State prisoners in any out-of-state correctional facility when to do so would most economically and effectively promote the purposes served by the Department of Correction. Contracts entered into under the authority of this subsection shall be for a period not to exceed two years and shall be renewable from time to time for a period not to exceed two years. Prisoners may be sent to out-of-state correctional facilities only when there are no available facilities in this State within the State prison system to appropriately house those prisoners. Any contract made under the authority of this subsection shall be approved by the Department of Administration before the contract is executed. Before expending more than the amount specifically appropriated by the General Assembly for the out-of-state housing of inmates, the Department shall obtain the approval of the Joint Legislative Commission on Governmental Operations and shall report such expenditures to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Chairs of the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

(d) Prisoners confined in out-of-state correctional facilities pursuant to subsection (c) of this section shall remain subject to the rules adopted for the conduct of persons committed to the State prison system. The rules regarding good time and gain time, discipline, classification, extension of the limits of confinement, transfers, housing arrangements, and eligibility for parole shall apply to inmates housed in those out-of-state correctional facilities. The operators of those out-of-state correctional facilities may promulgate any other rules as may be necessary for the operation of those facilities with the written approval of the Secretary of Correction. Custodial officials employed by an out-of-state correctional facility are agents of the Secretary of Correction and may use those procedures for use of force authorized by the Secretary of Correction not inconsistent with the laws of the State of situs of the facility to defend themselves, to enforce the observance of discipline in compliance with correctional facility rules, to secure the person of a prisoner, and to prevent escape. Prisoners confined to out-of-state correctional facilities may be required to perform reasonable work assignments within those facilities. Private firms under subsection (c) of this section shall employ inmate disciplinary and grievance policies of the North Carolina Department of Correction.

(e) Repealed by Session Laws 1995, c. 324, s. 19.10.

(f) Any contracts entered into by the Department of Correction with public contractors prior to March 25, 1994, for the out-of-state housing of inmates are ratified.

(g) The Secretary of Correction may contract with private for-profit or nonprofit firms for the provision and operation of four or more confinement facilities totaling up to 2,000 beds in the State to house State prisoners when to do so would most economically and effectively promote the purposes served by the Department of Correction. This 2,000-bed limitation shall not apply to the 500 beds in private substance abuse treatment centers authorized by the General Assembly prior to July 1, 1995. Whenever the Department of Correction determines that new prison facilities are required in addition to existing and planned facilities, the Department may contract for any remaining beds authorized by this section before constructing State-operated facilities.

Contracts entered under the authority of this subsection shall be for a period not to exceed 10 years, shall be renewable from time to time for a period not to exceed 10 years. The Secretary of Correction shall enter contracts under this subsection only if funds are appropriated for this purpose by the General Assembly. Contracts entered under the authority of this subsection may be subject to any requirements for the location of the confinement facilities set forth by the General Assembly in appropriating those funds.

Once the Department has made a determination to contract for additional private prison beds, it shall issue a request for proposals within 30 days of the decision. The request for proposals shall require bids to be submitted within two months, and the Department shall award contracts at the earliest practicable date after the submission of bids. The Secretary of Correction, in consultation with the Chairs of the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety, shall make recommendations to the State Purchasing Officer on the final award decision. The State Purchasing Officer shall make the final award decision, and the contract shall then be subject to the approval of the Council of State after consultation with the Joint Legislative Commission on Governmental Operations.

Contracts made under the authority of this subsection may provide the State with an option to purchase the confinement facility or may provide for the purchase of the confinement facility by the State. Contracts made under the authority of this subsection shall state that plans and specifications for private confinement facilities shall be furnished to and reviewed by the Office of State Construction. The Office of State Construction shall inspect and review each project during construction to ensure that the project is suitable for habitation and to determine whether the project would be suitable for future acquisition by the State. All contracts for the housing of State prisoners in private confinement facilities shall require a minimum of ten million dollars ($10,000,000) of occurrence-based liability insurance and shall hold the State harmless and provide reimbursement for all liability arising out of actions caused by operations and employees of the private confinement facility.

Prisoners housed in private confinement facilities pursuant to this subsection shall remain subject to the rules adopted for the conduct of persons committed to the State prison system. The Secretary of Correction may review and approve the design and construction of private confinement facilities before housing State prisoners in these facilities. The rules regarding good time, gain time, and earned credits, discipline, classification, extension of the limits of confinement, transfers, housing arrangements, and eligibility for parole shall apply to inmates housed in private confinement facilities pursuant to this subsection. The operators of private confinement facilities may adopt any other rules as may be necessary for the operation of those facilities with the written approval of the Secretary of Correction. Custodial officials employed by a private confinement facility are agents of the Secretary of Correction and may use those procedures for use of force authorized by the Secretary of Correction to defend themselves, to enforce the observance of discipline in compliance with confinement facility rules, to secure the person of a prisoner, and to prevent escape. Private firms under this subsection shall employ inmate disciplinary and grievance policies of the North Carolina Department of Correction.

(h) Private confinement facilities under this section shall be designed, built, and operated in accordance with applicable State laws, court orders, fire safety codes, and local regulations.

(i) The Department of Correction shall make a written report no later than March 1 of every odd-numbered year, beginning in 1997, on the substance of all outstanding contracts for the housing of State prisoners entered into under the authority of this section. The report shall be submitted to the Council of State, the Department of Administration, the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. In addition to the report, the Department of Correction shall provide information on contracts for the housing of State prisoners as requested by these groups. (1933, c. 172, s. 19; 1957, c. 349, s. 10; 1967, c. 996, s. 8; 1973, c. 1262, s. 10; 1975, c. 879, s. 46; 1977, 2nd Sess., c. 1147, s. 34; 1994, Ex. Sess., c. 24, s. 16(a), (b); 1995, c. 324, s. 19.10(a), (b); c. 507, s. 19; 1996, 2nd Ex. Sess., c. 18, s. 20.18; 1997-443, ss. 21.4(c)-(e); 1999-237, s. 18.20(a); 2001-84, s. 1; 2001-138, s. 2.)

Cross References. — For prohibition on private prisons housing out-of-state inmates, see G.S. 148-37.1.

Editor's Note. — Session Laws 2001-84, s. 2, provided: "This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

OPINIONS OF ATTORNEY GENERAL

Public Bidding Requirements Not Applicable to Subsection (b1). — The public bidding requirements of Article 8, Chapter 143, G.S. 143-128 et seq., are not applicable to the construction of the three close security correctional facilities authorized by G.S. 148-37(b1), as the statute clearly contemplates that such facilities will be constructed by the private sector using private funds. See opinion of Attorney General to Mr. Robert M. High, Deputy Treasurer, N. C. Department of State Treasurer, 2000 N.C. AG LEXIS 34 (4/17/2000).

Purchase of Prison Facilities After Construction by Private Firm. — Subsection (b1) neither expressly nor by implication authorizes the state to establish a nonprofit corporation to sell tax-exempt certificates of participation in order to finance a purchase of prison facilities immediately upon completion of construction by a private firm. See opinion of Attorney General to Mr. Robert M. High, Deputy Treasurer, N. C. Department of State Treasurer, 2000 N.C. AG LEXIS 34 (4/17/2000).

§ 148-37.1. Prohibition on private prisons housing out-of-state inmates.

(a) Except as otherwise provided in this section or authorized by North Carolina law, no municipality, county, or private entity may authorize, construct, own, or operate any type of correctional facility for the confinement of inmates serving sentences for violation of the laws of a jurisdiction other than North Carolina.

(b) The provisions of this section shall not apply to facilities owned or operated by the federal government and used exclusively for the confinement of inmates serving sentences for violation of federal law, but only to the extent that such facilities are not subject to restriction by the states under the provisions of the United States Constitution. (2000-67, s. 16.3(a).)

§ 148-37.2. Lease-purchase of prison facilities.

(a) Authorization. — The Secretary of Correction may, as provided in this section, enter contracts with private for-profit or nonprofit firms for the construction of close security correctional facilities described in subsection (a1) of this section to be operated by the Department pursuant to a lease that contains a schedule for purchase of the facilities over a period of up to 20 years.

The State, with the prior approval of the Council of State and the State Treasurer as provided in this section, is authorized to execute and deliver one or more lease-purchase agreements with a special nonprofit corporation providing for the lease-purchase by the State of the Projects from the special nonprofit corporation in connection with and under an arrangement whereby certificates of participation are sold and delivered by the special nonprofit corporation in order to provide funds to pay the purchase price of the Projects. The Projects will be constructed by selected contractors designated to the special nonprofit corporation by the State Property Office of the Department of Administration in consultation with the Department of Correction. The Projects will be sold to the special nonprofit corporation, with the purchase price paid by the special nonprofit corporation from the proceeds of the certificates of participation. The State may lease the real property upon which the Projects will be located, if owned by the State, to the selected contractors constructing the Projects and to the special nonprofit corporation for nominal consideration.

(a1) Facilities Authorized. — The following facilities are authorized under this section:

(1) 2001 Facilities. — Three close security correctional facilities totaling up to 3,000 cells.

(2) 2003 Facilities. — Three close security correctional facilities substantially identical to the facilities described in subdivision (1) of this

subsection and totaling up to 3,000 cells. If the State and the special nonprofit corporation are able to negotiate a contract for one or more of these facilities with the construction contractor that constructed the facilities described in subdivision (1) of this subsection on terms that are reasonable and desirable to the State as determined by the State Treasurer, the Secretary of Administration, and the Council of State, then a request for proposals under subsection (c) of this section is not required. The remaining provisions of this section continue to apply.

(b) Definitions. — The following definitions apply in this section:

(1) Certificates of participation. — Certificates or other instruments delivered by a special nonprofit corporation as provided in this section evidencing the assignment of proportionate and undivided interests in the rights to receive lease payments to be made by the State pursuant to a lease-purchase agreement.

(2) Construction contract agreement. — Either of the following:

a. A contract between the Department of Correction and the selected contractors for construction of the Projects, under which the selected contractors will be responsible for arranging for and obtaining their own construction financing, which will consist solely of private funds.

b. A contract between the special nonprofit corporation and the selected contractors for construction of the Projects, but only if the contract has provisions sufficient to carry out the requirements of the last paragraph of subsection (c) of this section. The Secretary of Correction shall determine the sufficiency of the contract and shall approve the contract only if it is sufficient.

(3) Lease-purchase agreement. — A lease-purchase agreement entered into pursuant to this section, under which the State will lease the Projects from the special nonprofit corporation, with option to purchase.

(4) Projects. — Facilities described in subsection (a1) of this section to be constructed by selected contractors, sold to the special nonprofit corporation, and leased to the State pursuant to this section.

(5) Purchase agreement. — A contract under which the special nonprofit corporation will purchase the Projects from the selected contractors.

(6) Selected contractors. — One or more private firms selected to construct the Projects.

(7) Special nonprofit corporation. — A nonprofit corporation created under Chapter 55A of the General Statutes and designated by the State Treasurer for entering into the transactions contemplated by this act.

(c) Request for Proposals. — The Secretary of Correction may issue a request for proposals to private firms for the private firms to construct the Projects in accordance with plans and specifications developed by the Department of Correction and reviewed by the Office of State Construction.

The Secretary of Correction shall make recommendations to the State Property Office of the Department of Administration on the final award decision. The Department of Correction and the State Property Office of the Department of Administration shall consult with the Joint Legislative Commission on Governmental Operations before making the final award decision. The Department of Administration shall make the final award decision, which shall then be subject to the approval of the Council of State. If the contract for construction of the 2003 facilities is entered into with the construction contractor who constructed the 2001 facilities as provided by subdivision (a1)(2) of this section, the general terms and conditions of the construction contract for the 2003 facilities shall be substantially similar to the terms and conditions of the construction contracts for the construction of the 2001 facilities, including, without limitation, terms and conditions regarding the activities, performance, and construction standards required of the contractor, the arrangements for selection and retention of subcontractors by the contractor, and the responsibility of the contractor for the performance by the selected subcontractors. The construction contract for the 2003 facilities may, however, contain any changes from the construction contracts for the 2001 facilities that may be necessary or desirable to reflect the financing arrangements for the 2003 facilities, including provisions for the periodic payment of construction costs based upon construction progress.

The Department of Correction will enter into a construction contract agreement with the selected contractors for the construction of the Projects or, alternatively, the construction contract may be entered into with the selected contractor by the special nonprofit corporation, with the approval of the Department of Correction. The special nonprofit corporation will enter into a purchase agreement with the selected contractors for the sale of the Projects to the special nonprofit corporation. With respect to the 2003 facilities, the purchase agreement may provide for the periodic payment by the special nonprofit corporation to the selected contractor of portions of the purchase price during the construction of the 2003 facilities on the basis of construction progress, rather than a payment of the entire purchase price upon delivery of the 2003 facilities. The Department of Correction shall furnish plans and specifications for review by the State Construction Office. Construction contract agreements entered into under this section shall provide that the Department of Correction and the Office of State Construction shall inspect and review each facility during construction to ensure and determine jointly that the facility is suitable for use as a correctional facility and for future acquisition by the State. The Department of Correction may contract with a design consortium for construction administration services.

(d) Approval of Lease-Purchase Agreement. — A lease-purchase agreement may not be entered into pursuant to this section unless the following conditions are met before the lease-purchase agreement is entered into: (i) the Council of State, by resolution, approves the execution and delivery of the lease-purchase agreement, and (ii) the State Treasurer approves the lease-purchase agreement and all other documentation related to it, including any leasehold deed of trust or trust agreement in connection with it. The resolution of the Council of State may include any matters the Council of State determines. In determining whether to approve the lease-purchase agreement, the State Treasurer may consider any factors as the State Treasurer considers relevant in order to find and determine that all of the following conditions are met:

(1) The principal amount to be financed under the lease-purchase agreement is adequate and not excessive for the purpose of paying the cost of the Projects.

(2) The increase, if any, in State revenues necessary to pay the sums to become due under the lease-purchase agreement is not excessive.

(3) The lease-purchase agreement can be entered into on terms desirable to the State.

(4) The sale of certificates of participation will not have an adverse effect on any scheduled or proposed sale of obligations of the State or any State agency or of any unit of local government in the State.

(e) Terms and Conditions. — The following provisions apply to a lease-purchase agreement entered into under this section:

(1) In order to secure the performance by the State of its obligations under the lease-purchase agreement, the lease-purchase agreement may require the eviction of the State from the occupancy of one or more of

the Projects in the event that the State breaches its obligations and agreements under the lease-purchase agreement.

(2) No deficiency judgment may be rendered against the State or any agency, department, or commission of the State in any action for breach of any obligation contained in the lease-purchase agreement or any other related documentation, and the taxing power of the State or any agency, department, or commission of the State is not and may not be pledged to secure any moneys due under the lease-purchase agreement.

(3) The lease-purchase agreement shall not contain a nonsubstitution clause that restricts the right of the State to replace or provide a substitute for the Projects.

(4) The lease-purchase agreement may include provisions requesting the Governor to submit in the Governor's budget proposal, or any amendments or supplements to it, appropriations necessary to make the payments required under the lease-purchase agreement.

(5) The lease-purchase agreement may contain any provisions for protecting and enforcing the rights and remedies of the special nonprofit corporation that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the State with respect to the Projects, which may include provisions relating to insuring, operating, and maintaining the Projects and the custody, safeguarding, investment, and application of moneys.

(6) The lease-purchase agreement may designate the lease payments to be paid by the State under it to be "principal components" and "interest components." Any interest component of the lease payments may be calculated based upon a fixed or variable interest rate or rates as determined by the State Treasurer.

(7) The lease-purchase agreement may be entered into by the State, and certificates of participation may be delivered by the special nonprofit corporation, at any time, including at times prior to the delivery of the completed Projects to the special nonprofit corporation, and the related delivery of occupancy of the Projects to the State by the special nonprofit corporation. The lease-purchase agreement may require the State to make prepayments of lease payments at a time prior to when the State accepts occupancy of the Projects. The lease-purchase agreement and related financing arrangements may provide for the funding of interest during construction from the proceeds of certificates of participation. The costs incurred in connection with the preparation of the lease-purchase agreement and related documents and the delivery of the certificates of participation may be paid from the proceeds of the certificates of participation.

(8) The State is authorized to agree in the lease-purchase agreement to indemnify the special corporation and its directors and agents for any liabilities that arise to the special corporation or directors or agents on account of their participation in the activities contemplated by this act.

(f) Faith and Credit Not Pledged. — The payment of amounts payable by the State under the lease-purchase agreement and other related documentation during any fiscal biennium or fiscal year is limited to funds appropriated for that purpose by the General Assembly in its discretion. No provision of this section and no lease-purchase agreement creates any pledge of the faith and credit of the State or any agency, department, or commission of the State within the meaning of any constitutional debt limitation.

(g) Certificates of Participation. — The State may cooperate as necessary to effectuate the delivery by the special nonprofit corporation of tax-exempt certificates of participation, including participating in the preparation of offering documents, the filing of required tax forms and agreeing to comply with restrictions on the use of the Projects as required in order for the interest component of the lease payments to be tax-exempt. Disclosures and compliance with other federal law requirements by the special nonprofit corporation shall be under the direction of the State Treasurer. Certificates of participation may be sold at the direction of the State Treasurer in the manner, either at public or private sale, and for any price or prices that the State Treasurer determines to be in the best interest of the State and to effect the purposes of this section. Interest payable with respect to certificates of participation shall accrue at the rate or rates determined by the State Treasurer with the approval of the special nonprofit corporation.

Certificates of participation may be delivered pursuant to a trust agreement with a corporate trustee approved by the State Treasurer. The corporate trustee may be any trust company or bank having the powers of a trust company within or without the State. A trust agreement may (i) provide for security and pledges and assignments with respect to the security as may be permitted under this section and further provide for the enforcement of any lien or security interest created pursuant to this section, and (ii) contain any provisions for protecting and enforcing the rights and remedies of the owners of any certificates of participation that are reasonable and proper and not in violation of law as determined by the State Treasurer. The State Treasurer shall designate the professionals providing legal or financial services relating to the lease-purchase agreement and the delivery of certificates of participation, including the provider of any credit facility and the underwriter or placement agent for any certificates of participation.

(h) Tax Exemption. — The lease-purchase agreement and any certificates of participation relating to it shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting estate, inheritance, or gift taxes, income taxes on the gain from the transfer of the lease-purchase agreement and certificates of participation, and franchise taxes. The interest component of the lease payments made by the State under the lease-purchase agreement, including the interest payable with respect to any certificates of participation, is not subject to taxation as income.

(i) Licensing Requirements. — The private for-profit or nonprofit firms authorized to respond to requests for proposals authorized by this section, or entitled to be a selected contractor pursuant to this section, need not be a licensed general contractor within the meaning of G.S. 87-1 so that providing a response to the request or entering a construction contract agreement or purchase agreement is not general contracting within the meaning of G.S. 87-1. This subsection does not remove the actual construction of any prison facility from the provisions of G.S. 87-1.

(j) Minority Business Participation. — G.S. 143-128.2 applies to the Projects authorized in this section.

(k) Upon completion of the construction of a facility authorized by this section and the commencement of the State's leasehold interest pursuant to the terms of a valid lease-purchase agreement:

(1) The facility shall not be subject to county or municipal building codes and requirements and shall not be subject to inspection by any county or municipal authorities under G.S. 143-135.1.

(2) The Department of Administration may exercise all powers and perform all duties set forth in G.S. 143-341 regarding the facility.

(3) The Commissioner of Insurance shall conduct the inspections, reviews, and examinations of the facility set forth in G.S. 58-31-40 and shall conduct electrical inspections of the facility pursuant to G.S. 143-143.2. (1999-237, s. 18.20(a); 2001-84, s. 1; 2001-202, s. 1; 2003-284, s. 47.1; 2005-98, s. 1.)

Editor's Note. — This section was formerly codified as subsection (b1) of G.S. 148-37. It was recodified as G.S. 148-37.2 by Session Laws 2001-84, G.S. 1.

Session Laws 1999-237, s. 18.20(b), provides that the Department of Correction shall provide a status report on the development of requests for proposals and the award-making process to the Joint Legislative Commission on Governmental Operations, by May 1, 2000, and that after the contract has been awarded, the Department shall report by May 1 of each year on the progress of the project.

Session Laws 1999-237, s. 30.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium."

Session Laws 1999-237, s. 1.1 provides: "This act shall be known as the 'Current Operations and Capital Improvement Appropriations Act of 1999'."

Session Laws 1999-237, s. 30.4 contains a severability clause.

Session Laws 2001-84, s. 2, provided: "This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 48.1, provides: "Parts 32 through 47 of this act do not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by those parts before the effective date of its amendment or repeal; nor do they affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2009-209, s. 2(f), provides: "Notwithstanding anything in Section 47.1 of S.L. 2003-284 to the contrary, the maximum amount of special indebtedness authorized by that section for the capital facilities cost of Columbus County Correctional Institution is one hundred one million fifty-six thousand four hundred ninety dollars ($101,056,490)."

Legal Periodicals. — For note, "Tax Increment Financing in North Carolina: The Myth of the Countermajoritarian Difficulty," see 83 N.C. L. Rev. 1526 (2005).

§ 148-37.3. Authority of private correctional officers employed pursuant to a contract with the Federal Bureau of Prisons.

(a) Correctional officers and security supervisors employed at private correctional facilities pursuant to a contract between their employer and the Federal Bureau of Prisons may, in the course of their employment as correctional officers or security supervisors, use necessary force and make arrests consistent with the laws applicable to the North Carolina Department of Correction, which force shall not exceed that authorized to Department of Correction officers, provided that the employment policies of such private corporations meet the same minimum standards and practices followed by the Department of Correction in employing its correctional personnel, and if:

(1) Those correctional officers and security supervisors have been certified as correctional officers as provided under Chapter 17C of the General Statutes; or

(2) Those correctional officers and security supervisors employed by the private corporation at the facility have completed a training curriculum that meets or exceeds the standards required by the North Carolina Criminal Justice Education and Training Standards Commission for correctional personnel.

(b) Any private corporation described in subsection (a) of this section shall without limit defend, indemnify, and hold harmless the State, its officers, employees, and agents from any claims arising out of the operation of the private correctional facility, or the granting of the powers authorized under this section, including any attorneys' fees or other legal costs incurred by the State, its officers, employees, or agents as a result of such claims.

(c) Any private corporation described in subsection (a) of this section shall reimburse the State and any county or other law enforcement agency for the full cost of any additional expenses incurred by the State or the county or other law enforcement agency in connection with the pursuit and apprehension of an escaped inmate from the facility.

In the event of an escape from the facility, any private corporation described in subsection (a) of this section shall immediately notify the sheriff in the county in which the facility is located, who shall cause an immediate entry into the State Bureau of Investigation Division of Criminal Information network. The sheriff of the county in which the facility is located shall be the lead law enforcement officer in connection with the pursuit and apprehension of an escaped inmate from the facility.

(d) Any private corporation described in subsection (a) of this section must maintain in force liability insurance to satisfy any final judgment rendered against the private corporation or the State, its officers, employees, and agents that arises out of the operation of the correctional facility or the indemnification requirements in subsection (b) of this section. The minimum amount of liability insurance that will be required under this section is ten million dollars ($10,000,000) per occurrence, and twenty-five million dollars ($25,000,000) aggregate per occurrence.

(e) Repealed by Session Laws 2007-162, s. 1, effective July 1, 2007.

(f) The authority set forth in this section to use necessary force and make arrests shall be in addition to any existing authority set forth in the statutory or common law of the State, but shall not exceed the authority to use necessary force and make arrests set out in subsection (a) of this section.

(g) A private corporation described in subsection (a) of this section shall bear the reasonable costs of services provided by the State, its officers, employees, and agents for the corporation. The amount of the costs shall be determined by the member of the Council of State or Cabinet member of the agency or department that provided the services.

(h) This section is effective August 18, 2001 and applies to private correctional facilities and the employees of those correctional facilities constructed and contracted to be operated by August 18, 2001. (2001-378, ss. 1-7; 2003-351, s. 1; 2007-162, s. 1.)

§§ 148-38, 148-39: Repealed by Session Laws 1957, c. 349, s. 11.

§ 148-40. Recapture of escaped prisoners.

The rules and regulations for the government of the State prison system may provide for the recapture of convicts that may escape, or any convicts that may have escaped from the State's prison or prison camps, or county road camps of this State, and the State Department of Correction may pay to any person recapturing an escaped convict such reward or expense of recapture as the regulations may provide. Any citizen of North Carolina shall have authority to apprehend any convict who may escape before the expiration of his term of imprisonment whether he be guilty of a felony or misdemeanor, and retain him in custody and deliver him to the State Department of Correction. (1933, c. 172, s. 21; 1955, c. 238, s. 8; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

CASE NOTES

Cited in State v. Payne, 213 N.C. 719, 197 S.E. 573 (1938); State v. Davis, 253 N.C. 86, 116 S.E.2d 365 (1960).

§ 148-41. Recapture of escaping prisoners; reward.

The Secretary of Correction shall use every means possible to recapture, regardless of expense, any prisoners escaping from or leaving without permission any of the State prisons, camps, or farms. When any person who has been confined or placed to work escapes from the State prison system, the Secretary shall immediately notify the Governor, and accompany the notice with a full description of the escaped prisoner, together with such information as will aid in the recapture. The Governor may offer such rewards as he may deem desirable and necessary for the recapture and return to the State prison system of any person who may escape or who heretofore has escaped therefrom. Such reward earned shall be paid by warrant of the State Department of Correction and accounted for as a part of the expense of maintaining the State's prisons. (1873-4, c. 158, s. 13; Code, s. 3442; Rev., s. 5407; 1917, c. 236; c. 286, s. 13; C. S., ss. 7742, 7743; 1925, c. 163; 1933, c. 172, s. 18; 1935, c. 414, s. 16; 1943, c. 409; 1955, c. 238, s. 9; c. 279, s. 3; 1957, c. 349, s. 10; 1967, c. 996, ss. 13, 15; 1973, c. 1262, s. 10.)

§ 148-42: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provided: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provided: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provided: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-43: Repealed by Session Laws 1963, c. 1174, s. 5.

§ 148-44. Separation as to sex.

The Department shall provide quarters for female prisoners separate from those for male prisoners. (1933, c. 172, s. 25; 1947, c. 262, s. 2; 1957, c. 349, s. 10; 1963, c. 1174, s. 2; 1985, c. 226, s. 3(3).)

CASE NOTES

Cited in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.

(a) Any person in the custody of the Department of Correction in any of the classifications hereinafter set forth who shall escape from the State prison system, shall for the first such offense, except as provided in subsection (g) of this section, be guilty of a Class 1 misdemeanor:

(1) A prisoner serving a sentence imposed upon conviction of a misdemeanor;
(2) A person who has been charged with a misdemeanor and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;
(3) Repealed by Session Laws 1985, c. 226, s. 4.
(4) A person who shall have been convicted of a misdemeanor and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 15A-1332(c).

(b) Any person in the custody of the Department of Correction, in any of the classifications hereinafter set forth, who shall escape from the State prison system, shall, except as provided in subsection (g) of this section, be punished as a Class H felon.

(1) A prisoner serving a sentence imposed upon conviction of a felony;
(2) A person who has been charged with a felony and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;
(3) Repealed by Session Laws 1985, c. 226, s. 5.
(4) A person who shall have been convicted of a felony and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 15A-1332(c); or
(5) Any person previously convicted of escaping or attempting to escape from the State prison system.

(c) Repealed by Session Laws 1979, c. 760, s. 5.

(d) Any person who aids or assists other persons to escape or attempt to escape from the State prison system shall be guilty of a Class 1 misdemeanor.

(e) Repealed by Session Laws 1983, c. 465, s. 5.

(f) Any person convicted of an escape or attempt to escape classified as a felony by this section shall be immediately classified and treated as a convicted felon even if such person has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors.

(g)(1) Any person convicted and in the custody of the North Carolina Department of Correction and ordered or otherwise assigned to work under the work-release program, G.S. 148-33.1, or any convicted person in the custody of the North Carolina Department of Correction and temporarily allowed to leave a place of confinement by the Secretary of Correction or his designee or other authority of law, who shall fail to return to the custody of the North Carolina Department of Correction, shall be guilty of the crime of escape and subject to the applicable provisions of this section and shall be deemed an escapee. For the purpose of this subsection, escape is defined to include, but is not restricted to, willful failure to return to an appointed place and at an appointed time as ordered.

(2) If a person, who would otherwise be guilty of a first violation of G.S. 148-45(g)(1), voluntarily returns to his place of confinement within 24 hours of the time at which he was ordered to return, such person shall not be charged with an escape as provided in this section but shall be subject to such administrative action as may be deemed appropriate for an escapee by the Department of Correction; said escapee shall not be allowed to be placed on work release for a four-month period or for the balance of his term if less than four months; provided, however, that if such person commits a subsequent violation of this section then such person shall be charged with that offense and, if convicted, punished under the provisions of this section. (1933, c. 172, s. 26;

1955, c. 279, s. 2; 1963, c. 681; 1965, c. 283; 1967, c. 996, s. 13; 1973, c. 1120; c. 1262, s. 10; 1975, cc. 170, 241, 705; c. 770, ss. 1, 2; 1977, c. 732, ss. 3, 4; c. 745; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1983, c. 465, ss. 1-5; 1985, c. 226, ss. 3(4)-6; 1993, c. 539, ss. 1058, 1321, 1322; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 19.25(t).)

Editor's Note. — Session Laws 1955, c. 279, which rewrote what is now subsection (a) of this section, provided, in s. 4: "The provisions of this act shall be construed to be mandatory rather than directive."

Legal Periodicals. — For note on availability of the defense of duress in prison escapes, see 12 Wake Forest L. Rev. 1102 (1976).

CASE NOTES

I. General Consideration.
II. Effect of Invalidity of Original Conviction.
III. Practice and Procedure.

I. GENERAL CONSIDERATION.

There are two classes of escape from the state prison system. One is a felonious escape and the other is a misdemeanor. State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

Escape from Custody Authorized by Law Is a Crime Against Public Justice. — State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

As Citizens Should Yield Obedience to Law. — The statute declaring escape from custody to be an offense proceeds from the theory that a citizen should yield obedience to the law. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

And Persons Confined by Law Must Submit to Such Confinement. — When one has been, by authority or command of the law, confined in prison, it is his duty to submit to such confinement until delivered by due course of law, no matter whether he has been committed for a future trial or for punishment after conviction. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

Escape of Prisoners Working for Board of Transportation. — Prisoners hired by the State Highway Commission (now the Board of Transportation) to work on the highways of the State are within the prison system when the agents of the Highway Commission (now the Board of Transportation) have been designated to receive and work such prisoners. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

An escape by a prisoner assigned by an official of the Department of Correction to work under an employee of the State Highway Commission (now Board of Transportation) constitutes an escape from the State prison system. State v. Coleman, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

Murder Committed in the Perpetration or Attempt to Perpetrate a Felonious Escape Is Murder in the First Degree. — State v. Lee, 277 N.C. 205, 176 S.E.2d 765 (1970).

For cases holding that a second escape is a felony, decided prior to repeal of subsection (c) of this section, see State v. Worley, 268 N.C. 687, 151 S.E.2d 618 (1966); State v. Walters, 17 N.C. App. 94, 193 S.E.2d 316 (1972); State v. Stone, 22 N.C. App. 352, 206 S.E.2d 389 (1974).

As to time when sentence began prior to 1965 amendment to this section, see State v. Doggett, 267 N.C. 648, 148 S.E.2d 622 (1966).

Predicate Offense Under Armed Career Criminal Act. — Felony conviction for escape while serving a sentence imposed upon a conviction of a felony (felony escape from custody), under subdivision (b)(1), qualifies as a predicate conviction under the Federal Armed Career Criminal Act, 18 U.S.C. § 924. United States v. Hairston, 71 F.3d 115 (4th Cir. 1995), cert. denied, 517 U.S. 1200, 116 S. Ct. 1699, 134 L. Ed. 2d 798 (1996).

Serious Potential Risk of Physical Injury to Another. — Subdivision (b)(1), "involves conduct that presents a serious potential risk of physical injury to another", as required by the Federal Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii), because an overt escape, especially an overt escape from a maximum security prison, inherently presents such a risk of physical injury. United States v. Hairston, 71 F.3d 115 (4th Cir. 1995), cert. denied, 517 U.S. 1200, 116 S. Ct. 1699, 134 L. Ed. 2d 798 (1996).

Applied in State v. Gibson, 265 N.C. 487, 144 S.E.2d 402 (1965); State v. Elliott, 269 N.C. 683, 153 S.E.2d 330 (1967); State v. Morgan, 272 N.C. 97, 157 S.E.2d 606 (1967); State v.

Faison, 272 N.C. 146, 157 S.E.2d 664 (1967); State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968); State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968); State v. Collins, 273 N.C. 479, 160 S.E.2d 291 (1968); State v. Allison, 1 N.C. App. 623, 162 S.E.2d 63 (1968); State v. Jones, 3 N.C. App. 69, 163 S.E.2d 910 (1968); State v. Ruffin, 3 N.C. App. 307, 164 S.E.2d 503 (1968); State v. Rogers, 7 N.C. App. 572, 172 S.E.2d 883 (1970); State v. Foster, 8 N.C. App. 67, 173 S.E.2d 577 (1970); State v. Ware, 10 N.C. App. 179, 177 S.E.2d 764 (1970); State v. Ford, 13 N.C. App. 34, 185 S.E.2d 328 (1971); State v. Ford, 281 N.C. 62, 187 S.E.2d 741 (1972); State v. Rufty, 16 N.C. App. 192, 191 S.E.2d 242 (1972); State v. White, 16 N.C. App. 652, 192 S.E.2d 663 (1972); State v. Edwards, 282 N.C. 578, 193 S.E.2d 736 (1973); State v. Haith, 17 N.C. App. 597, 194 S.E.2d 868 (1973); State v. Carroll, 17 N.C. App. 691, 195 S.E.2d 306 (1973); State v. Stewart, 19 N.C. App. 112, 198 S.E.2d 30 (1973); State v. Sadler, 19 N.C. App. 641, 199 S.E.2d 702 (1973); State v. Lowe, 21 N.C. App. 98, 203 S.E.2d 96 (1974); State v. Eppley, 30 N.C. App. 217, 226 S.E.2d 675 (1976).

Cited in In re Swink, 243 N.C. 86, 89 S.E.2d 792 (1955); State v. Hunt, 265 N.C. 714, 144 S.E.2d 890 (1965); State v. Sutton, 268 N.C. 165, 150 S.E.2d 50 (1966); Gainey v. Turner, 266 F. Supp. 95 (E.D.N.C. 1967); State v. Alphin, 7 N.C. App. 75, 171 S.E.2d 53 (1969); State v. Jones, 9 N.C. App. 726, 177 S.E.2d 311 (1970); Jernigan v. State, 279 N.C. 556, 184 S.E.2d 259 (1971); State v. McDowell, 24 N.C. App. 590, 211 S.E.2d 475 (1975); State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977); State v. Watson, 51 N.C. App. 369, 276 S.E.2d 732 (1981); State v. Parnell, 53 N.C. App. 793, 281 S.E.2d 732 (1981); State v. Washington, 54 N.C. App. 683, 284 S.E.2d 330 (1981).

II. EFFECT OF INVALIDITY OF ORIGINAL CONVICTION.

Belief in Innocence or Legal Errors in Convictions. — It would bring the law into disrepute and completely render prison order and discipline unenforceable if prisoners convicted of crime could exercise the right of self-judgment and self-help and be allowed to escape from imprisonment, either because they believed themselves to be innocent or believed that their convictions were obtained through legal error. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

Innocence or Guilt of Original Offense Is Immaterial to Crime of Escape. — It is generally held by the more modern authorities that it is immaterial whether a prisoner is innocent or guilty of the original offense insofar as his liability for escaping is concerned. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

When a prisoner is held in legal custody and commits an escape, the crime itself does not depend upon whether he would have been adjudged guilty or innocent of the original offense had the proper procedure for appeal been followed. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

As Is Later Determination That Original Conviction Was Void. — The crime of escape does not depend upon whether it may or may not be determined in a future habeas corpus proceeding that his original conviction was void for defects in the judgment of conviction by a court of competent jurisdiction. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

Or Voidable. — Deprivation of procedural rights before or during imprisonment does not constitute grounds or justification for, an escape by a prisoner serving a sentence imposed by authority of law. This is so even though the sentence the prisoner was serving at the time was later held to be irregular or voidable. A prisoner in such case may not put himself in defiance of the duly constituted authorities by escaping from custody but must seek redress in compliance with due process. State v. Warren, 4 N.C. App. 441, 166 S.E.2d 858 (1969).

North Carolina has held that a prisoner escaping while serving a sentence is not immune to punishment for the escape even though the sentence he was serving at the time of the escape was irregular or voidable and is set aside and a new trial ordered after the escape but prior to imposition of sentence for the escape, since a prisoner serving a sentence imposed by authority of law may not defy that authority but must seek redress in compliance with due process. Kelly v. North Carolina, 276 F. Supp. 200 (E.D.N.C. 1967).

And defendant can be tried and sentenced on charge of escape irrespective of outcome of a new trial. State v. Warren, 4 N.C. App. 441, 166 S.E.2d 858 (1969).

There is no deprivation of federal constitutional rights in trial for escape from an invalid sentence. Kelly v. North Carolina, 276 F. Supp. 200 (E.D.N.C. 1967).

III. PRACTICE AND PROCEDURE.

The elements of felonious escape are (1) lawful custody, (2) while serving a sentence imposed upon a plea of guilty, a plea of nolo contendere, or a conviction for a felony, and (3) escape from such custody. State v. Malone, 73 N.C. App. 323, 326 S.E.2d 302 (1985).

Exact time is not an essential element of the offense of escape as set out in subdivision (g)(1) of this section and the 24-hour exception provided in subdivision (g)(2) of this section is a defense which a defendant may raise should the evidence warrant such a defense. Therefore, the trial court did not err in denying defendant's motion to dismiss at the close of the State's evidence on the grounds that the warrant did not set out the exact date and time of the alleged escape and further failed to state that the period of time was in excess of the 24-hour time limitation found in subdivision (g)(2) of this section. State v. Womble, 44 N.C. App. 503, 261 S.E.2d 263, appeal dismissed, 299 N.C. 740, 267 S.E.2d 669 (1980).

For construction of former provisions similar to subsection (g)(1) of this section, see State v. Kimball, 261 N.C. 582, 135 S.E.2d 568 (1964); State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969); State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

Indictment to Allege Conviction of a Misdemeanor or Felony. — It is necessary to allege that the escape or attempted escape occurred when defendant was serving a sentence imposed upon conviction of a misdemeanor or of a felony, irrespective of whether the presently alleged escape or attempted escape was alleged to be a first or a second offense. State v. Jordan, 247 N.C. 253, 100 S.E.2d 497 (1957); State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965); State v. Stallings, 267 N.C. 405, 148 S.E.2d 252 (1966).

But Need Not State the Specific Felony. — An indictment charging that a defendant escaped while serving a sentence for a felony imposed in the superior court in a named county is sufficient without naming the felony. State v. Jackson, 14 N.C. App. 75, 187 S.E.2d 470 (1972).

An indictment charging that defendant escaped from lawful custody while serving a sentence for a felony imposed in the superior court of a named county was sufficient, without naming the felony for which defendant was imprisoned, and reference in the indictment to the felony was surplusage. State v. Stallings, 267 N.C. 405, 148 S.E.2d 252 (1966).

Or Other Detailed Information. — Where defendant contended that warrant was defective in that it did not allege: (1) the year of defendant's conviction in Craven County; (2) the length of the sentence imposed; (3) the number of the defendant's commitment from Craven County; and (4) the trial docket number of the case in which the commitment was issued, it was held that such detailed information was not required to charge an offense under this section. State v. Harper, 264 N.C. 354, 141 S.E.2d 475 (1965).

Indictment Held Insufficient to Charge Felony Escape. — A bill of indictment was insufficient to charge the felony of escape while serving a felony sentence, notwithstanding the indictment used the word "felony" to describe one of the offenses for which defendant was serving sentence when he escaped, where it also alleged that sentences for both offenses were imposed in district courts, since district courts are without jurisdiction to impose sentence in felony cases; however, the indictment was sufficient to charge misdemeanor escape. State v. Jackson, 14 N.C. App. 75, 187 S.E.2d 470 (1972).

Variance Held Not Fatal. — Where bill of indictment charged that defendant escaped while lawfully confined in the North Carolina State prison system in the lawful custody of the North Carolina Department of Correction, and the evidence showed he escaped while assigned by an official of the Department of Correction to work under an employee of the State Highway Commission (now Board of Transportation), the variance was not fatal. State v. Coleman, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

Because defendant's indictment for felonious escape tracked the statutory language of G.S. 148-45(g), defendant was effectively charged with a work-release escape, regardless of whether the indictment's citation to G.S. 148-45(b) was erroneous, due to the fact that defendant was sufficiently apprised of the charge at issue. State v. Lockhart, 181 N.C. App. 316, 639 S.E.2d 5, 2007 N.C. App. LEXIS 89 (2007).

Further Prosecution Not Barred by Arrest of Judgment for Defective Indictment. — Arrest of judgment on the ground that the bill of indictment is fatally defective does not bar further prosecution for a violation of this section if the solicitor deems it advisable to proceed on a new bill. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

Nor by Mistrial on Such Ground. — Where indictment on its face negatived any possibility of a showing that at the time of the alleged escape the defendant was serving a sentence in prison, such indictment was fatally defective, and the action of the court in ordering a mistrial was tantamount to quashing the bill of indictment, which the trial court had the right to do ex mero motu; hence, the defendant's conviction on a second bill of indictment was valid and a plea of former jeopardy was properly overruled. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

As to indictments for second or subsequent offenses, prior to repeal of subsection (c) of this section, see State v. Lawrence, 264 N.C. 220, 141 S.E.2d 264 (1965); State v. Revis, 267 N.C. 255, 147 S.E.2d 892 (1966); State v. Bennett, 271 N.C. 423, 156 S.E.2d 725 (1967); State v. Jackson, 14 N.C. App. 75, 187 S.E.2d 470 (1972); State v. Chapman, 20 N.C. App. 456, 201 S.E.2d 579 (1974).

To prove felonious escape under G.S. 148-45(b)(2), the State needed to prove that defendant was charged with a felony and had been committed to the custody of the Department of Correction; testimony concerning the kind of crimes for which defendant was sentenced to prison was relevant and competent evidence, and defendant's conviction was affirmed. State v. McDonald, 163 N.C. App. 458, 593 S.E.2d 793, 2004 N.C. App. LEXIS 510 (2004), cert. denied, 358 N.C. 548, 599 S.E.2d 910 (2004).

Proof of Lawfulness of Custody and Type of Offense for Which Defendant Committed Prerequisite to Conviction. — In order to sustain a conviction for the offense of escape under this section, the State must prove, among other things, from the evidence and beyond a reasonable doubt, that at the time of the escape defendant was in the lawful custody of the State Department of Correction and was serving a sentence imposed upon a plea of guilty, a plea of nolo contendere, or a conviction for a felony. State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

When a defendant is charged with escape from the State prison system under this section the State is entitled to introduce evidence of any and all convictions for which defendant was in custody at the time of escape. State v. Hammond, 307 N.C. 662, 300 S.E.2d 361 (1983).

Before a defendant can be convicted of felonious escape, the State must prove beyond a reasonable doubt that at the time of his escape defendant was serving a sentence of incarceration imposed for the conviction of a felony. State v. Hammond, 307 N.C. 662, 300 S.E.2d 361 (1983).

When a defendant is charged with escape under this statute, the State has the burden of proving that defendant was in the legal custody of the Department of Correction at the time of the escape. Testimony concerning the kind of crimes for which defendant was sentenced to prison is relevant and competent evidence which the State may introduce in order to meet its burden of proof on this issue. State v. Hammond, 307 N.C. 662, 300 S.E.2d 361 (1983).

When a defendant is charged with felonious escape from the state prison system under this section, the State has the burden of proving that defendant was in the legal custody of the Department of Correction at the time of the escape, serving a sentence imposed upon conviction of a felony. Accordingly, the State is entitled to introduce evidence of any and all convictions for which defendant was in custody at the time of escape. State v. Parrish, 73 N.C. App. 662, 327 S.E.2d 613 (1985).

To sustain a conviction for escape the state must prove that the defendant was in lawful custody and was serving a sentence imposed upon a plea of guilty, a plea of nolo contendere, or a conviction for a felony. State v. Malone, 73 N.C. App. 323, 326 S.E.2d 302 (1985).

The legislature, in setting the presumptive sentence for escape, presumably took into account that evidence of an underlying plea or conviction would be necessary to prove the offense. State v. Malone, 73 N.C. App. 323, 326 S.E.2d 302 (1985).

Failure to Prove Defendant Serving Sentence. — Defendant was improperly convicted of felonious escape where the State failed to present any evidence that defendant was serving a sentence for the commission of a felony on the date defendant escaped from a county jail. State v. Miller, 146 N.C. App. 494, 553 S.E.2d 410, 2001 N.C. App. LEXIS 975 (2001).

Voluntary Return Not Proven. — Motion to dismiss was properly denied in defendant's trial for work-release escape under G.S. 148-45(g)(1) because, although the evidence demonstrated that defendant was recaptured within 24 hours, it also indicated that defendant's family only surrendered him after officers threatened to obtain a search warrant and press criminal charges against the family members for harboring a fugitive; thus, defendant failed to show that the undisputed evidence supported the conclusion that he voluntarily returned into custody. State v. Lockhart, 181 N.C. App. 316, 639 S.E.2d 5, 2007 N.C. App. LEXIS 89 (2007).

What Evidence Competent to Show Lawfulness of Custody and Type of Offense. — Certified copies of the record of the superior court showing defendant's conviction and sentence, or a commitment issued under the hand and official seal of the clerk of the superior court, are admissible for the purpose of showing that defendant was in lawful custody at the time of the alleged escape. State v. Stallings, 267 N.C. 405, 148 S.E.2d 252 (1966).

A properly certified copy of the commitment is competent, when introduced into evidence, to show the lawfulness of the custody and the type of offense for which defendant was committed. State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

The defense of duress or escaping against his will will not be available to a prisoner charged with escape except where such defendant meets all of the following five requirements: (1) The prisoner is faced with a specific threat of death, forcible sexual attack or substantial bodily injury in the immediate future; (2) there is no time for a complaint to the authorities or there exists a history of futile complaints which make any result from such complaints illusory; (3) there is no time or opportunity to resort to courts; (4) there is no evidence of force or violence used towards prison personnel or other "innocent" persons in the escape; and (5) the prisoner immediately reports to the proper authorities when he has attained a position of safety from the immediate threat. State v. Watts, 60 N.C. App. 191, 298 S.E.2d 436 (1982).

Nature of Offense for Which Defendant Committed as Question for Jury. — A defendant who has committed an escape is entitled to have his case submitted to the jury on the question of whether he was imprisoned while serving a sentence imposed for a felony or for a misdemeanor. State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

Prejudicial Error Not to Charge Jury That It Must Find Defendant Was Serving Sentence for Felony Conviction at Time of Escape. — Since defendant's plea of not guilty put in issue every essential element of the crime charged, and defendant was charged with escaping from the lawful custody of the State Department of Correction while then and there serving time for a felony, trial judge's failure to instruct the jury that before they could convict defendant of the felony of escape charged, they must find beyond a reasonable doubt that at the time of the escape he was serving a sentence imposed upon conviction of a felony, was prejudicial error which entitled defendant to a new trial. State v. McCloud, 11 N.C. App. 425, 181 S.E.2d 204 (1971).

The court erred where it did not require the jury to find beyond a reasonable doubt that defendant was serving a felony sentence in a prosecution under this section. State v. Johnson, 21 N.C. App. 85, 203 S.E.2d 424 (1974).

Instruction on Willfulness Unnecessary. — In a prosecution for felonious escape under this section, the trial court was not required to instruct the jury pursuant to G.S. 148-4 that one of the essential elements of felonious escape is that the failure to remain in or return to confinement must be willful, since defendant was not charged with escape while outside the place of his confinement pursuant to authorization by the Secretary of Correction under G.S. 148-4, but was charged under this section, which establishes the general escape offense and does not contain the word willful. State v. Rose, 53 N.C. App. 608, 281 S.E.2d 404 (1981).

Erroneous Reference to Another Section in Judgment and Commitment Order Held Not Prejudicial. — The fact that the judgment and commitment order in an escape prosecution erroneously referred to G.S. 148-48 instead of this section was not prejudicial to the defendant. State v. Cobb, 9 N.C. App. 51, 175 S.E.2d 381 (1970).

Sentence of 12 Months Not Cruel and Unusual Punishment. — A sentence of imprisonment for 12 months for felonious escape under this section does not constitute cruel and unusual punishment, in violation of N.C. Const., Art. I, § 14 and U.S. Const., Amend. VIII. State v. Dixon, 5 N.C. App. 514, 168 S.E.2d 418 (1969).

A sentence of one year is not excessive under this section. State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965).

§ 148-46. Degree of protection against violence allowed.

(a) When any prisoner, or several combined shall offer violence to any officer, overseer, or guard, or to any fellow prisoner, or attempt to do any injury to the prison building, or to any workshop, or other equipment, or shall attempt to escape, or shall resist, or disobey any lawful command, the officer, overseer, or guard shall use any means necessary to defend himself, or to enforce the observance of discipline, or to secure the person of the offender, and to prevent an escape.

(b) A misdemeanor prisoner classified and treated as a convicted felon as the result of a consecutive felony sentence or sentences, or a convicted felon placed in the custody of the Secretary of Correction pending the outcome of an appeal, or a defendant charged with a felony or felonies and placed in the custody of the Secretary of Correction pending trial, shall be considered as a convicted felon in the custody of the Secretary of Correction against whom any means reasonably necessary, including deadly force, may be used to prevent an escape. (1933, c. 172, s. 27; 1975, c. 230.)

Legal Periodicals. — For note on use of deadly force in preventing escape of fleeing minor felon, see 34 N.C.L. Rev. 122 (1955).

CASE NOTES

Constitutional Liability. — While simple reasonableness governs official forcible encounters with "free citizens," a vastly different standard governs use of force against convicted prisoners. The prohibition in U.S. Const., Amend. VIII against cruel and unusual punishment requires liability for the unnecessary and wanton infliction of pain. Morrison v. Martin, 755 F. Supp. 683 (E.D.N.C. 1990), aff'd, 917 F.2d 1302 (4th Cir. 1990).

This section specifically permits the use of force to enforce lawful orders by prison officials. The deference due to prison administrators in the establishment of policies reasonably related to legitimate governmental objectives is well established. Morrison v. Martin, 755 F. Supp. 683 (E.D.N.C. 1990), aff'd, 917 F.2d 1302 (4th Cir. 1990).

The use of force against prisoners may be appropriate, depending upon the existence of certain factors: (1) The need for force; (2) the amount of force needed in relation to the amount used; (3) the extent of injury inflicted; and (4) whether the force arose out of good faith efforts to maintain discipline as opposed to the malicious infliction of harm. Stokes v. Galyan, 618 F. Supp. 1483 (W.D.N.C. 1985).

Correctional officers can be held answerable at law only for obduracy and wantonness, not merely because lesser measures might have sufficed or where ordinary errors of judgment occurred. Morrison v. Martin, 755 F. Supp. 683 (E.D.N.C. 1990), aff'd, 917 F.2d 1302 (4th Cir. 1990).

Administrator Dictates Policy. — As long as prison authorities are rationally pursuing a legitimate penological objective, the administrator has the last word as to relevant prison policy. Morrison v. Martin, 755 F. Supp. 683 (E.D.N.C. 1990), aff'd, 917 F.2d 1302 (4th Cir. 1990).

Cited in Bailey v. Turner, 736 F.2d 963 (4th Cir. 1984).

§ 148-46.1. Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform assigned duties.

Any person serving a sentence or sentences within the State prison system who, during the term of such imprisonment, willfully and intentionally inflicts upon himself any injury resulting in a permanent or temporary incapacity to perform work or duties assigned to him by the State Department of Correction, or any prisoner who aids or abets any other prisoner in the commission of such offense, shall be punished as a Class H felon. (1959, c. 1197; 1967, c. 996, s. 13; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 539, s. 1323; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 19.25(v).)

Cross References. — As to procedure for treatment of self-inflicted injuries upon prisoners where consent is refused, see G.S. 148-46.2.

CASE NOTES

Cited in State v. Faircloth, 297 N.C. 100, 253 S.E.2d 890 (1979).

§ 148-46.2. Procedure when consent is refused by prisoner.

When the Secretary of Correction finds as a fact that the injury to any prisoner was willfully and intentionally self-inflicted and that an operation or treatment is necessary for the preservation or restoration of the health of the prisoner and that the prisoner is competent to act for himself or herself; and that attempts have been made to obtain consent for the proposed operation or treatment but such consent was refused, and the findings have been reduced to writing and entered into the prisoner's records as a permanent part thereof, then the chief medical officer of the prison hospital or prison institution shall be authorized to give or withhold, on behalf of the prisoner, consent to the operation or treatment.

In all cases coming under the provisions of this section, the medical staff of the hospital or institution shall keep a careful and complete medical record of the treatment and surgical procedures undertaken. The record shall be signed by the chief medical officer of the hospital or institution and the surgeon performing any surgery. Any treatment of self-inflicted injuries shall also be subject to the provisions of G.S. 90-21.13 and G.S. 90-21.16. (1959, c. 1196; 1967, c. 996, s. 15; 1969, c. 982; 1973, c. 1262, s. 10; 1981, c. 307, ss. 4-7, 9; 2004-203, s. 53(b).)

Editor's Note. — This section was formerly G.S. 130-191.1. It was amended and transferred to its present position by Session Laws 1981, c. 307, s. 9.

§ 148-47. Disposition of child born of female prisoner.

Any child born of a female prisoner while she is in custody shall as soon as practicable be surrendered to the director of social services of the county wherein the child was born upon a proper order of the domestic relations court or juvenile court of said county affecting the custody of said child. When it appears to be for the best interest of the child, the court may place custody beyond the geographical bounds of Wake County: Provided, however, that all subsequent proceedings and orders affecting custody of said child shall be within the jurisdiction of the proper court of the county where the infant is residing at the time such proceeding is commenced or such order is sought: Provided, further, that nothing in this section shall affect the right of the mother to consent to the adoption of her child nor shall the right of the mother to place her child with the legal father or other suitable relative be affected by the provisions of this section. (1933, c. 172, s. 28; 1955, c. 1027; 1961, c. 186; 1969, c. 982.)

§ 148-48. Parole powers of Parole Commission unaffected.

Nothing in this Chapter shall be construed to limit or restrict the power of the Parole Commission to parole prisoners under such conditions as it may impose or prevent the reimprisonment of such prisoners upon violation of the conditions of such parole, as now provided by law. (1933, c. 172, s. 29; 1955, c. 867, s. 8; 1973, c. 1262, s. 10.)

CASE NOTES

Erroneous Reference to Statute Under Which Defendant Committed Held Not Prejudicial. — It was not prejudicial to the defendant where, in the judgment and commitment as it appeared in the record, the statute under which the defendant was convicted was erroneously referred to as "G.S. 148.48" instead of G.S. 148-45. State v. Cobb, 9 N.C. App. 51, 175 S.E.2d 381 (1970).

§ 148-49. Prison indebtedness not assumed by Board of Transportation.

The Board of Transportation shall not assume or pay off any part of the deficit of the State prison existing on March 22, 1933. (1933, c. 172, s. 33; 1973, c. 507, s. 5.)

CASE NOTES

Cited in State v. Ware, 173 N.C. App. 434, 618 S.E.2d 830, 2005 N.C. App. LEXIS 2039 (2005).

ARTICLE 3A.

Facilities and Programs for Youthful Offenders.

§§ 148-49.1 through 148-49.9: Repealed by Session Laws 1977, c. 732, s. 1.

Cross References. — For present provisions relating to facilities and programs for youthful offenders, see G.S. 148-49.10 et seq.

Editor's Note. — Session Laws 1977, c. 732, s. 6, provided: "All commitments to the Department of Correction under G.S. 148-49.3 shall be treated as commitments under G.S. 148-12(b)." Section 148-12(b) was repealed by Session Laws 1977, c. 711, s. 33.

Section 148-49.3 was also repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

ARTICLE 3B.

Facilities and Programs for Youthful Offenders.

§§ 148-49.10 through 148-49.16: Repealed by Session Laws 1993, c. 538, s. 34.

Editor's Note. — This Article was Article 3A of this Chapter as rewritten by Session Laws 1977, c. 732, s. 2, and recodified.

ARTICLE 4.

Paroles.

§§ 148-50 through 148-51: Repealed by Session Laws 1955, c. 867, s. 13.

§ 148-51.1: Repealed by Session Laws 1985, c. 226, s. 9.

§ 148-52: Repealed by Session Laws 1973, c. 1262, s. 10.

Cross References. — As to transfer of the functions of the Board of Paroles to the Department of Correction, see § 143B-262.

§ 148-52.1. Prohibited political activities of member of Post-Release Supervision and Parole Commission.

No member of the Post-Release Supervision and Parole Commission shall be permitted to use his position to influence elections or the political action of any person, serve as a member of the campaign committee of any political party, interfere with or participate in the preparation for any election or the conduct thereof at the polling place, or be in any manner concerned in the demanding, soliciting or receiving of any assessments, subscriptions or contributions, whether voluntary or involuntary, to any political party. Any Post-Release Supervision and Parole Commission member who shall violate any of the provisions of this section shall be subject to dismissal from office. (1953, c. 17, s. 4; 1973, c. 1262, s. 10; 1981, c. 260; 1993, c. 538, s. 44; 1994, Ex. Sess., c. 24, s. 14(b).)

State Government Reorganization. — The Board of Paroles was transferred to the Department of Social Rehabilitation and Control by former § 143A-168, enacted by Session Laws 1971, c. 864, and repealed by Session Laws 1973, c. 1262, s. 10. The functions of the Department of Social Rehabilitation and Control have been transferred to the Department of Correction. See G.S. 143B-262.

CASE NOTES

Basis of Article. — Sections 148-6, 148-26 and 148-33.1, as well as provisions with reference to paroles contained in this Article, are predicated upon the idea that the ability as well as the disposition of released prisoners to engage in honest employment and become law-abiding members of society is calculated to serve the best interests of the State and of its citizens. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

Cited in Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

OPINIONS OF ATTORNEY GENERAL

Campaigning for Office of Sheriff. — A person employed by the State as a probation and parole officer may file notice of candidacy and campaign for election to the office of sheriff assuming that no federal funds are involved with respect to the probation and parole officer's employment and, thus, that proscriptions contained in the federal Hatch Act do not apply. See opinion of Attorney General to Sheriff Ralph L. Thomas, Carteret County, 55 N.C.A.G. 35 (1985).

§ 148-53. Investigators and investigations of cases of prisoners.

For the purpose of investigating the cases of prisoners, the Department of Correction is hereby authorized and empowered to appoint an adequate staff of competent investigators, particularly qualified for such work, with such reasonable clerical assistance as may be required, who shall, under the rules and regulations duly adopted by the Post-Release Supervision and Parole Commission, investigate all cases designated by it, investigate cases of prisoners eligible for post-release supervision, and otherwise aid the Commission in passing upon the question of the parole and post-release supervision of prisoners, to the end that every prisoner in the custodial care of the State may receive full, fair, and just consideration. (1935, c. 414, s. 3; 1955, c. 867, s. 2; 1973, c. 1262, s. 10; 1977, c. 704, s. 3; c. 711, s. 30; 1977, 2nd Sess., c. 1147, s. 32; 1993, c. 538, s. 45; 1994, Ex. Sess., c. 24, s. 14(b).)

Editor's Note. — Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c, 1147, s. 32, effective July 1, 1978, provided: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-54. Parole and post-release supervision supervisors provided for; duties.

The Department of Correction is hereby authorized to appoint a sufficient number of competent parole and post-release supervision supervisors, who shall be particularly qualified for and adapted for the work required of them, and who shall under the direction of the Department of Correction, and under regulations prescribed by the Department of Correction after consultation with the Commission, exercise supervision and authority over paroled prisoners and persons on post-release supervision, assist paroled prisoners and persons on post-release supervision, and those who are to be paroled or released for post-release supervision in finding and retaining self-supporting employment, and to promote rehabilitation work with paroled and post-release supervised prisoners, to the end that they may become law-abiding citizens. The supervisors shall also, under the direction of the Department of Correction, maintain frequent contact with paroled and post-release supervised prisoners and find out whether or not they are observing the conditions of their paroles or post-release supervision, and assist them in every possible way toward compliance with the conditions, and they shall perform such other duties in connection with paroled prisoners as the Department of Correction may require. The number of supervisors may be increased by the Department of Correction as and when the number of paroled and post-release supervised prisoners to be supervised requires or justifies such increase. (1935, c. 414, s. 4; 1955, c. 867, s. 11; 1973, c. 1262, s. 10; 1977, c. 704, s. 4; 1993, c. 538, s. 46; 1994, Ex. Sess., c. 24, s. 14(b).)

Editor's Note. — Session Laws 2009-574, ss. 30.1 and 30.2, provide: "SECTION 30.1. The North Carolina Department of Correction and the North Carolina Department of Justice may study all of the following:

"(1) Issues that impede the timely certification of correctional officers and probation/parole officers and ways to expedite the certification process.

"(2) The current minimum education and training requirements for correctional and probation/parole officers and whether those requirements are necessary and appropriate for certified employees of the Department of Correction.

"(3) Inconsistencies between rules promulgated by the North Carolina Criminal Justice Education and Training Standards Commission and applicable State and federal laws, and ways to resolve those inconsistencies.

"(4) The current process of certifying criminal justice training schools and programs or courses of instruction and whether that process could be expedited.

"(5) Ways to improve communication and cooperation between the Criminal Justice Standards Division and the Department of Correction regarding the employment, education, training, and retention of correctional officers and probation/parole officers.

"(6) Ways to expedite and enhance the technical assistance the Criminal Justice Standards Division provides to the Department of Correction pursuant to Chapter 17C of the General Statutes.

"(7) The feasibility and advisability of establishing a separate training and standards commission for State correctional officers and probation/parole officers.

"SECTION 30.2. The Department of Correction and the Department of Justice may report their findings and recommendations no later than April 1, 2010, to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee."

Session Laws 2009-574, s. 52.1, provides: "For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate."

§ 148-54.1: Repealed by Session Laws 1955, c. 867, s. 13.

§ 148-55: Repealed by Session Laws 1973, c. 1262, s. 10.

§ 148-56. Assistance in supervision of parolees or post-release supervisees and preparation of case histories.

Upon request by the Post-Release Supervision and Parole Commission, the county directors of social services shall assist in the supervision of parolees and shall prepare and submit to the Post-Release Supervision and Parole Commission case histories or other information in connection with any case under consideration for parole or some form of executive clemency. (1935, c. 414, s. 6; 1955, c. 867, s. 9; 1961, c. 186; 1969, c. 982; 1973, c. 1262, s. 10; 1993, c. 538, s. 47; 1994, Ex. Sess., c. 24, s. 14(b).)

§ 148-57. Rules and regulations for parole consideration.

The Post-Release Supervision and Parole Commission is hereby authorized and empowered to set up and establish rules and regulations in accordance with which prisoners eligible for parole consideration may have their cases reviewed and by which such proceedings may be initiated and considered. That the rules and regulations shall include but not be limited to, a plan whereby the Post-Release Supervision and Parole Commission may determine parole eligibility, and, when eligibility is so approved, provide for parole of a prisoner to a plan approved by the Secretary of the Department of Correction. (1935, c. 414, s. 7; 1955, c. 867, s. 4; 1973, c. 1262, s. 10; 1977, c. 704, s. 2; 1993, c. 538, s. 48; 1994, Ex. Sess., c. 24, s. 14(b).)

Editor's Note. — This section was amended by Session Laws 1993, c. 538, s. 48, in the coded bill drafting format provided by G.S. 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

CASE NOTES

Honor-Grade Status, Work-Release Privilege and Parole as Discretionary Acts of Clemency. — Honor-grade status, work-release privilege, and parole are discretionary acts of grace or clemency extended by the State as a reward for good behavior, conferring no vested rights upon the convicted person. An accused person must be given full constitutional protection before and during his trial, but procedures of constitutional dimension are not appropriate in subsequent determinations of rewards for good behavior while serving a validly imposed sentence of confinement. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

Cited in Glenn v. Johnson, 761 F.2d 192 (4th Cir. 1985).

§ 148-57.1. Restitution as a condition of parole or post-release supervision.

(a) Repealed by Session Laws 1985, c. 474, s. 5.

(b) As a rehabilitative measure, the Post-Release Supervision and Parole Commission is authorized to require a prisoner to whom parole or post-release supervision is granted to make restitution or reparation to an aggrieved party as a condition of parole or post-release supervision when the sentencing court recommends that restitution or reparation to an aggrieved party be made a condition of any parole or post-release supervision granted the defendant. When imposing restitution as a condition and setting up a payment schedule for the restitution, the Post-Release Supervision and Parole Commission shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, and his obligation to support dependents. The Post-Release Supervision and Parole Commission shall not be bound by such recommendation, but if it elects not to implement the recommendation, it shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Post-Release Supervision and Parole Commission that restitution or reparation by the defendant be made a condition of any parole or post-release supervision granted the defendant. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of Article 81C of Chapter 15A of the General Statutes. The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order, as a condition of parole or post-release supervision, that the defendant pay the cost of any rehabilitative treatment for the minor.

(d) The Post-Release Supervision and Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that the payment of restitution or reparation by the prisoner is being considered as a condition of any parole or post-release supervision granted the prisoner, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the recommendation of the sentencing court. (1977, c. 614, s. 8; 1977, 2nd Sess., c. 1147, s. 36; 1985, c. 474, s. 5; 1987, c. 397, s. 4; c. 598, s. 4; 1993, c. 538, s. 49; 1994, Ex. Sess., c. 24, s. 14(b); 1998-212, s. 19.4(h).)

Legal Periodicals. — For article on plea bargaining statutes and practices in North Carolina, see 59 N.C.L. Rev. 477 (1981).

CASE NOTES

Constitutionality. — Since the decision to impose restitution or reparation is discretionary with the trial court, the Secretary and the Parole Commission, and since indigency could be considered in making that decision, G.S. 148-33.2(c) and subsection (c) of this section are not unconstitutional as a denial of equal protection discriminating against indigent defendants. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

The requirement that a defendant pay restitution under G.S. 148-33.2(c) or subsection (c) of this section as a condition of obtaining work-release or parole is not inherently unconstitutional. Whether the restitution requirement is unconstitutional as applied to a particular defendant may only be determined by considering the defendant's financial status and other relevant circumstances at the time when the restitution must be paid, that is, at the time he becomes eligible for parole or work-release privileges. State v. Parton, 303 N.C. 55, 277 S.E.2d 410 (1981), overruled on other grounds, State v. Freeman, 314 N.C. 432, 333 S.E.2d 743 (1985).

A requirement that a defendant pay restitution as a condition of parole or work release is not inherently unconstitutional. State v. Arnette, 67 N.C. App. 194, 312 S.E.2d 547 (1984).

The constitutionality of a reparation requirement may only be considered if and when restitution is ordered. State v. Arnette, 67 N.C. App. 194, 312 S.E.2d 547 (1984); State v. Wilson, 340 N.C. 720, 459 S.E.2d 192 (1995).

The constitutionality of a reparation requirement may only be determined by considering defendant's financial status at the time when restitution may be paid. State v. Arnette, 67 N.C. App. 194, 312 S.E.2d 547 (1984).

There is no statutory requirement for a sentencing judge to inquire into a defendant's ability to pay restitution when the judge merely recommends restitution as a condition of parole or work release. State v. Arnette, 67 N.C. App. 194, 312 S.E.2d 547 (1984).

Constitutionality of Requiring Repayment of Attorneys' Fees. — The interlocking statutes and court decisions that regulate North Carolina's ability to recover the costs of court-appointed counsel meet constitutional requirements. The indigent defendant's fundamental right to counsel is preserved under the system; he is given ample opportunity to challenge the decision to require repayment at all critical stages; and he is protected against heightened civil or criminal penalties based solely on his inability to pay. Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

Though far from a paragon of clarity and detail as a complete program, the North Carolina statutes relating to the repayment of attorneys' fees by restitution embody all the required features of a constitutionally acceptable approach. The indigent defendant's fundamental right to counsel is preserved under the North Carolina statute and no preconditions are placed on the exercise of that right beyond a reasonable and minimally intrusive procedure designed to establish the fact of indigency. Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

Like its civil recoupment statute, North Carolina's procedures for imposing the reimbursement of court-appointed counsel fees as a condition of parole are narrowly drawn to avoid unfairness and discriminatory effects. Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

Claim of parolee under 42 U.S.C. § 1983 that North Carolina had placed an unconstitutional restraint on her freedom by conditioning her parole upon repayment of attorneys' fees would be dismissed for failure to exhaust state remedies. Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

Amount of Restitution Must Be Supported by Evidence. — The amount of restitution recommended by the trial court must be supported by evidence adduced at trial or at sentencing. State v. Wilson, 340 N.C. 720, 459 S.E.2d 192 (1995).

The decision to recommend restitution or reparation is discretionary, and the trial court is not required to impose such a condition. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

Parole Commission, etc., Not Bound by Recommendation of Restitution. — Neither the Parole Commission nor the Department of Correction is bound by the judge's recommendation of restitution as a condition of parole or work release. State v. Arnette, 67 N.C. App. 194, 312 S.E.2d 547 (1984).

Restitution Cannot Be Imposed with Active Prison Sentence. — When a court imposes an active sentence, it may recommend restitution as a condition of work-release, as a condition of post-release supervision and parole, or as a condition of probation, but it may not require the defendant to make restitution while serving an active sentence. State v. Hughes, 136 N.C. App. 92, 524 S.E.2d 63, 1999 N.C. App. LEXIS 1302 (1999).

Law Enforcement Agencies Not Victims for Restitution Purposes. — While North Carolina statutes authorize the imposition of a condition, upon parole eligibility, of restitution to victims of crime who have suffered economic loss as a result of that crime, law enforcement agencies are not within the class of such victims. Evans v. Garrison, 657 F.2d 64 (4th Cir. 1981).

State as "Aggrieved Party". — Although the North Carolina Supreme Court has never definitively decided the issue, there is persuasive authority in North Carolina law supporting the State's right to claim the status of an "aggrieved party" for the expenses associated with providing court-appointed counsel. Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

Cited in State v. McNeill, 54 N.C. App. 454, 283 S.E.2d 565 (1981); State v. Ray, 125 N.C. App. 721, 482 S.E.2d 755 (1997).

§§ 148-58, 148-58.1: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provided: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provided: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provided: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-59. Duties of clerks of superior courts as to commitments; statements filed with Department of Correction.

The several clerks of the superior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the Post-Release Supervision and Parole Commission shall by regulations prescribe, which information shall contain, among other things, the following:

(1) The court in which the prisoner was tried;
(2) The name of the prisoner and of all codefendants;
(3) The date or session when the prisoner was tried;
(4) The offense with which the prisoner was charged and the offense for which convicted;
(5) The judgment of the court and the date of the beginning of the sentence;
(6) The name and address of the presiding judge;
(7) The name and address of the prosecuting solicitor;
(8) The name and address of private prosecuting attorney, if any;
(9) The name and address of the arresting officer;
(10) All available information of the previous criminal record of the prisoner; and
(11) For all Class G or more serious felonies, the names and addresses of the following persons, where the presiding judge makes a finding of such facts:
    a. Any victims of the offense for which the prisoner was convicted;
    b. The parent or legal guardian of any minor victims of the offense for which the prisoner was convicted; and
    c. The next of kin of any homicide victims of the offense for which the prisoner was convicted.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the Department of Correction, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the State Department of Correction without charge. (1935, c. 414, s. 9; 1953, c. 17, s. 2; 1955, c. 867, s. 12; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1973, c. 108, s. 90; c. 1262, s. 10; 1993, c. 538, s. 50; 1994, Ex. Sess., c. 12, s. 2; c. 24, s. 14(b).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 12, ss. 1, 2 made identical amendments to this section in the coded bill drafting format provided by G.S. 120-20.1, by amending the version of this section appearing in the 1993 supplement and the version appearing in the 1987 replacement chapter.

CASE NOTES

File to Contain Names and Addresses of Sworn Officials. — The file must contain the name and address of the judge, the investigating officer, and the State's prosecutor. These sworn officials know more of the background of the case than the record discloses. Hence, these officers may be consulted on matters in addition to that which the record discloses. Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

Applied in State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969).

§ 148-60: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provided: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provided: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provided: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-60.1. Allowances for paroled prisoner and prisoner on post-release supervision.

Upon the release of any prisoner upon parole or post-release supervision, the superintendent or warden of the institution shall provide the prisoner with suitable clothing and, if needed, an amount of money sufficient to purchase transportation to the place within the State where the prisoner is to reside. The Post-Release Supervision and Parole Commission may, in its discretion, provide that the prisoner shall upon his release on parole or post-release supervision receive a sum of money of at least forty-five dollars ($45.00). (1953, c. 17, s. 8; 1973, c. 1262, s. 10; 1987 (Reg. Sess., 1988), c. 1086, s. 120(b); 1993, c. 538, s. 51; 1994, Ex. Sess., c. 24, s. 14(b).)

§§ 148-60.2 through 148-62: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provided: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provided: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provided: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-62.1. Entitlement of indigent parolee and post-release supervisee to counsel, in discretion of Post-Release Supervision and Parole Commission.

Any parolee or post-release supervisee who is an indigent under the terms of G.S. 7A-450(a) may be determined entitled, in the discretion of the Post-Release Supervision and Parole Commission, to the services of counsel at State expense at a parole revocation hearing at which either:

(1) The parolee or post-release supervisee claims not to have committed the alleged violation of the parole or post-release supervision conditions; or
(2) The parolee or post-release supervisee claims there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, even if the violation is a matter of public record or is uncontested, and that the reasons are complex or otherwise difficult to develop or present; or
(3) The parolee or post-release supervisee is incapable of speaking effectively for himself;

and where the Commission feels, on a case by case basis, that such appointment in accordance with either (1), (2) or (3) above is necessary for fundamental fairness.

If the parolee or post-release supervisee is determined to be indigent and entitled to services of counsel, counsel shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services. (1973, c. 1116, s. 2; 1993, c. 538, s. 52; 1994, Ex. Sess., c. 24, s. 14(b); 2000-144, s. 45.)

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B, G.S. 7A-498 et seq.

Legal Periodicals. — For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

§ 148-63. Arrest powers of police officers.

Any officer who is authorized to make arrests of fugitives from justice shall have full authority and power to arrest any parolee whose parole has been revoked or any post-release supervisee who has been revoked. (1935, c. 414, s. 13; 1993, c. 538, s. 53; 1994, Ex. Sess., c. 24, s. 14(b).)

§ 148-64. Cooperation of prison and parole officials and employees.

The officials and employees of the Department of Correction and the Post-Release Supervision and Parole Commission shall at all times cooperate with and furnish each other such information and assistance as will promote the purposes of this Chapter and the purposes for which these agencies were established. The Commission shall have free access to all prisoners. (1935, c. 414, s. 14; 1955, c. 867, s. 7; 1967, c. 996, ss. 11, 15; 1973, c. 1262, s. 10; 1993, c. 538, s. 54; 1994, Ex. Sess., c. 24, s. 14(b).)

CASE NOTES

Cited in Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

§ 148-64.1. Early conditional release of inmates subject to a removal order; revocation of release.

(a) Eligibility for Early Release. — Notwithstanding any other provision of law, the Post-Release Supervision and Parole Commission may conditionally release an inmate into the custody and control of United States Immigration and Customs Enforcement if all of the following requirements are satisfied:

(1) The Department of Correction has received a final order of removal for the inmate from United States Immigration and Customs Enforcement.

(2) The inmate was convicted of a nonviolent criminal offense and is incarcerated for that offense. If the inmate was convicted of and is incarcerated for more than one offense, then all of the offenses of which the inmate was convicted and is incarcerated must be nonviolent criminal offenses. As used in this subdivision, the term "nonviolent criminal offense" means a conviction for an impaired driving offense or a felony violation of any of the following:

  a. G.S. 14-54.
  b. G.S. 14-56.
  c. G.S. 14-71.1.
  d. G.S. 14-100, where the thing of value is less than one hundred thousand dollars ($100,000).
  e. G.S. 90-95(d)(4).

(3) The inmate has served at least half of the minimum sentence imposed by the court or, in the case of an inmate convicted of an impaired driving offense under G.S. 20-138.1, the inmate has met all of the parole eligibility requirements under G.S. 15A-1371, notwithstanding G.S. 20-179(p)(3).

(4) The inmate was not convicted of an impaired driving offense resulting in death or serious bodily injury, as that term is defined in G.S. 14-32.4.

(5) The inmate agrees not to reenter the United States unlawfully.

(b) Release Is Discretionary. — The decision to release an inmate once the requirements of subsection (a) of this section are satisfied is in the sole, unappealable discretion of the Post-Release Supervision and Parole Commission.

(c) Return of Inmates. — In the event that the United States Immigration and Customs Enforcement is unable to or does not deport the inmate, the inmate shall be returned to the custody of the Department of Correction to serve the remainder of the original sentence.

(d) Unlawful Reentry Constitutes Violation. — An inmate released pursuant to this section who returns unlawfully and willfully to the United States violates the conditions of the inmate's early release.

(e) Arrest Authority. — An inmate who violates the conditions of the inmate's early release is subject to arrest by a law enforcement officer.

(f) Effect of Violation. — Upon notification from any federal or state law enforcement agency that the inmate is in custody, and after notice and opportunity to be heard, the Post-Release Supervision and Parole Commission shall revoke the inmate's release and reimprison the inmate for a period equal to the inmate's maximum sentence minus time already served by the inmate upon a finding that an inmate has violated the conditions of the inmate's early release.

(g) Violators Ineligible for Future Release. — Upon revocation of release under this subsection, the inmate shall not be eligible for any future release under this section or for any other release from confinement, other than post-release supervision, until the remainder of the sentence of imprisonment is served. (2008-199, s. 3.)

Editor's Note. — Session Laws 2008-199, s. 4, made this section effective August 8, 2008.

Subsections (c), (d), (e), (f), and (g), were enacted by Session Laws 2008-199, s. 3 as subsections (b1), (c), (d), (e), and (f), respectively. They were redesignated at the direction of the Revisor of Statutes.

§ 148-65: Repealed by Session Laws 1955, c. 867, s. 13.

ARTICLE 4A.

Out-of-State Parolee Supervision.

§§ 148-65.1 through 148-65.3: Repealed by Session Laws 2002-166, s. 2, effective October 23, 2003.

ARTICLE 4B.

Interstate Compact for Adult Offender Supervision.

§ 148-65.4. Short title.

This Article may be cited as "The Interstate Compact for Adult Offender Supervision. (2002-166, s. 1; 2008-189, s. 1.)

Editor's Note. — Session Laws 2002-166, s. 3, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. The Department of Correction shall implement the provisions of this act with funds that are otherwise appropriated or available to the Department."

Session Laws 2008-189, s. 1, amended the article heading, which formerly read "Interstate Compact for the Supervision of Adult Offenders."

Effect of Amendments. — Session Laws 2008-189, s. 1, effective August 7, 2008, substituted "Adult Offender Supervision" for "the Supervision of Adult Offenders" in the article heading and text of section.

§ 148-65.5. Governor to execute compact; form of compact.

The Governor of North Carolina is authorized and directed to execute a compact on behalf of the State of North Çarolina with any state of the United States legally joining therein in the form substantially as follows:

Preamble.

Whereas: The Interstate Compact for the Supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states, and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements, and sex offender registration;

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;

Whereas: The General Assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety. The Governor is hereby authorized and directed to enter into a compact on behalf of the State of North Carolina with any state of the United States and other territorial possessions of the United States legally joining therein in the form substantially as follows;

Whereas: Upon the adoption of this Interstate Compact for Adult Offender Supervision, it is the intention of the General Assembly to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers one year after the effective date of this compact.

Article I.
Purpose.

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states:
  (1) To provide the framework for the promotion of public safety and to protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;
  (2) To provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and
  (3) To equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(c) In addition, this compact will:
  (1) Create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, which will promulgate rules to achieve the purpose of this compact;
  (2) Ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
  (3) Establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators;
  (4) Monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and
  (5) Coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provision of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of the public policies and are therefore public business.

Article II.
Definitions.

(a) As used in this compact, unless the context clearly requires a different construction:

(1) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(2) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct.

(3) "Compact Administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the state council under this compact.

(4) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(5) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(6) "Interstate Commission" means the Interstate Commission for Adult Offender Supervision established by this compact.

(7) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(8) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(9) "Offender" means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(10) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(11) "Rules" means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.

(12) "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

(13) "State council" means the resident member of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact.

Article III.
The Compact Commission.

(a) The compacting states hereby create the "Interstate Commission for Adult Offender Supervision". The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(d) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

(e) The Interstate Commission shall establish an executive committee that shall include commission officers, members, and others as shall be determined by the bylaws. The executive committee oversees the day-to-day activities managed by the executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws, and as directed by the Interstate Commission; and performs other duties as directed by the commission or set forth in the bylaws.

Article IV.
The State Council.

(a) Each member state shall create a State Council for Interstate Adult Offender Supervision that shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the Compact Administrator, who shall be appointed by the state council or by the Governor in consultation with the legislature and the judiciary. In addition to appointment of its own commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including, but not limited to, development of policy operations and procedures of the compact within that state.

Article V.
Powers and Duties of the Interstate Commission.

The Interstate Commission shall have the following powers:

(1) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission.

(2) To promulgate rules that shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.
(3) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission.
(4) To enforce compliance with compact provisions, Interstate Commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.
(5) To establish and maintain offices.
(6) To purchase and maintain insurance and bonds.
(7) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs.
(8) To establish and appoint committees and hire staff when it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.
(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.
(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.
(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.
(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.
(13) To establish a budget and make expenditures and levy dues as provided in Article X of this compact.
(14) To sue or be sued.
(15) To provide for dispute resolution among compacting states.
(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.
(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.
(18) To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity.
(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

Article VI.

Organization and Operation of the Interstate Commission.

(a) Bylaws. — The Interstate Commission shall, by a majority of the members, within 12 months of the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee and such other committees as may be necessary and providing reasonable standards and procedures:

a. For the establishment of committees, and

b. Governing any general or specific delegation of any authority or function of the Interstate Commission;

(3) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the Interstate Commission;

(6) Providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start- up" administration of the compact; and

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and Staff. — The Interstate Commission shall, by a majority of the members, elect from among its members a chair and a vice-chair, each of whom shall have such authorities and duties as may be specified in the bylaws. The chair or, in the chair's absence or disability, the vice-chair shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

(c) Corporate Records of the Interstate Commission. — The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

(d) Qualified Immunity, Defense, and Indemnification. — The members, officers, executive director, and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

The Interstate Commission shall defend the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Article VII.

Activities of the Interstate Commission.

(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the Interstate Commission shall have the right and power to cast a vote to which the compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act", U.S.C. § 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;
(2) Disclose matters specifically exempted from disclosure by statute;
(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;
(4) Involve accusing any person of a crime or formally censuring any person;
(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
(6) Disclose investigatory records compiled for law enforcement purposes;
(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;
(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; and
(9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any recall vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

Article VIII.

Rule-making Functions of the Interstate Commission.

(a) The Interstate Commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551, et seq., and the Federal Advisory Committee Act, 5 U.S.C. § 1, et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the Interstate Commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule that is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rule- making record. Not later than 60 days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principle office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rule-making record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within 12 months after the first meeting must, at a minimum, include:

a. Notice to victims and opportunity to be heard;
b. Offender registration and compliance;
c. Violations/returns;
d. Transfer procedures and forms;
e. Eligibility for transfer;
f. Collection of restitution and fees from offenders;
g. Data collection and reporting;
h. The level of supervision to be provided by the receiving state;
i. Transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and
j. Mediation, arbitration, and dispute resolution.

(e) The existing rules governing the operation of the previous compact superceded by this Act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(f) Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

Article IX.
Oversight, Enforcement, and Dispute Resolution by the Interstate Commission.

(a) Oversight. — The Interstate Commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states that may significantly affect compacting states.

The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute Resolution. — The compacting states shall report to the Interstate Commission on issues or activities of concern to them and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The Interstate Commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) Enforcement. — The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any and all means set forth in Article XII, subsection (b) of this compact.

Article X.
Finance.

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment for each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff that must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article XI.
Compacting State, Effective Date, and Amendment.

(a) Any state, as defined in article ii of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2002, or upon enactment into law by the 35th jurisdiction. Therefore, it shall become effective and binding as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in Interstate Commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XII.
Withdrawal, Default, Termination, and Judicial Enforcement.

(a) Withdrawal. — Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

The effective date of withdrawal is the effective date of the repeal.

The withdrawing state shall immediately notify the Chair of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state's reenacting the compact or upon such later date as determined by the Interstate Commission.

(b) Default. — If the Interstate Commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(1) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

(2) Remedial training and technical assistance as directed by the Interstate Commission;

(3) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the Governor; the Chief Justice or Chief Judicial Officer of the state; the Majority and Minority Leaders of the defaulting state's legislature; and the state council.

The grounds of default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission bylaws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the Governor; the Chief Justice or Chief Judicial Officer of the state; the Majority and Minority Leaders of the defaulting state's legislature; and the state council of such termination.

The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial Enforcement. — The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(d) Dissolution of Compact. — The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up, and any surplus funds shall be distributed in accordance with the bylaws.

Article XIII.
Severability and Construction.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provision of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

Article XIV.
Binding Effect of Compact and Other Laws.

(a) Other Laws. — Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact. — All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective. (2002-166, s. 1; 2008-189, s. 1.)

Effect of Amendments. — Session Laws 2008-189, s. 1, effective August 7, 2008, substituted "Adult Offender Supervision" for "the Supervision of Adult Offenders" in the sixth paragraph of the "Preamble."

§ 148-65.6. Implementation of the compact.

(a) The North Carolina State Council for Interstate Adult Offender Supervision shall be established, consisting of 14 members. North Carolina's Commissioner to the Interstate Compact Commission is a member of the State Council and serves as chair of the State Council. The remaining members of the State Council shall consist of the following:

(1) One member representing the executive branch, to be appointed by the Governor;
(2) One member from a victim's assistance group, to be appointed by the Governor;
(3) One at-large member, to be appointed by the Governor;
(4) One member of the Senate, to be appointed by the President Pro Tempore of the Senate;
(5) One member of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

(6) A superior court judge, to be appointed by the Chief Justice of the Supreme Court;
(6a) A district court judge, to be appointed by the Chief Justice of the Supreme Court;
(7) Four members representing the Division of Community Corrections, to be appointed by the Director of the Division of Community Corrections;
(8) A district attorney, to be appointed by the Governor; and
(9) A sheriff, to be appointed by the Governor.

(a1) The Governor, in consultation with the legislature and judiciary, shall appoint the Compact Administrator. The Compact Administrator shall be appointed by the State Council as North Carolina's Commissioner to the Interstate Compact Commission.

(b) The State Council shall meet at least twice a year and may also hold special meetings at the call of the chairperson. All terms are for three years.

(c) The State Council may advise the Compact Administrator on participation in the Interstate Commission activities and administration of the compact.

(d) The members of the State Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses in accordance with the policies of the Office of State Budget and Management.

(e) The State Council shall act in an advisory capacity to the Secretary of Correction concerning this State's participation in Interstate Commission activities and other duties as may be determined by each member state, including recommendations for policy concerning the operations and procedures of the compact within this State.

(f) The Governor shall by executive order provide for any other matters necessary for implementation of the compact at the time that it becomes effective, and, except as otherwise provided for in this section, the State Council may promulgate rules or regulations necessary to implement and administer the compact. (2002-166, s. 1; 2008-189, s. 1.)

Effect of Amendments. — Session Laws 2008-189, s. 1, effective August 7, 2008, in subsection (a), substituted "14" for "11" in the first sentence, rewrote the second sentence; added subdivisions (a)(6a), (a)(8) and (a)(9); and added subsection (a1).

§ 148-65.7. Fees.

(a) Persons convicted in this State who make a request for transfer to another state pursuant to the compact shall pay a transfer application of one hundred fifty dollars ($150.00) for each transfer application submitted. The transfer application fee shall be paid to the Compact Commissioner upon submission of the transfer application. The Commissioner or the Commissioner's designee may waive the application fee if either the Commissioner or the Commissioner's designee finds that payment of the fee will constitute an undue economic burden on the offender.

All fees collected pursuant to this section shall be deposited in the Interstate Compact Fund and shall be used only to support administration of the Interstate Compact.

The Interstate Compact Fund is established within the Department of Correction as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert, and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Department of Correction pursuant to this subsection shall be remitted to the State Treasurer to be deposited and held in this Fund. Moneys in the Fund shall be used to supplement funds otherwise available to the Department of Correction for the administration of the Interstate Compact.

(b) Persons supervised in this State pursuant to this compact shall pay the supervision fee specified in G.S. 15A-1374(c). The fee shall be paid to the clerk of court in the county in which the person initially receives supervision services in this State. The Commissioner or the Commissioner's designee may waive the fee if either the Commissioner or the Commissioner's designee finds that payment of the fee will constitute an undue economic burden on the offender. (2002-166, s. 1; 2008-189, s. 1.)

Effect of Amendments. — Session Laws 2008-189, s. 1, effective August 7, 2008, substituted "Fees" for "Supervision fee" in the section heading; added subsection (a); designated the previously existing provisions as subsection (b), and added the third sentence in present subsection (b).

§ 148-65.8. Interstate parole and probation hearing procedures.

(a) Where supervision of an offender is being administered pursuant to the Interstate Compact for Adult Offender Supervision, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole, probation, or post-release supervision violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the offender. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the offender involved for a period not to exceed 15 days prior to the hearing. The offender shall not be entitled to bail pending the hearing.

(b) Any hearing pursuant to this section may be before the Administrator of the Interstate Compact for Adult Offender Supervision, a deputy of the Administrator, any other person appointed by the Administrator, or any person authorized pursuant to the laws of this State to hear cases of alleged parole, probation, or post-release supervision violation, except that no hearing officer shall be the person making the allegation of violation.

(c) With respect to any hearing pursuant to this section, the offender:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that the offender has committed a violation that may lead to a revocation of parole, probation, or post-release supervision.

(2) Shall be permitted to advise with any persons whose assistance the offender reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against the offender, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of the offender's contentions.

(c1) A record of the hearing shall be made and preserved. As soon as practicable following termination of any hearing conducted pursuant to this section or the waiver of such hearing, the appropriate officer or officers of this State shall report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the offender by the sending state. If the hearing recommendation is to retake or reincarcerate the offender, the hearing officer or officers may detain the offender until notice is received from the sending state. If the sending state provides notice that it intends to retake or reincarcerate the offender, the offender shall remain in custody for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(d) In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact for Adult Offender Supervision, any appropriate judicial or administrative officer or agency in another state may hold a hearing on the alleged violation. Upon receipt of the record of a parole, probation, or post-release supervision violation hearing held in another state pursuant to a statute substantially similar to this section, that record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter. (2002-166, s. 1; 2008-189, s. 1.)

Effect of Amendments. — Session Laws 2008-189, s. 1, effective August 7, 2008, substituted "Adult Offender Supervision" for "the Supervision of Adult Offenders" throughout; in subsection (a), deleted the former third sentence relating to reporting to the sending state, deleted the end of the former fourth sentence related to the period necessary to arrange for retaking or reincarceration, added the last sentence; in subdivision (c)(4), deleted the last sentence relating to preserving a record of the proceedings; and added subsection (c1).

§ 148-65.9. North Carolina sentence to be served in another jurisdiction.

The Post-Release Supervision and Parole Commission, with the concurrence of the Secretary of Correction, may direct that the balance of any sentence imposed by the courts of this State shall be served concurrently with a sentence or sentences in another state or federal institution and may effect a transfer of custody of such individual to the other jurisdiction for such purpose. In the event the individual's sentence liability in the other jurisdiction terminates prior to the expiration of the individual's North Carolina sentence, the individual shall be either paroled (if eligible) or returned to the prison department of this State, in the discretion of the Post-Release Supervision and Parole Commission. (2002-166, s. 1.)

Editor's Note. — This section was not amended in the revision of this Article by Session Laws 2008-189, s. 1.

Article 5.

Farming Out Convicts.

§ 148-66. Cities and towns and Department of Agriculture and Consumer Services may contract for prison labor.

The corporate authorities of any city or town may contract in writing with the State Department of Correction for the employment of convicts upon the highways or streets of such city or town, and such contracts when so exercised shall be valid and enforceable against such city or town, and the Attorney General may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement.

The Department of Agriculture and Consumer Services is hereby authorized and empowered to contract, in writing, with the State Department of Correction for the employment and use of convicts under its supervision to be worked on the State test farms and/or State experimental stations. (1881, c. 127, s. 1; Code, s. 3449; Rev., s. 5410; C.S., s. 7758; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 1; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1985, c. 226, s. 10(1); 1997-261, s. 106.)

Legal Periodicals. — For comment on the 1943 amendment, see 21 N.C.L. Rev. 333 (1943).

CASE NOTES

Cited in Watson v. City of Durham, 207 N.C. 624, 178 S.E. 218 (1935).

§ 148-67. Hiring to cities and towns and State Department of Agriculture and Consumer Services.

The State Department of Correction shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in G.S. 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the Department; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the Department.

Upon application to it, it shall be the duty of the State Department of Correction, in its discretion, to hire to the Department of Agriculture and Consumer Services for the purposes of working on the State test farms and/or State experimental stations, such convicts as may be mentally and physically capable of performing the work or labor contemplated; but the convicts so hired for services under this paragraph shall be fed, clothed and quartered while so employed by the State Department of Correction. (1881, c. 127, s. 2; Code, s. 3450; Rev., s. 5411; C.S., s. 7759; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 2; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1985, c. 226, s. 10(2); 1997-261, s. 107.)

§ 148-68. Payment of contract price; interest; enforcement of contracts.

The corporate authorities of any city or town so hiring convicts shall pay into the treasury of the State for the labor of any convict so hired such sum or sums of money at such time or times as may be agreed upon in the contract of hire; and if any such city or town fails to pay the State money due for such hiring, the same shall bear interest from the time it is due until paid at the rate of six percent (6%) per annum; and an action to recover the same may be instituted by the Attorney General in the name of the State in the courts of Wake County. (1881, c. 127, s. 3; Code, s. 3451; Rev., s. 5412; C.S., s. 7760; 1925, c. 163; 1931, c. 145, s. 35.)

§ 148-69. Agents; levy of taxes; payment of costs and expenses.

The corporate authorities of any city or town so hiring convicts may appoint and remove at will all such necessary agents to superintend the construction or improvement of such highways and streets as they may deem proper, or to pay the costs and expenses incident to such hiring may levy taxes and raise money as in other respects. (1881, c. 127, s. 4; Code, s. 3452; Rev., s. 5413; C. S., s. 7761; 1925, c. 163; 1931, c. 145, s. 35.)

§ 148-70. Management and care of inmates.

The State Department of Correction in all contracts for labor shall provide for feeding and clothing the inmates and shall maintain, control and guard the quarters in which the inmates live during the time of the contracts; and the Department shall provide for the guarding and working of such inmates under its sole supervision and control. The Department may make such contracts for the hire of the inmates confined in the State prison as may in its discretion be proper. (1917, c. 286, s. 2; 1919, c. 80, s. 1; C.S., s. 7762; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1959, c. 170, s. 2; 1967, c. 996, s. 13; 1975, c. 730, s. 1; 1983, c. 717, s. 14; 1985, c. 118; c. 226, s. 11; 1991 (Reg. Sess., 1992), c. 902, s. 2; 2007-280, s. 4.)

ARTICLE 5A.

Prison Labor for Farm Work.

§§ 148-70.1 through 148-70.7: Repealed by Session Laws 1957, c. 349, s. 11.

ARTICLE 6.

Reformatory.

§§ 148-71 through 148-73: Repealed by Session Laws 1947, c. 262, s. 3.

ARTICLE 7.

Records, Statistics, Research and Planning.

§ 148-74. Records Section.

Case records and related materials compiled for the use of the Secretary of Correction and the Parole Commission shall be maintained in a single central file system designed to minimize duplication and maximize effective use of such records and materials. When an individual is committed to the State prison system after a period on probation, the probation files on that individual shall be made a part of the combined files used by the Department of Correction and the Parole Commission. The administration of the Records Section shall be under the control and direction of the Secretary of Correction. (1925, c. 228, s. 1; 1953, c. 55, ss. 2, 4; 1967, c. 996, s. 12; 1973, c. 1262, s. 10; 1985, c. 226, s. 12.)

CASE NOTES

Access to Prison Records Limited to Named Parties. — Prison records are confidential and only named parties have access to them. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972); Paine v. Baker, 595 F.2d 197 (4th Cir. 1979), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

Prison Records Not Subject to Inspection by Public or Inmates. — Prison records are confidential and are not subject to inspection by the public or by the inmate involved. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972); Paine v. Baker, 595 F.2d 197 (4th Cir. 1979), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

A State prisoner does not have a constitutional right of access to his prison file. Paine v. Baker, 595 F.2d 197 (4th Cir. 1979), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

However, in certain limited circumstances a claim of constitutional magnitude is raised where a prisoner alleges (1) that information is in his file, (2) that the information is false, and (3) that it is relied on to a constitutionally significant degree. But see Shabazz v. Keating, 1999 OK 26, 977 P.2d 1089 (1999), questioning the present day viability of this opinion in light of later 4th circuit jurisprudence. Paine v. Baker, 595 F.2d 197 (4th Cir. 1979), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

Cited in Chapman v. State, 4 N.C. App. 438, 166 S.E.2d 873 (1969).

§ 148-75: Repealed by Session Laws 1963, c. 1174, s. 5.

§ 148-76. Duties of Records Section.

The Records Section shall maintain the combined case records and receive and collect fingerprints, photographs, and other information to assist in locating, identifying, and keeping records of criminals. The information collected shall be classified, compared, and made available to law-enforcement agencies, courts, correctional agencies, or other officials requiring criminal identification, crime statistics, and other information respecting crimes and criminals. (1925, c. 228, s. 3; 1953, c. 55, s. 4; 1967, c. 996, s. 12.)

CASE NOTES

Access to Prison Records Limited to Named Parties. — Prison records are confidential and only named parties have access to them. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972); Paine v. Baker, 595 F.2d 197 (4th Cir. 1979), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

Prison Records Not Subject to Inspection by Public or Inmates. — Prison records are confidential and are not subject to inspection by the public or by the inmate involved. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972); Paine v. Baker, 595 F.2d 197 (4th Cir. 1979), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

However, in certain limited circumstances a claim of constitutional magnitude is raised where a prisoner alleges (1) that information is in his file, (2) that the information is false, and (3) that it is relied on to a constitutionally significant degree. But see Shabazz v. Keating, 1999 OK 26, 977 P.2d 1089 (1999), questioning the present day viability of this opinion in light of later 4th circuit jurisprudence. Paine v. Baker, 595 F.2d 197 (4th Cir. 1979), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

Illustrative Cases. — Defendant was not prejudiced by the State's subpoenaing and obtaining, pursuant to this section, all of his confidential prison records and disclosing those records during cross-examination of witnesses. State v. Cummings, 352 N.C. 600, 536 S.E.2d 36, 2000 N.C. LEXIS 753 (2000), cert denied, 532 U.S. 997, 121 S. Ct. 1660, 149 L. Ed. 2d 641 (2001).

§ 148-77. Statistics, research, and planning.

In order to facilitate regular improvement in the structure, administration, and programs of the Department of Correction, there shall be established within the Department organizational units responsible for statistics, research, and planning. The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs to compile and analyze statistics and to conduct research in criminology and correction. (1925, c. 228, s. 4; 1967, c. 996, s. 12.)

§ 148-78. Reports.

The Secretary of Correction may prepare and release reports on the work of the Department of Correction, including statistics and other data, accounts of research, and recommendations for legislation. (1925, c. 228, s. 5; 1953, c. 55, s. 4; 1967, c. 996, s. 12; 1973, c. 1262, s. 10.)

§ 148-79: Repealed by Session Laws 1965, c. 1049, s. 2.

Cross References. — For present provisions relating to the duty of the State Bureau of Investigation to provide criminal information, see G.S. 114-19.

§ 148-80. Seal of Records Section; certification of records.

A seal shall be provided to be affixed to any paper, record, copy or form or true copy of any of the same in the files or records of the Records Section, and when so certified under seal by the duly appointed custodian, such record or copy shall be admitted as evidence in any court of the State. (1925, c. 228, s. 7; 1953, c. 55, s. 4; 1967, c. 996, s. 12.)

§ 148-81: Repealed by Session Laws 1965, c. 1049, s. 2.

ARTICLE 8.

Compensation to Persons Erroneously Convicted of Felonies.

§ 148-82. Provision for compensation.

Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be granted a pardon of innocence by the Governor upon the grounds that the crime with which the person was charged either was not committed at all or was not committed by that person, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the granting of the pardon. (1947, c. 465, s. 1; 1997-388, s. 1.)

Legal Periodicals. — For brief comment on this Article, see 25 N.C.L. Rev. 403 (1947).

§ 148-83. Form, requisites and contents of petition; nature of hearing.

Such petition shall be addressed to the Industrial Commission, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the Industrial Commission shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor. (1947, c. 465, s. 2; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10; 1997-388, s. 2.)

§ 148-84. Evidence; action by Industrial Commission; payment and amount of compensation.

(a) At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that the claimant received a pardon of innocence for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall award to the claimant an amount equal to fifty thousand dollars ($50,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, including any time spent awaiting trial. However, (i) in no event shall the compensation, including the compensation provided in subsection (c) of this section, exceed a total amount of seven hundred fifty thousand dollars ($750,000), and (ii) a claimant is not entitled to compensation for any portion of a prison sentence during which the claimant was also serving a concurrent sentence for conviction of a crime other than the one for which the pardon of innocence was granted.

The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall give written notice of its decision to all parties concerned.. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes.

(b) Reserved.

(c) In addition to the compensation provided under subsection (a) of this section, the Industrial Commission shall determine the extent to which incarceration has deprived a claimant of educational or training opportunities and, based upon those findings, may award the following compensation for loss of life opportunities:

(1) Job skills training for at least one year through an appropriate State program; and

(2) Expenses for tuition and fees at any public North Carolina community college or constituent institution of The University of North Carolina for any degree or program of the claimant's choice that is available from one or more of the applicable institutions. Claimants are also entitled to assistance in meeting any admission standards or criteria required at any of those institutions, including assistance in satisfying requirements for a certificate of equivalency of completion of secondary education. A claimant may apply for aid under this subdivision within 10 years of the claimant's release from incarceration, and aid shall continue for up to a total of five years when initiated within the 10-year period, provided the claimant makes satisfactory progress in the courses or degree program in which the claimant is enrolled. (1947, c. 465, s. 3; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10; 1997-388, s. 3; 2001-424, s. 25.12(a); 2008-173, ss. 1, 2; 2009-570, s. 24.)

Editor's Note. — This section, as amended, does not contain a subsection (b). Subsection (b) of this section has been so designated and set out as "Reserved" at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-173, ss. 1 and 2, effective August 4, 2008, and applicable to any person granted a pardon of innocence by the Governor on or after January 1, 2004, designated the previously existing provisions as subsection (a); in subsection (a), substituted "fifty thousand dollars ($50,000)" for "twenty thousand dollars ($20,000)," added the clause (i) designator and made related changes, in clause (i), inserted "including the compensation provided in subsections (b) and (c) of this section" and substituted "seven hundred fifty thousand dollars ($750,000)" for "five hundred thousand dollars ($500,000)", and added clause (ii); and added subsection (c).

Session Laws 2009-570, s. 24, effective August 28, 2009, substituted "subsection (c) of this section" for "subsections (b) and (c) of this section" in the last sentence of the first paragraph of subsection (a); and substituted "subsection (a) of this section" for "subsections (a) and (b) of this section" in the introductory language of subsection (c).

ARTICLE 9.

Prison Advisory Council.

§§ 148-85 through 148-88: Repealed by Session Laws 1957, c. 349, s. 11.

ARTICLE 10.

Interstate Agreement on Detainers.

§§ 148-89 through 148-95: Transferred to §§ 15A-761 to 15A-767 by Session Laws 1973, c. 1286, s. 22, as amended by Session Laws 1975, c. 573.

§§ 148-96 through 148-100: Reserved for future codification purposes.

ARTICLE 11.

Inmate Grievance Commission.

§§ 148-101 through 148-118: Repealed by Session Laws 1987, c. 746, s. 1.

Cross References. — As to corrections administrative remedy procedure, see now G.S. 148-118.1 et seq.

ARTICLE 11A.

Corrections Administrative Remedy Procedure.

§ 148-118.1. Authority.

The Department of Correction shall adopt an Administrative Remedy Procedure in compliance with 42 U.S.C. 1997, the "Civil Rights of Institutionalized Persons Act". The Administrative Remedy Procedure and any amendments or changes thereto shall be adopted only after prior consultation with the Grievance Resolution Board. (1987, c. 746, s. 2.)

§ 148-118.2. Effect.

(a) Upon approval of the Administrative Remedy Procedure by a federal court as authorized and required by 42 U.S.C. 1997(e)(a), and the implementation of the procedure, this procedure shall constitute the administrative remedies available to a prisoner for the purpose of preserving any cause of action under the purview of the Administrative Remedy Procedure, which a prisoner may claim to have against the State of North Carolina, the Department of Correction, or its employees.

(b) No State court shall entertain a prisoner's grievance or complaint which falls under the purview of the Administrative Remedy Procedure unless and until the prisoner shall have exhausted the remedies as provided in said procedure. If the prisoner has failed to pursue administrative remedies through this procedure, any petition or complaint he files shall be stayed for 90 days to allow the prisoner to file a grievance and for completion of the procedure. If at the end of 90 days the prisoner has failed to timely file his grievance, then the petition or complaint shall be dismissed. Provided, however, that the court can waive the exhaustion requirement if it finds such waiver to be in the interest of justice. (1987, c. 746, s. 2.)

§ 148-118.3. Publication of procedure.

The Administrative Remedy Procedure shall be published in the North Carolina Register. (1987, c. 746, s. 2.)

§ 148-118.4. Definitions.

For purposes of this Article, "prisoner" shall refer to all prisoners in the physical custody of the Department of Correction. (1987, c. 746, s. 2.)

§ 148-118.5. Records confidentiality.

All reports, investigations, and like supporting documents prepared by the Department for purposes of responding to the prisoner's request for an administrative remedy shall be deemed to be confidential. All formal written responses to the prisoner's request shall be furnished to the prisoner as a matter of course as required by the procedure. The Grievance Resolution Board shall have access to all relevant records developed by the Department of Correction. (1987, c. 746, s. 2.)

§ 148-118.6. Grievance Resolution Board.

The Grievance Resolution Board is established as a separate agency within the Department of Correction. It shall consist of five members appointed by the Governor to serve four-year terms. Of the members so appointed, three shall be attorneys selected from a list of 10 persons recommended by the Council of the North Carolina State Bar. The remaining two members shall be persons of knowledge and experience in one or more fields under the jurisdiction of the Secretary of Correction. In the event a vacancy occurs on the Board prior to the expiration of a member's term, the Governor shall appoint a new Board member to serve the unexpired term. If the vacancy occurs in one of the positions designated for an attorney, the Governor shall select another attorney from a list of five persons recommended by the Council of the North Carolina State Bar. The Board shall perform those functions assigned to it by the Governor and shall review the grievance procedure. The Grievance Resolution Board shall meet not less then quarterly to review summaries of grievances. All members of the Inmate Grievance Commission, appointed by the Governor pursuant to G.S. 148-101, may complete their terms as members of the Board. Each member of the Board shall receive per diem and travel expenses as authorized for members of State commissions and boards under G.S. 138-5. (1987, c. 746, s. 2.)

Editor's Note. — Section 148-101, referred to in the next to the last sentence, was repealed by Session Laws 1987, c. 746, s. 1.

§ 148-118.7. Removal of members.

The Governor may remove any member of the Grievance Resolution Board for one or more of the following reasons:

(1) Conviction of a crime involving moral turpitude or of any criminal offense the effect of which is to prevent or interfere with the performance of Board duties.
(2) Failure to regularly attend meetings of the Board.
(3) Failure to carry out duties assigned by the Board or its chairman.
(4) Acceptance of another office or the conduct of other business conflicting with or tending to conflict with the performance of Board duties.
(5) Any other ground that, under law, necessitates or justifies the removal of a State employee. (1987, c. 746, s. 2.)

§ 148-118.8. Appointment, salary, and authority of Executive Director and inmate grievance examiners.

(a) The Grievance Resolution Board shall appoint an Executive Director and grievance examiners after consultation with the Secretary of Correction. The Executive Director shall manage the staff and perform such other functions as are assigned to him by the Grievance Resolution Board. The Executive Director and the grievance examiners shall serve at the pleasure of the Grievance Resolution Board. However, if a grievance examiner is removed from his position for other than just cause, he shall have priority for any position that becomes available for which he is qualified according to rules regulating and defining priority as promulgated by the State Personnel Commission. The grievance examiners shall be subject to Article 2 of Chapter 126 of the North Carolina General Statutes for purposes of salary and leave. Support staff, equipment, and facilities for the Board shall be provided by the Department of Correction.

(b) The inmate grievance examiners shall investigate inmate grievances pursuant to the procedures established by the Administrative Remedy Procedure. Examiners shall attempt to resolve grievances through mediation with all parties. Otherwise, the inmate grievance examiners shall either (i) order such relief as is appropriate; or (ii) deny the grievance. The decision of the grievance examiner shall be binding, unless the Secretary of Correction (i) finds that such relief is not appropriate, (ii) gives a written explanation for this finding, and (iii) makes an alternative order of relief or denies the grievance. (1987, c. 746, s. 2.)

§ 148-118.9. Investigatory power of the Grievance Resolution Board.

The Secretary of Correction may request that the Grievance Resolution Board investigate matters involving broad policy concerns. The Grievance Resolution Board may convene a fact-finding hearing to consider the issues presented for investigation. A record of testimony presented at such hearing shall be maintained by the Board. The Board shall report the findings of its investigation to the Secretary within a reasonable time. In no event shall such a request on the part of the Secretary result in a delay of the resolution of an inmate's grievance beyond the 90 day period. (1987, c. 746, s. 2.)

ARTICLE 12.

Interstate Corrections Compact.

§ 148-119. Short title.

This Article shall be known and may be cited as the Interstate Corrections Compact. (1979, c. 623.)

§ 148-120. Governor to execute; form of compact.

The Governor of North Carolina is hereby authorized and requested to execute, on behalf of the State of North Carolina, with any other state or states legally joining therein a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

(1) The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, and with the federal government, thereby serving the best interest of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

(2) As used in this compact, unless the context clearly requires otherwise:

a. "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

b. "Sending state" means a state party to this compact in which conviction or court commitment was had.

c. "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

d. "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

e. "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in (2)d. above may lawfully be confined.

(3)a. Each party state may make one or more contracts with any one or more of the other party states, or with the federal government, for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration;
2. Payments to be made to the receiving state or to the federal government, by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;
4. Delivery and retaking of inmates;
5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

b. The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto and nothing in any such contract shall be inconsistent therewith.

(4)a. Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, Subsection (1) [paragraph a. of subdivision (3)] shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

b. The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

c. Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state, provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III, Subsection (1) [paragraph a. of subdivision (3)].

d. Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

e. All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

f. Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record, together with any recommendations of the hearing officials, shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

g. Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

h. Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

i. The parents, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

(5)a. Any decision of the sending state in respect to any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

b. An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

(6) Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may

be affected by this compact or any contract pursuant hereto; and any inmate in a receiving state pursuant to this compact may participate in any such federally-aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

(7) This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

(8) This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate official of all other party states. An actual withdrawal shall not take effect until one year after the notice provided in said statute has been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

(10) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1979, c. 623.)

§ 148-121. Proceedings to be open; all documents public records; exception.

(a) Except as provided in subsection (c) of this section, at least 30 days before a transfer of a North Carolina inmate to another state system pursuant to this Article is approved, the Secretary of Correction shall give notice that the transfer is being considered. The Secretary shall give notice of the proposed transfer by:

(1) Notifying the district attorney of the district where the prisoner was convicted, the judge who presided at the prisoner's trial, the law-enforcement agency that arrested the prisoner, and the victim of the prisoner's crime;

(2) Posting notice at the courthouse in the county in which the prisoner was convicted; and

(3) Notifying any other person who has made a written request to receive notice of a transfer of the prisoner.

(b) Except as provided in subsection (c) of this section, all written comments regarding a transfer are public records under General Statutes Chapter 132.

(c) If, in the discretion of the Secretary, such notice or disclosure requirements provided for in this section would jeopardize the safety of persons or property, the provisions of this section do not apply. (1983, c. 874, s. 1.)

ARTICLE 13.

Transfer of Convicted Foreign Citizens Under Federal Treaty.

§ 148-122. Transfer of convicted foreign citizens under treaty; consent by Governor.

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which the offenders are citizens or nationals, the Governor may, on behalf of the State and subject to the terms of the treaty, authorize the Secretary of Correction to consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of the State in the treaty. (2002-166, s. 4.)

Editor's Note. — Session Laws 2002-166, s. 3, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. The Department of Correction shall implement the provisions of this act with funds that are otherwise appropriated or available to the Department."

§§ 148-123 through 148-127: Reserved for future codification purposes.

ARTICLE 14.

Correction Enterprises.

§ 148-128. Authorization for Correction Enterprises.

The Division of Correction Enterprises is established as a division of the Department of Correction. The Division of Correction Enterprises may develop and operate industrial, agricultural, and service enterprises that employ incarcerated offenders in an effort to provide them with meaningful work experiences and rehabilitative opportunities that will increase their employability upon release from prison. Enterprises operated under this Article shall be known as "Correction Enterprises." (2007-280, s. 1.)

Editor's Note. — The sections in this Article were renumbered at the direction of the Revisor of Statutes, the numbers in Session Laws 2007-280, s. 1, having been G.S. 148-123 through 148-129.

Session Laws 2007-280, s. 6, made this article effective August 1, 2007.

§ 148-129. Purposes of Correction Enterprises.

Correction Enterprises shall serve all of the following purposes to:

(1) Provide incarcerated offenders a work and training environment that emulates private industry.

(2) Provide incarcerated offenders with training opportunities that allow them to increase work skills and employability upon release from prison.
(3) Provide quality goods and services.
(4) Aid victims by contributing a portion of its proceeds to the Crime Victims Compensation Fund.
(5) Generate sufficient funds from the sale of goods and services to be a self-supporting operation. (2007-280, s. 1.)

§ 148-130. Correction Enterprises Fund.

(a) All revenues from the sale of articles and commodities manufactured or produced by Correction Enterprises shall be deposited with the State Treasurer to be kept and maintained as a special revolving working-capital fund designated "Correction Enterprises Fund."

(b) Revenue in the Correction Enterprises Fund shall be applied first to capital and operating expenditures, including salaries and wages of personnel necessary to develop and operate Correction Enterprises and incentive wages for inmates employed by Correction Enterprises or participating in work assignments established by the Division of Prisons. Of the remaining revenue in the Fund, five percent (5%) of the net proceeds, before expansion costs, shall be credited to the Crime Victims Compensation Fund established in G.S. 15B-23 as soon as practicable after net proceeds have been determined for the previous year. At the direction of the Governor, the remainder shall be used for other purposes within the State prison system or shall be transferred to the General Fund.

(c) The Correction Enterprises Fund shall be the source of all incentive wages and allowances paid to inmates employed by Correction Enterprises and inmates participating in work assignments established by the Division of Prisons. (2007-280, s. 1.)

§ 148-131. Powers and responsibilities.

In order to fulfill the purposes set forth in G.S. 148-129, the Division of Correction Enterprises is authorized and empowered to take all actions necessary in the operation of its enterprises, including any of the following actions to:

(1) Develop and operate industrial, agricultural, and service enterprises either within prison facilities or outside the prison facilities.
(2) Plan and establish new industrial, agricultural, and service enterprises so long as any new enterprise is specifically approved by the Governor as required by G.S. 66-58(f).
(3) Employ inmates and any other personnel that may be necessary in the operation of Correction Enterprises.
(4) Expand, diminish, or discontinue any enterprise operating under its authority.
(5) Purchase any machinery, equipment, materials, and supplies required in the operation of its enterprises.
(6) Market and sell the goods and services produced by Correction Enterprises.
(7) Determine the prices at which products and services produced by inmate labor shall be sold.
(8) Execute and enter into contracts.
(9) Establish and operate an enterprise that complies with all applicable federal laws and guidelines required by the federal Prison Industry Enhancement Certification Program (Justice Assistance Act of 1984: Public Law 98-473, Section 819).

(10) Establish policies and procedures regarding the operation of Correction Enterprises.

(11) Take any action necessary and appropriate for the effective operation of its enterprises, so long as that action complies with applicable State and federal laws. (2007-280, s. 1.)

§ 148-132. Distribution of products and services.

The Division of Correction Enterprises is empowered and authorized to market and sell products and services produced by Correction Enterprises to any of the following entities:

(1) Any public agency or institution owned, managed, or controlled by the State.

(2) Any county, city, or town in this State.

(3) Any federal, state, or local public agency or institution in any other state of the union.

(4) An entity or organization that has tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code and also receives local, state, or federal grant funding.

(5) **(Effective until July 1, 2012)** Any current employee or retiree of the State of North Carolina or of a unit of local government of this State, verified through State-issued identification, or through proof of retirement status, but purchases by a State or local governmental employee or retiree may not exceed two thousand five hundred dollars ($2,500) during any calendar year. Products purchased by State and local governmental employees and retirees under this section may not be resold.

(5) **(Effective July 1, 2012)** or retiree or of a unit of local government of this State, or through proof of retirement status by a State or local governmental employee or retiree

Products purchased by State and local governmental employees and retirees under this section may not be resold. (2007-280, s. 1; 2009-451, s. 19.16.)

Subdivision (5) Set Out Twice. — The first version of subdivision (5) set out above is effective until July 1, 2012. The second version of subdivision (5) set out above is effective July 1, 2012.

Editor's Note. — This section was amended by Session Laws 2009-451, s. 19.16, in the coded bill drafting format provided by G.S. 120-20.1. The act failed to account for both versions of subdivision (5). The second version of subdivision (5) has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2007-280, s. 6, provides: "This act becomes effective August 1, 2007, but the first sentence of G.S. 148-127(5) as enacted by this act expires on July 1, 2012."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 19.16, effective July 1, 2009, in subdivision (5), in the first sentence, inserted "or retiree" near the beginning, "or of a unit of local government of this State" and "or through proof of retirement status" near the middle, and substituted "purchases by a State or local governmental employee or retiree" for "a State employee's purchases" near the end, and in the last sentence, inserted "and local governmental" and "and retirees" near the middle.

§ 148-133. Inmate wages and conditions of employment.

(a) The Secretary shall adopt rules for the administration and management of personnel policies for inmates who work for Correction Enterprises, including wages, working hours, training requirements, and conditions of employment. The Secretary shall adopt rules to ensure that inmates participating in the Prison Industry Enhancement Certification Program comply with all applicable federal rules and regulations.

(b) No inmate working for Correction Enterprises shall be paid more than three dollars ($3.00) per day unless applicable State or federal laws require a higher salary. Inmates who are employed as part of the Prison Industry Enhancement Certification Program shall be paid in accordance with applicable federal rules and regulations. (2007-280, s. 1.)

§ 148-134. Preference for Department of Correction products.

All departments, institutions, and agencies of this State that are supported in whole or in part by the State shall give preference to Correction Enterprises products in purchasing articles, products, and commodities that these departments, institutions, and agencies require and that are manufactured or produced within the State prison system and offered for sale to them by Correction Enterprises. No article or commodity available from Correction Enterprises shall be purchased by any State department, institution, or agency from any other source unless the prison product does not meet the standard specifications and the reasonable requirements of the department, institution, or agency as determined by the Secretary of Administration or the requisition cannot be complied with because of an insufficient supply of the articles or commodities required. The provisions of Article 3 of Chapter 143 of the General Statutes respecting contracting for the purchase of all supplies, materials, and equipment required by the State government or any of its departments, institutions, or agencies under competitive bidding shall not apply to articles or commodities available from Correction Enterprises. The Division of Correction Enterprises shall be required to keep the price of such articles or commodities substantially in accord with that paid by governmental agencies for similar articles and commodities of equivalent quality. (2007-280, s. 1.)

Chapter 149.

State Song and Toast.

Sec.
149-1. "The Old North State."
149-2. "A Toast" to North Carolina.

§ 149-1. "The Old North State."

The song known as "The Old North State," as hereinafter written, is adopted and declared to be the official song of the State of North Carolina, said song being in words as follows:

"Carolina! Carolina! Heaven's blessings attend her!
While we live we will cherish, protect and defend her;
Though the scorner may sneer at and witlings defame her,
Our hearts swell with gladness whenever we name her.
  Hurrah! Hurrah! The Old North State forever!
  Hurrah! Hurrah! The good Old North State!
Though she envies not others their merited glory,
Say, whose name stands the foremost in Liberty's story!
Though too true to herself e'er to crouch to oppression,
Who can yield to just rule more loyal submission?
Plain and artless her sons, but whose doors open faster
At the knock of a stranger, or the tale of disaster?
How like to the rudeness of their dear native mountains,
With rich ore in their bosoms and life in their fountains.
And her daughters, the Queen of the Forest resembling—
So graceful, so constant, yet to gentlest breath trembling;
And true lightwood at heart, let the match be applied them,
How they kindle and flame! Oh! none know but who've tried them.
Then let all who love us, love the land that we live in
(As happy a region on this side of Heaven),
Where Plenty and Freedom, Love and Peace smile before us,
Raise aloud, raise together, the heart-thrilling chorus!"

(1927, c. 26, s. 1.)

§ 149-2. "A Toast" to North Carolina.

The song referred to as "A Toast" to North Carolina is hereby adopted and declared to be the official toast to the State of North Carolina, said toast being in words as follows:

"Here's to the land of the long leaf pine,
The summer land where the sun doth shine,
Where the weak grow strong and the strong grow great,
Here's to 'Down Home,' the Old North State!
"Here's to the land of the cotton bloom white,
Where the scuppernong perfumes the breeze at night,
Where the soft southern moss and jessamine mate,
'Neath the murmuring pines of the Old North State!
"Here's to the land where the galax grows,
Where the rhododendron's rosette glows,
Where soars Mount Mitchell's summit great,
In the 'Land of the Sky,' in the Old North State!
"Here's to the land where maidens are fair,
Where friends are true and cold hearts rare,

The near land, the dear land whatever fate,
The blest land, the best land, the Old North State!"

(1957, c. 777.)

Chapter 150.

Uniform Revocation of Licenses.

§§ 150-1 through 150-34: Repealed by Session Laws 1973, c. 1331, as amended by Session Laws 1975, c. 69, s. 4.

Cross References. — For provisions as to administrative hearings, see G.S. 150B-22 through 150B-42. As to judicial review of administrative decisions, see G.S. 150B-43 through 150B-52.

The near land, [illegible] ever free;
The blest land, the best land, the Old North State!"

(1957, c. 777.)

Chapter 150A.

Administrative Procedure Act.

§§ 150A-1 through 150A-64: Recodified as §§ 150B-1 to 150B-64, effective January 1, 1986.

Editor's Note. — This Chapter was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Session Laws 1985, c. 746, s. 19 had provided that the act would expire January 1, 1992, and would not be effective on or after that date, but the expiration date was deleted by Session Laws 1991, c. 103, ss. 1 and 2 and Session Laws 1991, c. 689, s. 182.

Session Laws 1983, c. 923, s. 52 had provided for the repeal of Chapter 150A, with the exception of G.S. 150A-9 and 150A-11 through 150A-17, effective July 1, 1985. Session Laws 1985, c. 504, s. 1 extended the date of the repeal to July 11, 1985, and Session Laws 1985, c. 684, s. 1 further extended the date of the repeal to July 14, 1985. Subsequently, Session Laws 1985, c. 746, s. 10, effective July 12, 1985, repealed the repealing language of Session Laws 1983, c. 923, s. 52. Thus, the repeal by Session Laws 1983, c. 923, s. 52 never went into effect.

Session Laws 1983, c. 883, s. 1, had provided for repeal, effective July 1, 1985, of all rules adopted under the provisions of Article 2 of Chapter 150A which were in effect on January 1, 1985, unless they were approved by the 1985 Session of the General Assembly. Session Laws 1985, c. 504, s. 2 extended the repeal date provided for in Session Laws 1983, c. 883 to July 11, 1985, and Session Laws 1985, c. 684, s. 2, further extended this date to July 14, 1985. Subsequently, Session Laws 1985, c. 746, s. 11, effective July 12, 1985, repealed Session Laws 1983, c. 883, s. 1. Thus, the repeal of rules by Session Laws 1983, c. 883, s. 1 never went into effect.

Former G.S. 150A-10 was repealed by Session Laws 1983, c. 641, s. 2, effective January 1, 1984. Former G.S. 150A-46.1, relating to review de novo, was enacted by Session Laws 1983, c. 919, s. 1.

Chapter 150B.

Administrative Procedure Act.

Article 1.

General Provisions.

Sec.
150B-1. Policy and scope.
150B-2. Definitions.
150B-3. Special provisions on licensing.
150B-4. Declaratory rulings.
150B-5 through 150B-8. [Reserved.]

Article 2.

Rule Making.

150B-9 through 150B-16. [Repealed.]
150B-17. [Recodified.]

Article 2A.

Rules.

Part 1. General Provisions.

150B-18. Scope and effect.
150B-19. Restrictions on what can be adopted as a rule.
150B-20. Petitioning an agency to adopt a rule.
150B-21. Agency must designate rule-making coordinator; duties of coordinator.

Part 2. Adoption of Rules.

150B-21.1. Procedure for adopting a temporary rule.
150B-21.1A. Adoption of an emergency rule.
150B-21.1B. (Expires June 30, 2012) Adoption of rules to implement the American Recovery and Reinvestment Act.
150B-21.2. Procedure for adopting a permanent rule.
150B-21.3. Effective date of rules.
150B-21.4. Fiscal notes on rules.
150B-21.5. Circumstances when notice and rule-making hearing not required.
150B-21.6. Incorporating material in a rule by reference.
150B-21.7. Effect of transfer of duties or termination of agency on rules.

Part 3. Review by Commission.

150B-21.8. Review of rule by Commission.
150B-21.9. Standards and timetable for review by Commission.
150B-21.10. Commission action on permanent rule.
150B-21.11. Procedure when Commission approves permanent rule.
150B-21.12. Procedure when Commission objects to a permanent rule.
150B-21.13. Procedure when Commission extends period for review of permanent rule.

Sec.
150B-21.14. Public hearing on a rule.
150B-21.15. [Repealed.]
150B-21.16. Report to Joint Legislative Administrative Procedure Oversight Committee.

Part 4. Publication of Code and Register.

150B-21.17. North Carolina Register.
150B-21.18. North Carolina Administrative Code.
150B-21.19. Requirements for including rule in Code.
150B-21.20. Codifier's authority to revise form of rules.
150B-21.21. Publication of rules of North Carolina State Bar, Building Code Council, and exempt agencies.
150B-21.22. Effect of inclusion in Code.
150B-21.23. Rule publication manual.
150B-21.24. Access to Register and Code.
150B-21.25. Paid copies of Register and Code.

Part 5. Rules Affecting Local Governments.

150B-21.26. Governor to conduct preliminary review of certain administrative rules.
150B-21.27. Minimizing the effects of rules on local budgets.
150B-21.28. Role of the Office of State Budget and Management.

Article 3.

Administrative Hearings.

150B-22. Settlement; contested case.
150B-22.1. Special education petitions.
150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.
150B-23.1. Mediated settlement conferences.
150B-23.2. Fee for filing a contested case hearing.
150B-24. Venue of hearing.
150B-25. Conduct of hearing; answer.
150B-26. Consolidation.
150B-27. Subpoena.
150B-28. Depositions and discovery.
150B-29. Rules of evidence.
150B-30. Official notice.
150B-31. Stipulations.
150B-31.1. Contested tax cases.
150B-32. Designation of administrative law judge.
150B-33. Powers of administrative law judge.

Sec.
150B-34. Decision of administrative law judge.
150B-35. No ex parte communication; exceptions.
150B-36. Final decision.
150B-37. Official record.

Article 3A.

Other Administrative Hearings.

150B-38. Scope; hearing required; notice; venue.
150B-39. Depositions; discovery; subpoenas.
150B-40. Conduct of hearing; presiding officer; ex parte communication.
150B-41. Evidence; stipulations; official notice.
150B-42. Final agency decision; official record.

Article 4.

Judicial Review.

150B-43. Right to judicial review.
150B-44. Right to judicial intervention when decision unreasonably delayed.

Sec.
150B-45. Procedure for seeking review; waiver.
150B-46. Contents of petition; copies served on all parties; intervention.
150B-47. Records filed with clerk of superior court; contents of records; costs.
150B-48. Stay of decision.
150B-49. New evidence.
150B-50. Review by superior court without jury.
150B-51. Scope and standard of review.
150B-52. Appeal; stay of court's decision.
150B-53 through 150B-57. [Reserved.]

Article 5.

Publication of Administrative Rules.

150B-58 through 150B-64. [Repealed.]

ARTICLE 1.

General Provisions.

§ 150B-1. Policy and scope.

(a) Purpose. — This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. — This Chapter confers procedural rights.

(c) Full Exemptions. — This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.
(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
(3) The Utilities Commission.
(4) The Industrial Commission.
(5) The Employment Security Commission.
(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
(7) The North Carolina State Lottery.
(8) **(Expires June 30, 2012)** Except as provided in G.S. 150B-21.1B, any agency with respect to contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(d) Exemptions from Rule Making. — Article 2A of this Chapter does not apply to the following:

(1) The Commission.
(2) Repealed by Session Laws 2000-189, s. 14, effective July 1, 2000.
(3) Repealed by Session Laws 2001-474, s. 34, effective November 29, 2001.

(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.
(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.
(7) The State Health Plan for Teachers and State Employees in administering the provisions of Article 3A of Chapter 135 of the General Statutes.
(8) The North Carolina Federal Tax Reform Allocation Committee, with respect to the adoption of the annual qualified allocation plan required by 26 U.S.C. § 42(m), and any agency designated by the Committee to the extent necessary to administer the annual qualified allocation plan.
(9) The Department of Health and Human Services in adopting new or amending existing medical coverage policies under the State Medicaid Program.
(10) The Economic Investment Committee in developing criteria for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes.
(11) The North Carolina State Ports Authority with respect to fees established pursuant to G.S. 143B-454(a)(11).
(12) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Site Infrastructure Development Program under G.S. 143B-437.02.
(13) The Department of Commerce and the Governor's Office in developing guidelines for the One North Carolina Fund under Part 2H of Article 10 of Chapter 143B of the General Statutes.
(14) The Community Colleges System Office in developing guidelines for the Community College Facilities and Equipment Fund.
(15) Repealed by Session Laws 2009-445, s. 41(b), effective August 7, 2009.
(16) The State Ethics Commission with respect to Chapter 138A and Chapter 120C of the General Statutes.
(17) The Department of Commerce in developing guidelines for the NC Green Business Fund under Part 2B of Article 10 of Chapter 143B of the General Statutes.
(18) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Job Maintenance and Capital Development Fund under G.S. 143B-437.012.
(19) The Community Colleges System Office in developing criteria and guidelines administering the Customized Training Program under G.S. 115D-5.1.

(e) Exemptions From Contested Case Provisions. — The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of Health and Human Services and the Department of Environment and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).
(2) Repealed by Session Laws 1993, c. 501, s. 29.
(3), (4) Repealed by Session Laws 2001-474, s. 35, effective November 29, 2001.

(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.
(6) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.
(7) The Department of Correction.
(8) The Department of Transportation, except as provided in G.S. 136-29.
(9) The North Carolina Occupational Safety and Health Review Commission.
(10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
(11) Hearings that are provided by the Department of Health and Human Services regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7.
(12) The State Health Plan for Teachers and State Employees respect to disputes involving the performance, terms, or conditions of a contract between the Plan and an entity under contract with the Plan.
(13) The State Health Plan for Teachers and State Employees with respect to determinations by the Executive Administrator and Board of Trustees, the Plan's designated utilization review organization, or a self-funded health maintenance organization under contract with the Plan that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the Plan's requirements for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.
(14) The Department of Crime Control and Public Safety for hearings and appeals authorized under Chapter 20 of the General Statutes.
(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.
(16) The Department of Health and Human Services with respect to contested cases commenced by (i) Medicaid providers appealing a denial or reduction in reimbursement for community support services, and (ii) community support services providers appealing decisions by the LME to deny or withdraw the provider's endorsement.

(f) Exemption for the University of North Carolina. — Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina. (1973, c. 1331, s. 1; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4; 1981, c. 614, s. 22; 1983, c. 147, s. 2; c. 927, s. 13; 1985, c. 746, ss. 1, 19; 1987, c. 112, s. 2; c. 335, s. 2; c. 536, s. 1; c. 847, s. 2; c. 850, s. 20; 1987 (Reg. Sess., 1988), c. 1082, s. 14; c. 1111, s. 9; 1989, c. 76, s. 29; c. 168, s. 33; c. 373, s. 2; c. 538, s. 1; c. 751, s. 7(44); 1989 (Reg. Sess., 1990), c. 1004, s. 36; 1991, c. 103, s. 1; c. 418, s. 2; c. 477, s. 1; c. 749, ss. 9, 10; 1991 (Reg. Sess., 1992), c. 1030, s. 46; 1993, c. 501, s. 29; 1993 (Reg. Sess., 1994), c. 777, ss. 4(j), 4(k); 1995, c. 249, s. 4; c. 507, s. 27.8(m); 1997-35, s. 2; 1997-278, s. 1; 1997-412, s. 8; 1997-443, ss. 11A.110, 11A.119(a); 2000-189, s. 14; 2001-192, s. 1; 2001-299, s. 1; 2001-395, s. 6(c); 2001-424, ss. 6.20(b), 21.20(c); 2001-446, s. 5(d); 2001-474, ss. 34, 35; 2001-496, s. 8(c); 2002-99, s. 7(b); 2002-159, ss. 31.5(b), 49; 2002-172, s. 2.6; 2002-190, s. 16; 2003-226, s. 17(b); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 1.3; 2004-88, s. 1(e); 2005-133, s. 10; 2005-276, s.

31.1(ff); 2005-300, s. 1; 2005-344, s. 11.1; 2005-455, s. 3.3; 2006-66, ss. 12.8(c), 8.10(d); 2006-201, s. 2(a); 2007-323, ss. 13.2(c), 28.22A(o); 2007-345, s. 12; 2007-491, s. 2; 2007-552, 1st. Ex. Sess., s. 3; 2008-107, s. 10.15A(f); 2008-168, s. 5(a); 2008-187, s. 26(b); 2009-445, s. 41(b); 2009-475, s. 4; 2009-523, s. 2(a).)

Community Support Providers Appeals Process. — Session Laws 2008-107, s. 10.15A(e1)-(e4), as amended by Session Laws 2009-526, s. 2(c), and Session Laws 2009-550, s. 1.1(c), provides: "(e1) For the purpose of expediting the resolution of community support provider appeals and thereby saving State and federal funds that are paid for services that are found to be unnecessary or otherwise ineligible for payment, the Department shall implement on a temporary basis a community support provider appeals process. The process shall be a substitute for informal provider appeals at the Department level and formal provider appeals by the Office of Administrative Hearings. The community support provider appeals process shall apply to a community support services provider:

"(1) Who is aggrieved by a decision of the Department to reduce, deny, recoup, or recover reimbursement for community support services, or to deny, suspend, or revoke a provider agreement to provide community support services.

"(2) Whose endorsement has been withdrawn or whose application for endorsement has been denied by a local management entity.

"(e2) The community support provider appeals process shall be developed and implemented as follows:

"(1) A hearing under this section shall be commenced by filing a petition with the chief hearings clerk of the Department within 30 days of the mailing of the notice by the Department of the action giving rise to the contested case. The petition shall identify the petitioner, be signed by the party or representative of the party, and shall describe the agency action giving rise to the contested case. As used in this section, "file or filing" means to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Department and acceptance thereof by the chief hearings clerk, except that the hearing officer may permit the papers to be filed with the hearing officer, in which event the hearing officer shall note thereon the filing date. The Department shall supply forms for use in these contested cases.

"(2) If there is a timely request for an appeal, the Department shall promptly designate a hearing officer who shall hold an evidentiary hearing. The hearing officer shall conduct the hearing according to applicable federal law and regulations and shall ensure that:

"a. Notice of the hearing is given not less than 15 days before the hearing. The notice shall state the date, hour, and place of the hearing and shall be deemed to have been given on the date that a copy of the notice is mailed, via certified mail, to the address provided by the petitioner in the petition for hearing.

"b. The hearing is held in Wake County, except that the hearing officer may, take testimony and receive evidence by telephone or other electronic means. The petitioner and the petitioner's legal representative may appear before the hearing officer in Wake County.

"c. Discovery is no more extensive or formal than that required by federal law and regulations applicable to the hearings. Prior to and during the hearing, a provider representative shall have adequate opportunity to examine the provider's own case file. No later than five days before the date of the hearing, each party to a contested case shall identify each witness that the party intends to call.

"(3) The hearing officer shall have the power to administer oaths and affirmations and regulate the conduct of the hearing. The following shall apply to hearings held pursuant to this section:

"a. At the hearing, the parties may present such sworn evidence, law, and regulations as are relevant to the issues in the case.

"b. The petitioner and the respondent agency each have a right to be represented by a person of his choice, including an attorney obtained at the party's own expense.

"c. The petitioner and the respondent agency shall each have the right to cross-examine witnesses as well as make a closing argument summarizing his view of the case and the law.

"d. The appeal hearing shall be recorded. If a petition for judicial review is filed the Department shall include a copy of the recording of the hearing as part of the official record. The recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed as provided in G.S. 108A-79(i)(5).

"(4) The hearing officer shall decide the case based upon a preponderance of the evidence, giving deference to the demonstrated knowledge and expertise of the agency as provided in G.S. 150B-34(a). The hearing officer shall prepare a proposal for the decision, citing relevant law, regulations, and evidence, which shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency.

"(5) The petitioner and the respondent agency shall have 15 days from the date of the mailing of the proposal for decision to present written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who will make the final decision. If neither written arguments are presented, nor extension of time granted by the final agency decision maker for good cause, within 15 days of the date of the mailing of the proposal for decision, the proposal for decision becomes final. If written arguments are presented, such arguments shall be considered and the final decision shall be rendered. The final decision shall be rendered not more than 180 days from the date of the filing of the petition. This time limit may be extended by agreement of the parties or by final agency decision maker, for good cause shown. The final decision shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency. In the absence of a petition for judicial review filed pursuant to subsection (f) of this section, the final decision shall be binding upon the petitioner and the Department.

"(6) A petitioner who is dissatisfied with the final decision of the Department may file, within 30 days of the service of the decision, a petition for judicial review in the Superior Court of Wake County or of the county from which the case arose. The judicial review shall be conducted according to Article 4 of Chapter 150B of the General Statutes.

"(7) In the event of a conflict between federal law or regulations and State law or regulations, federal law or regulations shall control. This section applies to all petitions that are filed by a Medicaid community support services provider on or after July 1, 2008, and for all Medicaid community support services provider petitions that have been filed at the Office of Administrative Hearings previous to July 1, 2008, but for which a hearing on the merits has not been commenced prior to that date. The requirement that the agency decision must be rendered not more than 180 days from the date of the filing of the petition for hearing shall not apply to (i) community support services provider petitions that were filed at the Office of Administrative Hearings or (ii) requests for a hearing under the Department's informal settlement process prior to the effective date of this act. The Office of Administrative Hearings shall transfer all cases affected by this section to the Department of Health and Human Services within 30 days of the effective date of this section. This act preempts the existing informal appeal process and reconsideration review process at the Department of Health and Human Services and the existing appeal process at the Office of Administrative Hearings with regard to all appeals filed by Medicaid community support services providers under the Medical Assistance program.

"(e3) Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may, pursuant to its statutory authority or federal Medicaid requirements, suspend the endorsement or Medicaid participation of a provider of community support services pending a final agency decision based on a fair hearing of the provider's appeal filed with the Department under its community support provider appeal process. A provider of community support services whose endorsement, Medicaid participation, or services have been suspended is not entitled to payment during the period the appeal is pending, and the Department shall make no such payment to the provider during that period. If the final agency decision is in favor of the provider, the Department shall remove the suspension, commence payment for provider services, and reimburse the provider for payments withheld during the period of appeal. Contracts between the Department or a local management entity and the provider shall contain a provision indicating the circumstances under which a provider may appeal an agency decision and giving notice of the suspension of payments to the provider while the appeal is pending. This subsection applies to community support provider appeals pending in the Department of Health and Human Services or the Office of Administrative Hearings, as applicable, on and after July 1, 2008.

"(e4) The Department's community support provider appeals process established under this section shall expire July 1, 2010. The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the effectiveness and efficiency of the community support provider appeals process."

Appeal to State MH/DD/SA Appeals Panel. — Session Laws 2008-107, s. 10.15A(h1)-(h6), as amended and added to by Session Laws 2008-118, s. 3.13(a), (b), Session Laws 2009-526, s. 2(a) and (b), and Session Laws 2009-550, s. 1.1(a) and (b), provides for administrative appeals by Medicaid applicants and recipients. See notes under G.S. 150B-52, 108A-54, and 108A-79.

Editor's Note. — This Chapter is former Chapter 150A, as rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and recodified. Where appropriate, the historical citations to the sections in the former Chapter have been added to the corresponding sections in the Chapter as rewritten and recodified.

In addition, Session Laws 1985, c. 746, s. 19, had provided that the act would expire January 1, 1992, and would not be effective on or after that date, but the expiration date was deleted by Session Laws 1991, c. 103, ss. 1 and 2 and Session Laws 1991, c. 689, s. 182.

Section 1 of Session Laws 1987, c. 827, provided: "The General Statutes are amended by deleting the reference '150A' and substituting the reference '150B' each time it appears."

Session Laws 1987, c. 536, s. 6 provided that a county ordinance that applies to the Camp Butner reservation on the effective date of the act (July 2, 1987) shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation.

Subdivision (d)(15) was enacted as subdivision (d)(14) by Session Laws 2006-66, s. 12.8(c). Subdivision (d)(16) was enacted as subdivision (d)(14) by Session Laws 2006-201, s. 2(a). They have been redesignated as subdivisions (d)(15) and (d)(16), respectively, at the direction of the Revisor of Statutes.

Session Laws 1997-412, s. 14, provided that ss. 6, 7, 8, 10 and 11 of the act, which amended G.S. 143-341(3), 143-135.3, 150B-1(f), 143-135.1, 133-1.1(d), and G.S. 116-31.11, as enacted by s. 1 thereof, would expire on July 1, 2001. Subsequently, Session Laws 2001-496, s. 8(c), effective July 1, 2001, reenacted ss. 5, 7, 8 and 10 of Session Laws 1997-412. Session Laws 2001-496, s. 14(a) provided that ss. 8(a) to 8(e) of that act would expire December 31, 2006. Subsequently, Session Laws 2005-300, s. 1, amended Session Laws 2001-496, s. 14(a), by deleting the expiration clause.

Session Laws 1999-294, s. 13 provides that the Codifier of Rules may amend the text of the administrative rules in Title 11 of the North Carolina Administrative Code to reflect the recodification of Chapter 58 of the General Statutes. An amendment pursuant to this section is exempt from Chapter 150B of the General Statutes and review by the Rules Review Commission to the extent that it does not change the substance of the rule.

Session Laws 2001-395, s. 6(c), would have added subdivision (d)(9) effective August 29, 2001. Session Laws 2001-424, s. 6.20(b), effective July 1, 2001, repealed Session Laws 2001-395, s. 6, so that the provisions of 2001-395 never went into effect.

Session Laws 2001-424, s. 21.10, provides: "The Codifier of Rules may continue the process of reorganizing Titles 10 and 15A of the North Carolina Administrative Code to reflect the recent reorganization of the Department of Health and Human Services and the Department of Environment and Natural Resources. The reorganization of the Code may include replacing Title 10 with a new Title 10A if desirable for clarity. The Codifier of Rules may make changes in the text of the affected rules to reflect changes in organizational structure of the Department of Health and Human Services and the Department of Environment and Natural Resources. So long as the changes in text do not change the substance of the rules, the reorganization by the Codifier is exempt from the requirements of Chapter 150B of the General Statutes and does not require the review or approval of the Rules Review Commission."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Acts of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-190, s. 17, as amended by Session Laws 2002-159, s. 31.5, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Session Laws 2003-416, s. 2, provides that S.L. 2002-172 is reenacted.

Subdivision (c)(6), added by Session Laws 2003-226, s. 17(b), effective January 1, 2004, is applicable with respect to primaries and elections held on or after that date.

Session Laws 2005-133, s. 1, effective June 29, 2005, as amended by Session Laws 2006-226, s. 30, provides: "Under the Occupational

Safety and Health Act of North Carolina, the name of the Safety and Health Review Board is changed to the North Carolina Occupational Safety and Health Review Commission. The Revisor of Statutes is authorized to substitute the term 'Commission' for the term 'Board' wherever that term appears in the General Statutes in relation to the Act. The Revisor of Statutes is also authorized to insert the words 'North Carolina Occupational' in front of the phrase 'Safety and Health Review Commission' wherever that phrase appears in the General Statutes in relation to the Act."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2005-455, s. 4.2, contains a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2007-323, s. 28.22A(n), provides: "If on July 1, 2008, there are State employees or retired employees that are enrolled in the Teachers' and State Employees' Comprehensive Major Medical Plan (indemnity plan) on June 30, 2008, and that have not elected one of the optional PPO benefit plans available under the State Health Plan for Teachers and State Employees, then the Plan shall enroll those employees or retired employees in the Standard PPO Option, or its equivalent, effective July 1, 2008."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2007-491, s. 47, provides in part: "The remainder of this act becomes effective January 1, 2008. The procedures for review of disputed tax matters enacted by this act apply to assessments of tax that are not final as of the effective date of this act and to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a petition for review was filed with the Tax Review Board under G.S. 105-241.2 before the effective date of this act. The repeal of G.S. 105-122(c) and G.S. 105-130.4(t) and Sections 11 and 12 apply to requests for alternative apportionment formulas filed on or after the effective date of this act. A petition filed with the Tax Review Board for an apportionment formula before the effective date of this act is considered a request under G.S. 105-122(c1) or G.S. 105-130.4(t1), as appropriate."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-475, s. 15, provides: "The General Assembly finds that it is in the public interest of the State of North Carolina to ensure expeditious awards of ARRA [America Recovery and Reinvestment Act of 2009] funds to maximize the economic recovery impact of the ARRA. It is the policy of the State to provide fair regulation, oversight, and transparency for the use of ARRA funds and to quickly and efficiently complete the awards of grants and contracts under the ARRA. It is also the policy of this State that, due to the historic level of federal and State oversight of ARRA grant and contract awards, restraint should be exercised in the granting of legal and injunctive relief that might forestall awards to programs and contractors."

Effect of Amendments. — Session Laws 2007-323, s. 28.22A(o), as amended by Session Laws 2007-345, s. 12, effective July 1, 2008, substituted "State Health Plan for Teachers and State Employees" for "North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan" in subdivisions (d)(7) and (e)(12), and substituted "State Health Plan for Teachers and State Employees" for "Teachers' and State Employees' Comprehensive Major Medical Plan" in subdivision (e)(13).

Session Laws 2007-491, s. 2, effective January 1, 2008, deleted former subdivision (e)(6), which read: "Department of Revenue."

Session Laws 2008-107, s. 10.15A(f), effective July 1, 2008, inserted "agencies" in the introductory paragraph of subsection (e); added subdivision (e)(16).

Session Laws 2008-168, s. 5(a), effective July 1, 2008, substituted "Article 3A of" for "Parts 2, 3, 4, and 5 of Article 3" in subdivision (d)(7).

Session Laws 2008-187, s. 26(b), effective August 7, 2008, substituted "G.S. 143B-437.012" for "G.S. 143B-437.11" in subdivision (d)(18).

Session Laws 2009-445, s. 41(b), effective August 7, 2009, deleted subdivision (d)(15), which read: "The Department of Commerce in developing guidelines for the North Carolina Economic Development Reserve."

Session Laws 2009-475, s. 4, effective February 17, 2009, and expiring June 30, 2012, added subdivision (c)(8).

Session Laws 2009-523, s. 2(a), effective August 26, 2009, added subdivision (d)(19).

Legal Periodicals. — For comment on former Chapter 150, see 31 N.C.L. Rev. 378 (1953).

For note as to constitutionality of statutes licensing occupations, see 35 N.C.L. Rev. 473 (1957).

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

For interpretative analysis of former Chapter 150A, see 53 N.C.L. Rev. 833 (1975).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For article, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

For survey of 1980 administrative law, see 59 N.C.L. Rev. 1026 (1981).

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

For article, "The New Administrative Procedures Act: A Practical Guide to Understanding and Using It," see 9 Campbell L. Rev. 293 (1987).

For note, "The Forty-Two Hundred Dollar Question: 'May State Agencies Have Discretion in Setting Civil Penalties Under the North Carolina Constitution?'," see 68 N.C.L. Rev. 1035 (1990).

For survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2252 (1997).

For article, "Powers of Administrative Law Judges, Agencies, and Courts: An Analytical and Empirical Assessment," see 79 N.C.L. Rev. 1571 (2001).

For article, "What Were We Thinking?: Legislative Intent and the 2000 Amendments to the North Carolina APA," see 79 N.C.L. Rev. 1657 (2001).

CASE NOTES

Editor's Note. *— Most of the cases below were decided under corresponding provisions of former Chapter 150A, or prior to the 1991 amendments to this Chapter.*

History of Chapter. — The original Administrative Procedure Act (APA), codified as Chapter 150A, was effective until Dec. 31, 1985; the APA was rewritten in 1985 and recodified as Chapter 150B, with the new version becoming effective Jan. 1, 1986. Vass v. Board of Trustees, 108 N.C. App. 251, 423 S.E.2d 796 (1992).

The 1991 Amendment to this section merely confirms that when a person is aggrieved by agency action, the Administrative Procedure Act only "describes the procedures" for Office of Administrative Hearings review in the event the North Carolina General Assembly vests a party with the right to administrative review, such as a contested case hearing. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d 594 (1993), rev'd on other grounds, 337 N.C. 569, 447 S.E.2d 768, reh'g denied, 338 N.C. 314, 451 S.E.2d 634 (1994).

The 2003 version of G.S. 150B-34(c), which excluded the Certificate of Need Act, G.S. 131E-175 et seq., from the requirements of G.S. 150B-36(b), (b1), (b2), (b3), and (d) and G.S. 150B-51, left the scope and standard of review applied under the 1999 version of G.S. 150B-51 undisturbed. Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

The primary purpose of this Act is to confer procedural rights, including the right to an administrative hearing, upon any person aggrieved by an agency decision, and statutes should be liberally construed together to preserve and effectuate that right. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 768, rehearing denied, 338 N.C. 314, 451 S.E.2d 634 (1994).

The administrative hearing provisions of this act apply to all agencies and all proceedings except those expressly exempted, and it expressly named the particular agencies exempted therefrom, specifying the extent of each such exemption. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 768, rehearing denied, 338 N.C. 314, 451 S.E.2d 634 (1994).

Under G.S. 90-270.15(a), the North Carolina Psychology Board is responsible for overseeing licensed psychologists practicing in the state, and it may discipline licensees who violate ethical or professional standards; under G.S. 90-270.15(e), disciplinary actions by the Board are governed by the Administrative Procedure Act, § 150B-1 et seq. Farber v. N.C. Psychology Bd., 153 N.C. App. 1, 569 S.E.2d 287, cert. denied, 356 N.C. 612, 574 S.E.2d 679 (2002).

Contested case hearing provisions of the North Carolina Administrative Procedure Act apply to all agencies and all proceedings except those expressly exempted therefrom, and G.S. 150B-1(e) specifies the extent of each such exemption. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 154 N.C. App. 18, 571 S.E.2d 602, 2002 N.C. App. LEXIS 1411 (2002), review denied sub nom. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Nat'l Res., 357 N.C. 251, 582 S.E.2d 276 (2003).

Strict Separation of Agency Functions Not Required. — Neither the Administrative Procedure Act, G.S. 150B-1 et seq., nor due process, requires a strict separation between agency functions. Farber v. N.C. Psychology Bd., 153 N.C. App. 1, 569 S.E.2d 287, cert. denied, 356 N.C. 612, 574 S.E.2d 679 (2002).

The University of Chapel Hill is expressly exempted from the administrative hearings provisions of the Administrative Procedure Act. Beauchesne v. University of N.C, 125 N.C. App. 457, 481 S.E.2d 685 (1997).

Application of Chapter. — Where the complaints and notices of hearing were filed prior to Jan. 1, 1986, the action was commenced prior to Jan. 1, 1986, and Chapter 150B had no application; thus, G.S. 150A-45 (rewritten and recodified as G.S. 150B-45), requiring a person seeking review to file a petition in the Superior Court of Wake County, and not G.S. 150B-45, permitting such filing in either Wake County or the county where the person resides, governed. Pinewood Manor Mobile Homes, Inc. v. North Carolina Manufactured Hous. Bd., 84 N.C. App. 564, 353 S.E.2d 231, cert. denied, 319 N.C. 674, 356 S.E.2d 780 (1987).

North Carolina Administrative Procedure Act, G.S. 150B-1 et seq., applied, pursuant to G.S. 150B-1(e), to a county employee's declaratory judgment action for a ruling that the county's personnel regulations were not substantially equivalent to the standards established by the North Carolina State Personnel Act, G.S. 126-1 et seq., where the employee's employment with the county was terminated. Steward v. Green, 189 N.C. App. 131, 657 S.E.2d 719, 2008 N.C. App. LEXIS 423 (2008).

Individuals aggrieved pursuant to the Rehabilitation Act are not required to seek administrative review in a contested case hearing before the Office of Administrative Hearings via the contested case hearing provisions of this act; rather, they are entitled to a hearing governed by procedures established by the Rehabilitation Act of 1973, P.L.102-569, 42 U.S.C. § 701, et seq. as amended. Hedgepeth v. North Carolina Div. of Servs. for the Blind, 142 N.C. App. 338, 543 S.E.2d 169, 2001 N.C. App. LEXIS 94 (2001).

Direct Challenge to Constitutionality of North Carolina Supreme Court Order. — A direct challenge of the constitutionality of an order of the North Carolina Supreme Court cannot be adjudicated under this Chapter. The issue must be litigated as an original action in the General Court of Justice. Beard v. North Carolina State Bar, 320 N.C. 126, 357 S.E.2d 694 (1987).

Judicial Notice of Regulations. — Where promulgating agency is not subject to the North Carolina Administrative Procedure Act, the court is only required to take judicial notice of its regulations if they are submitted in accordance with certain procedures designed to insure their accuracy. Southern Ry. v. O'Boyle Tank Lines, 70 N.C. App. 1, 318 S.E.2d 872 (1984).

Irreconcilable Dispute. — When a dispute between a state agency and another person arise and cannot be settled informally, the procedures for resolving the dispute are governed by this act. North Buncombe Ass'n of Concerned Citizens v. Rhodes, 100 N.C. App. 24, 394 S.E.2d 462 (1990), appeal dismissed, 327 N.C. 484, 397 S.E.2d 215 (1990).

State Personnel Commission. — As to the applicability of former Chapter 150A to the State Personnel Commission, see Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209, cert. denied, 291 N.C. 450, 230 S.E.2d 767 (1976).

Department of Insurance. — Insurance Commissioner's promulgation of 11 N.C.A.C. 12.0319, prohibiting subrogation provisions in life or accident and health insurance contracts, supported by G.S. 58-2-40 (right to limit practices injurious to the public) and 58-50-15(a) (prohibiting provisions less favorable to the insured), did not exceed his statutory authority, even though it may change state substantive law, and did not amount to an unconstitutional delegation of legislative powers, because statutory provisions (G.S. 58-2-40, 58-51-15, and 58-50-15) and judicial review (available under this chapter) offer adequate procedural safeguards and support the delegation of power to the Commissioner. In re Ruling by N. C. Comm'r of Ins., 134 N.C. App. 22, 517 S.E.2d 134, 1999 N.C. App. LEXIS 665 (1999), cert. denied, appeal dismissed, 351 N.C. 105, 540 S.E.2d 356 (1999).

Department of Transportation. — Language which provides that Articles 2 and 3 of former Chapter 150A shall not apply to the Department of Transportation in rule-making or administrative hearings only applies to actions taken by the department pursuant to Chapter 20, which refers to regulation of motor vehicles. In contrast, Chapters 136 and 143B provide the Department of Transportation and the Board of Transportation with powers and duties to engage in the planning and construction of the state highway system, and had the General Assembly wanted to exclude actions of the Department and Board of Transportation under Chapter 136 from the requirements of Articles 2 and 3 of former Chapter 150A, it would have done so with the same specificity that it used in excluding actions taken pursuant to Chapter 20. Orange County Sensible Hwys. & Protected Env'ts, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

University of North Carolina's State Residency Committee (SRC) is exempt from this Chapter; therefore, although provisions in the act requiring judicial review of final administrative review were applicable, the SRC was not governed by G.S. 150B-36, which requires agencies to state reasons for their decisions. Wilson v. State Residence Comm., 92 N.C. App. 355, 374 S.E.2d 415 (1988), cert. denied, 324 N.C. 252, 377 S.E.2d 764 (1989).

Board of Trustees. — Language in G.S. 135-39.7 [now G.S. 135-44.7] that board of trustees "may make a binding decision" concerning a dispute between an aggrieved individual and a claims administrator of a medical plan is not an express and unequivocal exemption of the board from the requirements of this Chapter; instead, the use of the term "binding" in the statute was intended to mean only that the board's decision would be binding upon the parties absent further review according to law. Vass v. Board of Trustees, 324 N.C. 402, 379 S.E.2d 26 (1989).

The Department of Environment, Health, and Natural Resources (now the Department of Environment and Natural Resources), is not among those agencies which the Administrative Procedures Act specifically exempts from its provisions. North Buncombe Ass'n of Concerned Citizens v. Rhodes, 100 N.C. App. 24, 394 S.E.2d 462 (1990), appeal dismissed, 327 N.C. 484, 397 S.E.2d 215 (1990).

Entitlement to Administrative Hearing on Mining Permit. — Petitioners were entitled to a contested case hearing by the Office of Administrative Hearings on their claim that mining permit should not have been issued. North Buncombe Ass'n of Concerned Citizens, Inc. v. North Carolina Dep't of Env't, Health, & Natural Resources, 338 N.C. 302, 449 S.E.2d 451 (1994).

The Social Services Commission was not excluded from coverage under subsection (d). Whittington v. North Carolina Dep't of Human Resources, 100 N.C. App. 603, 398 S.E.2d 40 (1990).

Board of Dental Examiners. — The Board of Dental Examiners is an agency governed by the provisions of the North Carolina Administrative Procedure Act and is not exempt from the contested case provisions of the Act. Homoly v. North Carolina State Bd. of Dental Examrs., 121 N.C. App. 695, 468 S.E.2d 481 (1996).

Where taxpayer only argued in his brief that decision by board was unsupported by substantial evidence in view of the "whole record" test, the Court of Appeals would decline to review the board's decision under the other standards of this section. Walls & Marshall Fuel Co. v. North Carolina Dep't of Revenue, 95 N.C. App. 151, 381 S.E.2d 815 (1989).

For discussion of respective powers and duties of Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

Appeal Allowed. — Third party was entitled under this Act and the Air Pollution Control Act, G.S. 143-215.105 et seq., to appeal to the Office of Administrative Hearings from the decision of the Department of Environmental Management, to grant an air pollution control permit to Duke Power Company. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 768, rehearing denied, 338 N.C. 314, 451 S.E.2d 634 (1994).

Challenges to Constitutionality of Regulation or Statute. — Under North Carolina law, plaintiffs may be able to bypass administrative review and seek direct relief from the court. For example, when an aggrieved party challenges the constitutionality of a regulation or statute, administrative remedies are deemed to be inadequate and exhaustion thereof is not required. Prentiss v. Allstate Ins. Co., 87 F. Supp. 2d 514, 1999 U.S. Dist. LEXIS 21397 (W.D.N.C. 1999).

Department of Health and Human Services, Division of Medical Assistance. — Pursuant to G.S. 150B-1(c), the North Carolina Department of Health and Human Services, Division of Medical Assistance, is an Article 3 agency and thereby subject to the mandates of G.S. 150B-44. Albemarle Mental Health Ctr. v. N.C. Dep't of HHS, 159 N.C. App. 66, 582 S.E.2d 651, 2003 N.C. App. LEXIS 1422 (2003), aff'd, 358 N.C. 134, 591 S.E.2d 519 (2004).

Dialysis firm challenging the refusal of the N.C. Department of Health and Human Services (DHHS), Division of Facility Services [now the Division of Health Service Regulation], Medical Facilities Planning Section, to amend a Semiannual Dialysis Report (SDR) did not have a remedy under the North Carolina Administrative Procedures Act or the North Carolina Declaratory Judgment Act since, inter alia: the enabling statute suggested that the North Carolina State Medical Facilities Plan (SMFP), which contained the SDR, was a snapshot in time intended to enable the DHHS to develop policy, criteria, and standards for health service facilities planning; and it was the role of the DHHS and the N.C. State Health Coordinating Council to develop the SMFP. Bio-Medical Applications of N.C., Inc. v. N.C. HHS, 179 N.C. App. 483, 634 S.E.2d 572, 2006 N.C. App. LEXIS 1979 (2006).

Disciplinary Hearing Commission. — The contention that an attorney who is accused of misconduct should be entitled to a hearing before an administrative law judge under the North Carolina Administrative Procedure Act, is rejected. N.C. State Bar v. Rogers, 164 N.C. App. 648, 596 S.E.2d 337, 2004 N.C. App. LEXIS 965 (2004).

Applied in Florence Concrete Prods., Inc. v. North Carolina Licensing Bd., 113 N.C. App. 270, 437 S.E.2d 877 (1994); Simonel v. North Carolina Sch. of Arts, 119 N.C. App. 772, 460 S.E.2d 194 (1995); Johnston Health Care Ctr., L.L.C. v. North Carolina Dep't of Human Res., 136 N.C. App. 307, 524 S.E.2d 352, 2000 N.C. App. LEXIS 20 (2000); Charlotte-Mecklenburg Hosp. Auth. v. Bruton, 145 N.C. App. 190, 550 S.E.2d 524, 2001 N.C. App. LEXIS 547 (2001); Univ. of N.C. at Chapel Hill v. Feinstein, 161 N.C. App. 700, 590 S.E.2d 401, 2003 N.C. App. LEXIS 2277 (2003); Googerdy v. N.C. Agric. & Tech. State Univ., 386 F. Supp. 2d 618, 2005 U.S. Dist. LEXIS 24545 (M.D.N.C. Aug. 24, 2005); Holly Ridge Assocs., LLC v. N.C. Dep't of Env't & Natural Res., 361 N.C. 531, 648 S.E.2d 830, 2007 N.C. LEXIS 811 (2007).

Cited in Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383; O.S. Steel Erectors v. Brooks, 84 N.C. App. 630, 353 S.E.2d 869 (1987); North Carolina Dep't of Justice v. Baker, 90 N.C. App. 30, 367 S.E.2d 392 (1988); Vass v. Board of Trustees, 324 N.C. 402, 379 S.E.2d 26 (1989); Walls & Marshall Fuel Co. v. North Carolina Dep't of Revenue, 95 N.C. App. 151, 381 S.E.2d 815 (1989); C.D. Spangler Constr. Co. v. Industrial Crankshaft & Eng'g Co., 326 N.C. 133, 388 S.E.2d 557 (1990); In re Greene, 328 N.C. 639, 403 S.E.2d 257 (1991); Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992); Brooks v. BCF Piping, Inc., 109 N.C. App. 26, 426 S.E.2d 282 (1993); In re McCrary, 112 N.C. App. 161, 435 S.E.2d 359 (1993); Nailing v. UNC-CH, 117 N.C. App. 318, 451 S.E.2d 351 (1994); Byers v. North Carolina Sav. Institutions Div., 123 N.C. App. 689, 474 S.E.2d 404 (1996); Ware v. Fort, 124 N.C. App. 613, 478 S.E.2d 218 (1996); Bryant v. Hogarth, 127 N.C. App. 79, 488 S.E.2d 269 (1997); Holland Group, Inc. v. North Carolina Dep't of Admin., 130 N.C. App. 721, 504 S.E.2d 300 (1998); Prentiss v. Allstate Ins. Co., 87 F. Supp. 2d 514, 1999 U.S. Dist. LEXIS 21397 (W.D.N.C. 1999); Dialysis Care of N.C., LLC v. Department of Health & Human Servs., 137 N.C. App. 638, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000); Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., 138 N.C. App. 572, 532 S.E.2d 192, 2000 N.C. App. LEXIS 782 (2000); DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001); Best v. Dep't of Health & Human Servs., 149 N.C. App. 882, 563 S.E.2d 573, 2002 N.C. App. LEXIS 396 (2002); Farber v. N.C. Psychology Bd., 153 N.C. App. 1, 569 S.E.2d 287; CVS Pharm., Inc. v. N.C. Bd. of Pharm., 162 N.C. App. 495, 591 S.E.2d 567 (2004); In re Advance Am., Cash Advance Ctrs. of N.C. Inc., 189 N.C. App. 115, 657 S.E.2d 405, 2008 N.C. App. LEXIS 426 (2008); Meza v. Div. of Soc. Servs., — N.C. App. —, 668 S.E.2d 571, 2008 N.C. App. LEXIS 1814 (2008).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — *The opinions below were issued prior to the 1991 amendments to this Chapter.*

Applicability of § 150B-23(a). — Section 150B-23(a), as amended by Session Laws 1987, Chapter 878, is not applicable to agencies governed by Article 3A of this Chapter. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, 57 N.C.A.G. 85 (1987).

Appeals by applicants and recipients of public assistance or social services from adverse decisions of county agencies or boards are governed by the substantive provisions and procedural requirements of G.S. 108A-79, including the procedural provisions of the Administrative Procedure Act consistent with the statute, to the extent that substance and procedure are not in conflict with applicable federal law and regulations. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 55 N.C.A.G. 91 (1986).

Procedural, Not Substantive, Provisions of Act Applicable to Appeals of County Agency Decisions. — Given the detailed substantive provisions of G.S. 108A-79, designed specifically to apply to appeals of county agency decisions, and the fact that the Administrative Procedure Act (APA), by its terms, does not apply to such appeals, the Legislature, by reference to the APA, did not intend to substitute the Act's substantive requirements for those of G.S. 108A-79. The citation to the APA simply indicates a legislative intent to incorporate the powers of hearing officers and the hearing procedures detailed in the Act into G.S. 108A-79(i) by reference. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 55 N.C.A.G. 91 (1986).

When a contested case hearing is conducted by an agency governed by Article 3A of this Chapter, a petition or other notice need not be filed with the Office of Administrative Hearings. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, 57 N.C.A.G. 85 (1987).

Chapter 78A Does Not Take Precedence over This Act. — The provisions of Chapter 78A are not stated with the specificity and particularity sufficient to take precedence over any similar provisions of this Chapter which might conceivably apply to the actions and proceedings addressed by the Securities Act. See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (1988).

This Chapter applies to the Secretary of State in the execution of the duties delegated in Chapter 78A. To be entirely exempt from this Chapter under subsection (c) of this section, the agency must either be listed in subsection (d) or have a specific statement of exemption from this Chapter in its enabling legislation; however, neither basis for exemption exists for Chapter 78A. Subsection (c) does have the additional effect of causing any applicable provisions of this Chapter which cannot be reconciled with provisions of Chapter 78A to fail in favor of Chapter 78A. See opinion of Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (1988).

§ 150B-2. Definitions.

As used in this Chapter,

(1) "Administrative law judge" means a person appointed under G.S. 7A-752, 7A-753, or 7A-757.

(1a) "Agency" means an agency or an officer in the executive branch of the government of this State and includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.

(1b) "Adopt" means to take final action to create, amend, or repeal a rule.

(1c) "Codifier of Rules" means the Chief Administrative Law Judge of the Office of Administrative Hearings or a designated representative of the Chief Administrative Law Judge.

(1d) "Commission" means the Rules Review Commission.

(2) "Contested case" means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. "Contested case" does not include rulemaking, declaratory rulings, or the award or denial of a scholarship, a grant, or a loan.

(2a) Repealed by Session Laws 1991, c. 418, s. 3.

(2b) "Hearing officer" means a person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.

(3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.

(4) "Licensing" means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. "Licensing" does not include controversies over whether an examination was fair or whether the applicant passed the examination.

(4a) "Occupational license" means any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.

(4b) "Occupational licensing agency" means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. "Occupational licensing agency" does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.

(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.

(6) "Person aggrieved" means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.

(7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.

(8) "Residence" means domicile or principal place of business.

(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.

b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.

c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

e. Statements of agency policy made in the context of another proceeding, including:

1. Declaratory rulings under G.S. 150B-4.
2. Orders establishing or fixing rates or tariffs.

f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.

g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.

h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.
j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21 and the variable component of the excise tax on motor fuel under G.S. 105-449.80.
k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.

(8b) "Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

(9) Repealed by Session Laws 1991, c. 418, s. 3. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, ss. 61, 62; 1977, c. 915, s. 5; 1983, c. 641, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(2)-1(5); 1987, c. 878, ss. 1, 2, 21; 1987 (Reg. Sess., 1988), c. 1111, s. 17; 1991, c. 418, s. 3; c. 477, ss. 3.1, 3.2, 9; 1995, c. 390, s. 29; 1996, 2nd Ex. Sess., c. 18, s. 7.10(g); 1997-456, s. 27; 2003-229, s. 12; 2007-491, s. 44(1)b.)

Cross References. — For section regarding rulemaking to implement ABC plan, see G.S. 115C-17.

Editor's Note. — Subdivisions (01), (1), (1a), (1b), and (1c) of this section were renumbered as subdivisions (1), (1a), (1b), (1c) and (1d), respectively, pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Effect of Amendments. — Session Laws 2007-491, s. 44(1)b, effective January 1, 2008, substituted "G.S. 105-241.21" for "G.S. 105-241.1" in subdivision (8a)j.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For article, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

For survey of 1980 property law, see 59 N.C.L. Rev. 1209 (1981).

For note, "Contested Case Hearings Under the North Carolina Administrative Procedure Act: 1985 Rewrite Contains Dual System of Administrative Adjudication," see 64 N.C.L. Rev. 852 (1986).

For survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2252 (1997).

CASE NOTES

Editor's Note. *— Most of the cases below were decided under corresponding provisions of former Chapter 150A or prior to the 1991 amendments to this Chapter.*

"Agency". — The Department of Insurance is an "agency" subject to the provisions of subdivision (1) of this section. North Carolina Reinsurance Facility v. Long, 98 N.C. App. 41, 390 S.E.2d 176 (1990).

The Department of Revenue is an administrative agency of the State. Bailey v. State, 330 N.C. 227, 412 S.E.2d 295 (1991), cert. denied, 504 U.S. 911, 112 S. Ct. 1942, 118 L. Ed. 2d 547 (1992), overruled on other grounds, 348 N.C. 130, 500 S.E.2d 54 (1998).

Although the North Carolina Administrative Procedure Act (the Act) provides review only for agency decisions, G.S. 150B-50 (1991), and local units of government are not within the definition of agencies in subdivision (1), the principles embodied in the Act "are highly pertinent" to appellate review of local government actions. Vulcan Materials Co. v. Guilford County Bd. of County Comm'rs, 115 N.C. App. 319, 444 S.E.2d 639, cert. denied, 337 N.C. 807, 449 S.E.2d 758 (1994).

Where an agency is not a unit of state government, but rather a local one, it does not fall under the definition of "agency" within the confines of the The Administrative Procedure Act, specifically, G.S. 150B-2(1a). Lee Ray Bergman Real Estate Rentals v. N.C. Fair Hous. Ctr., 153 N.C. App. 176, 568 S.E.2d 883, 2002 N.C. App. LEXIS 1089 (2002).

"Contested Case". — Case challenging a consent special order entered into by Environmental Management Commission and a corporation, which order was alleged to intrude upon the National Pollutant Discharge Elimination System (NPDES) permit process (which process requires a hearing), was "contested" for the purposes of former G.S. 150A-43. State ex rel.

Tenn. Dep't of Health & Env't v. Environmental Mgt. Comm'n, 78 N.C. App. 763, 338 S.E.2d 781 (1986).

Where the rights of the petitioner were determined by an in-person interview and by an investigation conducted by a hearing officer of the North Carolina DMV, a state agency, they constituted "an agency proceeding." Therefore, the case was "contested" for purposes of G.S. 150B-43. Charlotte Truck Driver Training School, Inc. v. North Carolina DMV, 95 N.C. App. 209, 381 S.E.2d 861 (1989).

Petitioner's allegation that he had been "demoted in rank without sufficient cause" stated grounds for his department's action to be deemed "disciplinary" within the meaning and intent of G.S. 126-35 and for his case to be considered "contested" within the meaning and intent of G.S. 126-37(a). Because he had properly pursued all informal procedures mandated by the State Personnel Act and by the North Carolina Administrative Code for the resolution of his grievance, petitioner's appeal also fit the procedural profile of a "contested case" for purposes of its review by the Office of Administrative Hearings under this Chapter. Batten v. North Carolina Dep't of Cor., 326 N.C. 338, 389 S.E.2d 35 (1990), overruled on other grounds, Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 168 (1994).

Wildlife Resources Commission's rejection of sewer district's study and of its request for lower streamflow requirements constituted agency action giving rise to a dispute which ultimately became a "contested case" over which the Office of Administrative Hearings has jurisdiction. Metropolitan Sewerage Dist. v. North Carolina Wildlife Resources Comm'n, 100 N.C. App. 171, 394 S.E.2d 668 (1990).

A contested case hearing is distinguishable from a contested case. The phrase "contested case" extends beyond an adjudicatory hearing to include any agency proceeding, by whatever name called, wherein the legal rights, duties and privileges of a party are required by law to be determined by an agency after an opportunity for an adjudicatory hearing. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

Elements of "Contested Case". — There are two elements of a "contested case": (1) An agency proceeding; (2) that determined the rights of a party or parties. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Clear and Convincing Evidentiary Rule Invalid. — An administrative rule requiring that clear and convincing evidence be presented to show that a transfer of assets was made exclusively for a purpose other than to establish Medicaid eligibility was invalid. Dillingham v. North Carolina Dep't of Human Resources, 132 N.C. App. 704, 513 S.E.2d 823 (1999).

Error of Law. — The reviewing court may substitute its judgment for that of the Review Board if the Board's decision was affected by an error of law. Associated Mechanical Contractors v. Payne, 342 N.C. 825, 467 S.E.2d 398 (1996).

The result of a petitioner's ineffective attempts to file a petition for a contested case hearing was only a contested case. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

Without the jurisdictional prerequisite of a contested case hearing, a petitioner cannot utilize G.S. 131E-188(b) to appeal to the Court of Appeals. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

"Person Aggrieved." — "Procedural injury," whereby petitioner State of Tennessee's right to be heard on certain aspects of a National Pollutant Discharge Elimination System (NPDES) permit was substantially impaired, was sufficient under former G.S. 150A-43 to qualify petitioner as an "aggrieved person" for purposes of appeal of issuance of Environmental Management Commission's consent special order with corporation. In addition, where the consent special order contained provisions substantially identical to provisions which petitioner opposed in the proposed NPDES permit, which affected the property rights of the petitioner in the Pigeon River, these allegations also established petitioner's "aggrieved person" status. State ex rel. Tenn. Dep't of Health & Env't v. Environmental Mgt. Comm'n, 78 N.C. App. 763, 338 S.E.2d 781 (1986).

Where none of petitioner's personal rights or interests, nor any rights or interests properly attributable to him in a cognizable representative capacity, were either directly or indirectly at issue in requested rule making proceeding, he was not substantially affected by Department of Human Resources' denial of his petition for rule making. Therefore, he was not a "person aggrieved" as a result of the agency decision and had no standing to seek judicial review thereof. In re Wheeler, 85 N.C. App. 150, 354 S.E.2d 374 (1987).

"Person aggrieved" means one who is adversely affected in respect to legal rights, or who is suffering from an infringement or denial of legal rights. In re Wheeler, 85 N.C. App. 150, 354 S.E.2d 374 (1987).

A power company satisfied the definition of a "person aggrieved" because its interest in having the Department of Environment, Health and Natural Resources (now the Department of Environment and Natural Resources) prepare an Environmental Impact Statement before issuing a permit and its interest in the air resources of the state were adversely affected by DEHNR's granting of a permit issued to another power company to construct and operate combustion turbine electric generating units. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d 594 (1993), rev'd on other grounds, 337 N.C. 569, 447 S.E.2d 768, reh'g denied, 338 N.C. 314, 451 S.E.2d 634 (1994).

A landowner qualified as a "person aggrieved" as he owned and lived on property adjacent to the proposed site. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d 594 (1993), rev'd on other grounds, 337 N.C. 569, 447 S.E.2d 768, reh'g denied, 338 N.C. 314, 451 S.E.2d 634 (1994).

A pet owner was not a "person aggrieved" under G.S. 150B-2(6) as to the decision of the North Carolina Veterinary Medical Board disciplining a veterinarian against whom she filed a complaint, and therefore the pet owner was not entitled to an administrative hearing on the issue and had no standing to seek judicial review. In re Complaint No. 97025-1-1, 146 N.C. App. 258, 552 S.E.2d 230, 2001 N.C. App. LEXIS 855 (2001), cert. denied, 354 N.C. 573, 558 S.E.2d 867 (2001).

Neighboring property owners to a proposed landfill site for which an application for a facility permit was pending would suffer interference with the use and enjoyment of and diminution in the value of their property if the permit were granted; thus, they were persons aggrieved under the statute who had standing to challenge a superior court's judgment on review of an administrative agency decision. Furthermore, a neighboring town was also a person aggrieved because its tax base and planning jurisdiction would be affected by the proposed landfill. County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002), cert. dismissed, 357 N.C. 62, 579 S.E.2d 387 (2003).

Where the former caretaker sought a declaratory judgment pursuant to G.S. 150B-4 in the caretaker's action alleging that the caretaker could be harmed in the future by the department of health and human services' calculation of debt owed to the state for benefits taken under a certain program, the caretaker was not entitled to a declaratory judgment, because the caretaker was not aggrieved under G.S. 150B-2(6); the caretaker could be aggrieved in the future if certain events were to occur, but nothing in the record indicated that these events were certain to come to pass, imminently threatened, or likely to occur. Diggs v. N.C. HHS, 157 N.C. App. 344, 578 S.E.2d 666, 2003 N.C. App. LEXIS 540 (2003).

Where the former caretaker argued that the former caretaker became aggrieved pursuant to G.S. 150B-2 when the department of health and human services issued a declaratory ruling pursuant to G.S. 150B-4, thereby entitling the former caretaker to a declaratory ruling pursuant to G.S. 150B-4, the argument failed, as the former caretaker was not a person aggrieved at the time the former caretaker requested a declaratory ruling, the declaratory ruling had no effect. Diggs v. N.C. HHS, 157 N.C. App. 344, 578 S.E.2d 666, 2003 N.C. App. LEXIS 540 (2003).

Where a trade association, adversely affected by certain licensing procedures, was a "person aggrieved" under G.S. 150B-2(6), and where licensing issues were deemed to be "contested cases" under G.S. 150B-2(2), (3) and G.S. 150B-22, the association had standing to bring a contested case challenging the state agencies' general permitting procedures for wood chip mills. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 357 N.C. 640, 588 S.E.2d 880, 2003 N.C. LEXIS 1413 (2003).

County employee was a person aggrieved by the North Carolina Office of State Personnel's determination that a county's personnel regulations were substantially equivalent to the North Caroilna State Personnel Act, G.S. 126-1 et seq. Steward v. Green, 189 N.C. App. 131, 657 S.E.2d 719, 2008 N.C. App. LEXIS 423 (2008).

Standing Is Question of Subject Matter Jurisdiction. — Whether one has standing to obtain judicial review of an administrative decision is a question of subject matter jurisdiction. Carter v. North Carolina State Bd. of Registration, 86 N.C. App. 308, 357 S.E.2d 705 (1987).

County had standing to challenge establishment of toxic waste site within its borders because of the effect on its tax base and planning jurisdiction, because of the final agency determination upon issuance of an environmental impact statement, and because the Environmental Policy Act (Art. 1 of Chap. 113A) includes the right to judicial review of an issue which involves a contested case. Warren County v. North Carolina, 528 F. Supp. 276 (E.D.N.C. 1981).

The intervention statute is permissive only. In re Brunswick County, 81 N.C. App. 391, 344 S.E.2d 584 (1986).

Decisions of Municipalities Exempt from Chapter. — The North Carolina Administrative Procedure Act provides judicial review only for agency decisions, from which the decisions of local municipalities are expressly exempt. Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, 300 N.C. 562, 270 S.E.2d 106 (1980).

Standard on Review of City's Special Zoning Request Decisions. — Although the North Carolina Administrative Procedure Act provides judicial review only for agency decisions and exempts cities and other local municipalities, a similar standard of review is appropriate to review city council special zoning request decisions. Jennewein v. City Council, 62 N.C. App. 89, 302 S.E.2d 7, cert. denied, 309 N.C. 461, 307 S.E.2d 365 (1983).

The Department of Insurance is an "agency" subject to the provisions of the North Carolina Administrative Procedure Act. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

Tax Review Board was an "administrative agency" under former statute. In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963).

"Rule". — Specific findings by the State Banking Commission were not rules as defined under subsection (8a); thus, the Commission did not apply unpromulgated rules in denying application to sell non-credit disability insurance. Beneficial N.C., Inc. v. State ex rel. N.C. State Banking Comm'n, 126 N.C. App. 117, 484 S.E.2d 808 (1997).

The North Carolina Family and Children's Medicaid Manual was not a "rule" within the definition of G.S. 150B-2(8a), because it contained nonbinding interpretations of relevant state and federal law, and violations of its provisions were of no effect; thus, it did not have to be adopted pursuant to the requirements of the North Carolina Administrative Procedure Act for the adoption of rules. Okale v. N.C. Dep't of Health & Human Servs., 153 N.C. App. 475, 570 S.E.2d 741, 2002 N.C. App. LEXIS 1171 (2002).

Multi-employer policy, an interpretive statement established in the North Carolina Operations Manual for occupational safety and health regulations, falls within the exception created by G.S. 150B-2(8a)(c) and does not have to be promulgated as an agency rule. Comm'r of Labor v. Weekley Homes, L.P., 169 N.C. App. 17, 609 S.E.2d 407 (2005).

There is statutory authority under G.S. 95-126(b)(2)(m) granted to the North Carolina Department of Labor to protect the health and safety of all employees in North Carolina; the operations manual is a non-binding interpretive statement, not a rule requiring formal rule-making procedures — accordingly, the exception that requires rule-making if the rights and duties of the employer are affected does not apply; thus, the operations manual merely established guidelines that directed Occupational Safety and Health Act inspectors as to what parties could be cited for violation of a rule and thus did not require formal rule-making. Comm'r of Labor v. Weekley Homes, L.P., 169 N.C. App. 17, 609 S.E.2d 407 (2005).

Trial court's findings that the N.C. State Medical Facilities Plan was specifically excluded from the definition of a rule under G.S. 150B-2(8a)(k), that a Semiannual Dialysis Report was part of the SMFP, and that the SDR was not a rule were supported by sufficient evidence. Bio-Medical Applications of N.C., Inc. v. N.C. HHS, 179 N.C. App. 483, 634 S.E.2d 572, 2006 N.C. App. LEXIS 1979 (2006).

Memorandum Was Not a "Rule" Under Subdivision (8a). — Where a memorandum constituted guidelines to be followed when investigating and prosecuting violations of state law and a statement that possession or operation of certain video machines on ABC-licensed premises transgressed that law, the memorandum fell squarely within the meaning of subdivisions (8a)(c) and (8a)(g), and therefore did not constitute a "rule." Ford v. State, Dep't of Crime Control & Pub. Safety, 115 N.C. App. 556, 445 S.E.2d 425 (1994).

Interpretation of Medicaid Law as Rule. — A provision of an agency manual requiring written evidence that a transfer of assets was made exclusively for a purpose other than to establish Medicaid eligibility was an administrative rule under this section, where the requirement created a binding standard interpreting eligibility provisions of Medicaid law. Dillingham v. North Carolina Dep't of Human Resources, 132 N.C. App. 704, 513 S.E.2d 823 (1999).

Rehabilitation Act. — The Superior Court had jurisdiction over a petition for review of denial of services under the Rehabilitation Act of 1973, P.L. 102-569, 42 U.S.C. § 701, et seq. as amended, where, although the petitioner's claims were not heard by an Administrative Law Judge, they were heard by an agency hearing officer, at a proceeding in which petitioner and respondent were allowed to submit and cross-examine evidence and where respondent's director reviewed and affirmed the hearing officer's decision, in accordance with its own regulations. Hedgepeth v. North Carolina Div. of Servs. for the Blind, 142 N.C. App. 338, 543 S.E.2d 169, 2001 N.C. App. LEXIS 94 (2001).

While subdivision (1) expressly excepts local boards of education from the coverage of the Administrative Procedure Act, nonetheless the standards for judicial review set forth in G.S. 150B-51 apply to appeals from school boards. Evers v. Pender County Bd. of Educ., 104 N.C. App. 1, 407 S.E.2d 879 (1991), aff'd, 331 N.C. 380, 416 S.E.2d 3 (1992).

Board of trustees of medical plan was an "agency" of the executive branch of State government under this section. Vass v. Board of Trustees, 324 N.C. 402, 379 S.E.2d 26 (1989).

Trustees of university were not an agency governed by the former statute. In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

State Employee's Attempt to Recover for Surgery Costs. — State employee's dispute with the Board of Trustees of the Teachers' and

State Employees' Comprehensive Major Medical Plan (now State Health Plan for Teachers and State Employees), an administrative agency, seeking to recover costs of surgery should have been brought under this Chapter. Vass v. Board of Trustees, 89 N.C. App. 333, 366 S.E.2d 1 (1988), modified and aff'd, 324 N.C. 402, 379 S.E.2d 26 (1989).

Petitioner whose driving privilege was mandatorily suspended under G.S. 20-17(2) and G.S. 20-19(e) did not have the right to appeal under G.S. 20-25 or under this Chapter. However, the superior court could review the actions of the Commissioner by issuing a writ of certiorari. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

Intervenor Not Approved. — For purposes of meeting appeal requirements of G.S. 131E-188(b), appellant, proposed intervenor below, was not and could not be a party to contested hearing at issue below until its motion to intervene was approved. Since this motion was not approved, appellant was not a party to contested case, and therefore, did not meet jurisdictional requirements of G.S. 131E-188(b). HCA Crossroads Residential Centers, Inc. v. North Carolina Dep't of Human Resources, 99 N.C. App. 193, 392 S.E.2d 398 (1990).

"Substantial Evidence." — Administrative law judge and trial court did not err in finding contradictions in the testimony of a supervisor and an employee whom the supervisor promoted; based on the inconsistencies in testimony by the supervisor and the employee, relevant evidence existed that a reasonable mind might accept as adequate to support the conclusion that their versions were contradictory. Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

Substantial Evidence to Support Licensing Suspension. — Substantial evidence under G.S. 150B-2(8b) supported the Board of Dental Examiner's findings that (1) an orthodontist's treatment of a patient was untimely and that such untimeliness was a breach of the requisite standard of care for dentists under G.S. 90-41; and (2) the orthodontist's treatment of another patient was likewise negligent because the Board could reasonably have concluded that the standard of care required the use of photographs as a means to track the progress of orthodontic case. Watkins v. N.C. State Bd. of Dental Exam'rs, 358 N.C. 190, 593 S.E.2d 764 (2004).

Substantial Evidence Supported Awarding Certificate of Need. — The findings by the North Carolina Department of Health and Human Services in awarding a certificate of need to an applicant, under the whole record test, were supported by substantial evidence, that is, relevant evidence that a reasonable mind might have accepted as adequate to support a conclusion, pursuant to G.S. 150B-2(8b). Total Renal Care of N.C., LLC v. N.C. HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005).

As to applicability of former statute, see In re North Carolina Auto. Rate Admin. Office, 278 N.C. 302, 180 S.E.2d 155 (1971); Carter v. Town of Chapel Hill, 14 N.C. App. 93, 187 S.E.2d 588, cert. denied, 281 N.C. 314, 188 S.E.2d 897 (1972).

Scope of Appellate Review. — In an action arising from allegations of age discrimination, while the superior court properly applied both a de novo review and the whole-record test to the respective issues on appeal under G.S. 150B-51(b) when it reviewed the final decision of the State Personnel Commission (SPC), it erred when it improperly substituted its judgment for that of the SPC under the whole-record test. Thus, remand was ordered for the superior court to affirm the SPC's final agency decision. Trotter v. N.C. HHS, 189 N.C. App. 655, 659 S.E.2d 749, 2008 N.C. App. LEXIS 712 (2008).

Applied in Beneficial N.C., Inc. v. State ex rel. N.C. State Banking Comm'n, 126 N.C. App. 117, 484 S.E.2d 808 (1997); Duke Univ. Medical Ctr. v. Bruton, 134 N.C. App. 39, 516 S.E.2d 633 (1999); DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001); Hospice at Greensboro, Inc. v. N.C. HHS Div. of Facility Servs., 185 N.C. App. 1, 647 S.E.2d 651, 2007 N.C. App. LEXIS 1714 (2007); Good Hope Health Sys., L.L.C. v. N.C. HHS, 189 N.C. App. 534, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008); Kelly v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 664 S.E.2d 625, 2008 N.C. App. LEXIS 1544 (2008); Jailall v. N.C. Dep't of Pub. Instruction, — N.C. App. —, 675 S.E.2d 79, 2009 N.C. App. LEXIS 455 (2009).

Cited in Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 768; Gummels v. North Carolina Dep't of Human Resources, 97 N.C. App. 245, 388 S.E.2d 223 (1990); Penuel v. Hiatt, 97 N.C. App. 616, 389 S.E.2d 289 (1990); North Buncombe Ass'n of Concerned Citizens v. Rhodes, 100 N.C. App. 24, 394 S.E.2d 462 (1990); State ex rel. Envtl. Mgt. Comm'n v. House of Raeford Farms, Inc., 101 N.C. App. 433, 400 S.E.2d 107 (1991); Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 111 N.C. App. 875, 433 S.E.2d 814 (1993); Farnsworth v. Jones, 114 N.C. App. 182, 441 S.E.2d 597 (1994); Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 338 N.C. 288, 449 S.E.2d 188 (1994); Act-Up Triangle v. Commission for Health Servs., 345 N.C. 699, 483 S.E.2d 388 (1997); Meads v. North Carolina Dep't of Agric., 349 N.C. 656, 509 S.E.2d 165 (1998); Jackson v. North Carolina Dep't of Human Res., 131 N.C. App. 179, 505 S.E.2d 899, 1998 N.C. App. LEXIS 1306 (1998);

N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 162 N.C. App. 467, 591 S.E.2d 549, 2004 N.C. App. LEXIS 178 (2004); Alston v. N.C. A&T State Univ., 304 F. Supp. 2d 774, 2004 U.S. Dist. LEXIS 1725 (M.D.N.C. 2004); N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004); Vanderburg v. N.C. Dep't of Revenue, 168 N.C. App. 598, 608 S.E.2d 831, 2005 N.C. App. LEXIS 451 (2005); Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005); Trayford v. N.C. Psychology Bd., 174 N.C. App. 118, 619 S.E.2d 862, 2005 N.C. App. LEXIS 2286 (2005); In re Lustgarten, 177 N.C. App. 663, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — *Many of the opinions below were issued prior to the 1991 amendments to this Chapter.*

Procedures Substantially Affecting Nonagency Persons Must Be Adopted as Rules. — When G.S. 150B-2(8a) and G.S. 150B-11(1) are read together, it is apparent that any procedures, whether formal or informal, that directly or substantially affect the rights or procedures of nonagency persons must be adopted as rules. See Opinion of Attorney General to Elizabeth H. Drury, Director, Office of Legislative and Legal Affairs, Department of Human Resources, 56 N.C.A.G. 25 (1986) decided prior to the 1991 amendment.

Employee Insurance Committees have rule-making and limited quasi-judicial powers pursuant to former G.S. 58-194.3(b) (see now G.S. 58-31-60) and are "agencies" within the meaning of G.S. 150B-2(1). See Opinion of Attorney General to Elizabeth H. Drury, Director, Office of Legislative and Legal Affairs, Department of Human Resources, 56 N.C.A.G. 25 (1986) decided prior to the 1991 amendment.

The signing of a proposed memorandum of understanding with federal land managers of National Parks and Wilderness Areas in and around North Carolina would not constitute rulemaking under the N.C. Administrative Procedures Act and, therefore, did not require rulemaking by the Environmental Management Commission. See Opinion of Attorney General to Mr. William R. Gilkeson, Staff Attorney, N.C. General Assembly, 1998 N.C.A.G. 54 (12/4/98).

Contested Cases. — Determinations made by the securities administrator pursuant to his statutory authority are considered "contested cases" within the meaning of subdivision (2) of this section. Such determinations control or restrict the activities of dealers, salesmen, or issuers of securities, but these determinations only become "contested cases" if the administrator's action is "disputed" by the subject of such determination. See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (1988).

The registration of securities dealers and salesmen by the Securities Division pursuant to G.S. 78A-37 constitutes the granting of an "occupational license" within the meaning of subdivision (4a) of this section. See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (1988).

Scope of Article 3A of This Chapter. — Even though the Securities Division is determined to be an "occupational licensing agency" within the meaning of subdivision (4b) of this section, the provisions of Article 3A of this chapter (procedure for conduct of administrative hearings by occupational licensing agencies) in no way restrict or modify provisions of G.S. 78A-39(a), (c),(e) and (f); 78A-45 or 78A-46(b). See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (1988).

The Securities Division is an "occupational licensing agency" within the meaning of subdivision (4b) of this section. See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (1988).

Career banding project did not require formal rules. — A career banding project which the Office of State Personnel planned to implement did not require formal rules in order to be implemented. See opinion of Attorney General to Mr. Thomas H. Wright, State Personnel Director, Office of State Personnel, 2002 N.C. AG LEXIS 16 (4/12/02).

§ 150B-3. Special provisions on licensing.

(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150B-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150B-38. In either case, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

(d) This section does not apply to the following:

(1) Revocations of occupational licenses based solely on a court order of child support delinquency or a Department of Health and Human Services determination of child support delinquency issued pursuant to G.S. 110-142, 110-142.1, or 110-142.2.

(2) Refusal to renew an occupational license pursuant to G.S. 87-10.1, 87-22.2, 87-44.2, or 89C-18.1, based solely on a Department of Revenue determination that the licensee owes a delinquent income tax debt. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1995, c. 538, s. 2(i); 1997-443, s. 11A.118(a); 1998-162, s. 8.)

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

CASE NOTES

Cited in Miller v. North Carolina State Bd. of Registration for Professional Eng'rs & Land Surveyors, 322 N.C. 465, 368 S.E.2d 605 (1988); Ramsey v. N.C. DMV, 184 N.C. App. 713, 647 S.E.2d 125, 2007 N.C. App. LEXIS 1594 (2007).

OPINIONS OF ATTORNEY GENERAL

The requirements in subsection (c) of this section that an agency make a finding that the "public health, safety, or welfare requires emergency action" prior to a summary suspension of a license or an occupational license, and that the agency incorporate such finding in its order of suspension, are not in any way in conflict with the findings required to be made by the securities administrator by G.S. 78A-39(a) prior to denying, suspending, or revoking the registration of a securities dealer or salesman and by G.S. 78A-29(a) prior to denying, suspending, or revoking the effectiveness of a securities registration statement. See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (1988).

Extension of Permit's Expiration Date. — Licensee's permit to operate underground storage tanks was not extended by virtue of G.S. 150B-3(a), extending a permit's expiration date until a final decision was made on whether an application for a new permit would be accepted, because he did not make a "timely and sufficient application for issuance or renewal" of his permit, so G.S. 150B-3(a) did not prevent the licensee from being fined for a lack of permits. Overcash v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 635 S.E.2d 442, 2006 N.C. App. LEXIS 2168 (2006).

§ 150B-4. Declaratory rulings.

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

(b) Repealed by Session Laws 1997-34, s. 1, effective April 23, 1997. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 4; c. 477, s. 2.1; 1997-34, s. 1.)

Editor's Note. — This section is former G.S. 150B-17, as recodified by Session Laws 1991, c. 418, s. 4.

Legal Periodicals. — For article, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

Editor's Note. — *Most of the cases below were decided under corresponding provisions of former G.S. 150B-17 or Chapter 150A.*

Former § 150A-17 clearly did not contemplate an evidentiary proceeding. If evidence were required to establish the facts, then the proper procedure would have been to hold a contested case hearing. In re Ford, 52 N.C. App. 569, 279 S.E.2d 122 (1981).

Good Cause for Denial. — Good cause exists for denial of a request for a declaratory ruling where the denial is based on the existence of a prior agency ruling which necessarily required an interpretation on the same statute which is the subject of the request for declaratory ruling. Catawba Mem. Hosp. v. North Carolina Dep't of Human Resources, 112 N.C. App. 557, 436 S.E.2d 390 (1993), cert. granted, 336 N.C. 72, 445 S.E.2d 31 (1994).

A declaratory ruling by an administrative agency is subject to judicial review as though it were an agency final decision or order in a contested case. High Rock Lake Ass'n v. North Carolina Envtl. Mgt. Comm'n, 51 N.C. App. 275, 276 S.E.2d 472 (1981).

Party Not Aggrieved. — Where the former caretaker sought a declaratory judgment pursuant to G.S. 150B-4 in the caretaker's action alleging that the caretaker could be harmed in the future by the department of health and human services' calculation of debt owed to the state for benefits taken under a certain program, the caretaker was not entitled to a declaratory judgment, because the caretaker was not aggrieved under G.S. 150B-2(6); the caretaker could be aggrieved in the future if certain events were to occur, but nothing in the record indicated that these events were certain to come to pass, imminently threatened, or likely to occur. Diggs v. N.C. HHS, 157 N.C. App. 344, 578 S.E.2d 666, 2003 N.C. App. LEXIS 540 (2003).

Declaratory Ruling Has No Effect When Petitioner Was Not Aggrieved. — Where the former caretaker argued that the former caretaker became aggrieved pursuant to G.S. 150B-2 when the department of health and human services issued a declaratory ruling pursuant to G.S. 150B-4, thereby entitling the former caretaker to a declaratory ruling pursuant to G.S. 150B-4, the argument failed, as the former caretaker was not a person aggrieved at the time the former caretaker requested a declaratory ruling, the declaratory ruling had no effect. Diggs v. N.C. HHS, 157 N.C. App. 344, 578 S.E.2d 666, 2003 N.C. App. LEXIS 540 (2003).

Plaintiff Failing to Exhaust Administrative Remedies Not Entitled to Judicial Relief. — Plaintiff collection agency was not entitled to seek a declaratory judgment in the superior court as to the validity and applicability of a regulation of the Department of Insurance prohibiting collection agencies from instituting judicial proceedings on behalf of other persons, where plaintiff failed to exhaust available administrative remedies by petitioning the Department of Insurance for amendment or repeal of the regulation under former G.S. 150A-16 or seeking a declaratory ruling from the Department of Insurance as to the validity and applicability of the regulation under former G.S. 150A-17, and then by seeking judicial review of an adverse Department of Insurance decision under former G.S. 150A-43 et seq. Porter v. North Carolina Dep't of Ins., 40 N.C. App. 376, 253 S.E.2d 44, cert. denied, 297 N.C. 455, 256 S.E.2d 808 (1979).

Work First benefits recipient's appeal of the denial of a declaratory judgment that the Work First Manual violated the Americans With Disabilities Act, 42 U.S.C.S. § 12101 et seq., was dismissed as the recipient failed to exhaust her administrative remedies; she could have sought a declaratory ruling under G.S. 150B-4 and the trial court did not obtain subject matter jurisdiction over the complaint. Chatmon v. N.C. HHS, 175 N.C. App. 85, 622 S.E.2d 684, 2005 N.C. App. LEXIS 2711 (2005).

Trial Court Lacked Jurisdiction Where Declaratory Relief Not Pursued in Agency Proceeding. — Original jurisdiction for a declaratory ruling as to the rights and interest of parties in a pier and boat ramp extending over a state-owned lake rested in the Department of Natural Resources and Community Development (now the Department of Environment and Natural Resources). As the parties did not pursue such declaratory relief and failed to exhaust their administrative remedies prior to instituting their civil action, the trial court lacked subject matter jurisdiction. Woodlief v. Johnson, 75 N.C. App. 49, 330 S.E.2d 265 (1985).

Applied in Affordable Care, Inc. v. N.C. State Bd. of Dental Exam'rs, 153 N.C. App. 527, 571 S.E.2d 52 (2002).

Cited in Gummels v. North Carolina Dep't of Human Resources, 97 N.C. App. 245, 388 S.E.2d 223 (1990); Total Care, Inc. v. Department of Human Resources, 99 N.C. App. 517, 393 S.E.2d 338 (1990); Florence Concrete Prods., Inc. v. North Carolina Licensing Bd., 113 N.C. App. 270, 437 S.E.2d 877 (1994); County of Durham v. North Carolina Dep't of Env't & Natural Resources, 131 N.C. App. 395, 507 S.E.2d 310 (1998); D.G. Matthews & Son v. State ex rel. McDevitt, 131 N.C. App. 520, 508 S.E.2d 331 (1998); Good Hope Health Sys., L.L.C. v. N.C. HHS, 189 N.C. App. 534, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

§§ 150B-5 through 150B-8: Reserved for future codification purposes.

ARTICLE 2.

Rule Making.

§§ 150B-9 through 150B-16: Repealed by Session Laws 1991, c. 418, s. 5.

Cross References. — As to rulemaking, see now G.S. 150B-18 et seq.

§ 150B-17: Recodified as § 150B-4 by Session Laws 1991, c. 418, s. 4, effective October 1, 1991.

ARTICLE 2A.

Rules.

Part 1. General Provisions.

§ 150B-18. Scope and effect.

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. (1991, c. 418, s. 1.)

Editor's Note. — Session Laws 1991, ch. 418 repealed former Articles 2 and 5 and enacted in their place a new Article 2A. Where appropriate, the historical citations to sections in the repealed Articles have been added to corresponding sections in new Article 2A.

Session Laws 2004-124, s. 22A.1.(a), provides: "All personnel and equipment presently assigned to the Rules Review Commission for the purpose of carrying out Article 2A of Chapter 150B of the General Statutes, are transferred to the Office of Administrative Hearings by a Type I transfer as defined by G.S. 143A-6(a). The Chief Administrative Law Judge shall be responsible for the hiring of the Director and other staff of the Rules Review Commission."

Legal Periodicals. — For article, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

For survey of 1980 administrative law, see 59 N.C.L. Rev. 1017 (1981).

For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

For note, "The Forty-Two Hundred Dollar Question: 'May State Agencies Have Discretion in Setting Civil Penalties Under the North Carolina Constitution?'," see 68 N.C. L. Rev. 1035 (1990).

CASE NOTES

Editor's Note. — *Many of the cases below were decided under corresponding provisions of former Article 2 or earlier statutes.*

Notice and Opportunity to Be Heard Required. — Substantial compliance under former G.S. 150A-9, among other things, required notice and the opportunity to be heard, as provided by former G.S. 150A-12, before the adoption of a rule. American Guar. & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398, cert. denied, 292 N.C. 729, 235 S.E.2d 782 (1977).

Limitation on Authority of Social Services Commission to Make Rules. — The Social Services Commission has and continues to have general rule making authority under its grant in G.S. 143B-153 and by the provision of G.S. 108A-71 which authorizes the Department of Human Resources to accept all "State appropriations" for programs of social services. That grant became limited, however, by this Chapter upon its enactment, thereby requiring the Commission to comply with certain procedural requirements in adopting rules if specifically authorized by legislative enactment to adopt rules. Whittington v. North Carolina Dep't of Human Resources, 100 N.C. App. 603, 398 S.E.2d 40 (1990).

Rule denying Medicaid payments to those who are eligible for Medicare, but have failed to enroll, would be struck down as unsupported by statutory or regulatory authority and as denying a substantial right. Duke Univ. Medical Ctr. v. Bruton, 134 N.C. App. 39, 516 S.E.2d 633 (1999).

Compliance with This Chapter in Administering State Abortion Fund. — Since the State Abortion Fund prior to the enactment of Session Laws 1985, c. 479, s. 93 was merely a "state appropriation," the Department of Human Resources, through its Social Services Commission, could and did enact rules and regulations pertaining to the program. However, by the passage of s. 93, which specifically limits, by legislative enactment, how the Fund is to be administered, the Department of Human Resources and the Commission's rule making authority must comply with the requirements of this Chapter. Whittington v. North Carolina Dep't of Human Resources, 100 N.C. App. 603, 398 S.E.2d 40 (1990).

Construction with Coastal Area Management Act. — The mandatory provisions of the Administrative Procedure Act must be read as complementing the procedural safeguards in the Coastal Area Management Act of 1974. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

Construction with State Bar Rules. — North Carolina State Bar could not rely upon the felonious misconduct portion of N.C. St. Bar R. B.0111(e) to avoid dismissal of its claims for relief because that portion of the rule was not properly adopted under G.S. 84-21, the enabling statute governing the state bar's rulemaking authority; moreover, G.S. 84-21 did not contain a provision permitting only substantial compliance with its requirements, in contrast to G.S. 150B-18, and the more specific directions of G.S. 84-21 governed over the general rule-making provision of the North Carolina Administrative Procedures Act. N.C. State Bar v. Brewer, 183 N.C. App. 229, 644 S.E.2d 573, 2007 N.C. App. LEXIS 1040 (2007).

Administrative agency rules may be grouped into three categories: (1) Procedural rules which describe how the agency will discharge its assigned functions and the requirements others must follow in dealing with the agency; (2) Legislative rules which are established by an agency as a result of a delegation of legislative power to the agency; and (3) Interpretative rules which interpret and apply the provisions of the statute under which the agency operates. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301

N.C. 107, 273 S.E.2d 300 (1980).

The Supreme Court is not limited to the label placed on a rule by an agency, but must look instead to the substance of the rule in question. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

Amendments to State Guidelines as Administrative Rule-Making. — Amendments to the State guidelines by the Coastal Resources Commission are considered administrative rule-making under this section and thus subject to the comprehensive additional safeguards contained in the Administrative Procedure Act. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

Requirement by the Commissioner of Insurance that audited data be submitted in a ratemaking case was a legislative rule and therefore subject to the rule-making provisions of the North Carolina Administrative Procedure Act. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

Construction of Former § 150A-10(4). — The exclusion of policy statements or interpretations "made in the decision of a contested case" included in subdivision (4) of former G.S. 150A-10 clearly was not intended to embrace substantive rules with anticipated future applicability. This is so because of the difference between interpretative and legislative rules and because subdivision (6) of former G.S. 150A-10, which excludes "interpretative rules and general statements of policy of the agency" would be unnecessary if subdivision (4) of former G.S. 150A-10 were intended to apply to matters beyond the contested case in question. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

Formal Rule-Making Procedure Not Required. — There is statutory authority under G.S. 95-126(b)(2)(m) granted to the North Carolina Department of Labor to protect the health and safety of all employees in North Carolina; the operations manual is a non-binding interpretive statement, not a rule requiring formal rule-making procedures — accordingly, the exception that requires rule-making if the rights and duties of the employer are affected does not apply; thus, the operations manual merely established guidelines that directed Occupational Safety and Health Act inspectors as to what parties could be cited for violation of a rule and thus did not require formal rule-making. Comm'r of Labor v. Weekley Homes, L.P., 169 N.C. App. 17, 609 S.E.2d 407 (2005).

Applied in Affordable Care, Inc. v. N.C. State Bd. of Dental Exam'rs, 153 N.C. App. 527, 571 S.E.2d 52 (2002).

Cited in Jackson v. North Carolina Dep't of Human Res., 131 N.C. App. 179, 505 S.E.2d 899, 1998 N.C. App. LEXIS 1306 (1998).

§ 150B-19. Restrictions on what can be adopted as a rule.

An agency may not adopt a rule that does one or more of the following:

(1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.

(2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.

(3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.

(4) Repeats the content of a law, a rule, or a federal regulation. A brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the "reasonably necessary" standard of review set in G.S. 150B-21.9(a)(3).

(5) Establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following:
   a. A service to a State, federal, or local governmental unit.
   b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both.
   c. A transcript of a public hearing.
   d. A conference, workshop, or course.
   e. Data processing services.

(6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 7.10(a).)

Editor's Note. — Session Laws 2009-216, s. 2(c), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Wastewater Discharge Rule 15A NCAC 02B.0270. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)." Section 2 of Session Laws 2009-216 pertains to wastewater discharge into the Jordan Lake Reservoir.

Session Laws 2009-216, s. 3(j), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Sections 3(c) through 3(i) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Sections 3(c) through 3(f) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)." Section 3 of Session Laws 2009-216 pertains to stormwater management, Jordan Lake Reservoir.

CASE NOTES

Implementation or Adoption of Rules. — Because neither G.S. 160A-325(a) nor any other statute specifically authorized the North Carolina Department of Environment and Natural Resources to implement or interpret G.S. 160A-325(a), it was not part of the Department's regulatory permitting scheme for solid waste management landfills; assuming, arguendo, that a town was required to adhere to its requirements, the failure to do so did not require withdrawal of a facility permit for a proposed landfill. County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002), cert. dismissed, 357 N.C. 62, 579 S.E.2d 387 (2003).

OPINIONS OF ATTORNEY GENERAL

Adoption of Rules. — The Water Quality Committee of the Environmental Management Commission is authorized to adopt rules requiring permits for impacts to isolated wetlands and surface waters. See opinion of Attorney General to Dr. Charles H. Peterson, Vice Chairman, Environmental Management Commission, and Ms. Coleen Sullins, Water Quality Section, Division of Water Quality, 2001 N.C. AG LEXIS 33 (9/5/01).

§ 150B-20. Petitioning an agency to adopt a rule.

(a) Petition. — A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

(b) Time. — An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) Action. — If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition, the notice of text it publishes in the North Carolina Register may state that the agency is initiating rule making as the result of a rule-making petition and state the name of the person who submitted the rule-making petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes may set out the text of the requested rule change submitted with the rule-making petition and state whether the agency endorses the proposed text.

(d) Review. — Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

(e) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 7.10(b). (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; c. 477, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 7.10(b); 1997-34, s. 2; 2003-229, s. 1.)

Editor's Note. — Session Laws 1999-237, s. 11 provides that the Codifier of Rules may reorganize Titles 10 and 15A of the North Carolina Administrative Code to reflect the recent reorganization of the Department of Health and Human Services and the Department of Environment and Natural Resources.

Legal Periodicals. — For article, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

Editor's Note. *— The cases below were decided under corresponding provisions of former Article 2 or earlier statutes.*

Judicial Review of Denial. — An agency's denial of a petition for rule making under former G.S. 150A-16 is subject to judicial review pursuant to the provisions of former G.S. 150A-43. In re Wheeler, 85 N.C. App. 150, 354 S.E.2d 374 (1987).

Where the Commission denied plaintiffs' rule-making petition, judicial review of the decision to deny the petition was available pursuant to subsection (d). Act-Up Triangle v. Commission for Health Servs., 345 N.C. 699, 483 S.E.2d 388 (1997).

Use of "Whole Record" Test. — The superior court properly employed the "whole record test" in its judicial review of the Commission's decision to deny plaintiffs' rule-making petition. Act-Up Triangle v. Commission for Health Servs., 345 N.C. 699, 483 S.E.2d 388 (1997).

Plaintiff Failing to Exhaust Administrative Remedies Not Entitled to Judicial Relief. — Plaintiff collection agency was not entitled to seek a declaratory judgment in the superior court as to the validity and applicability of a regulation of the Department of Insurance prohibiting collection agencies from instituting judicial proceedings on behalf of other persons, where plaintiff failed to exhaust available administrative remedies by petitioning the Department of Insurance for amendment or repeal of the regulation under former G.S. 150A-16 or seeking a declaratory ruling from the Department of Insurance as to the validity and applicability of the regulation under former G.S. 150A-17, and then by seeking judicial review of an adverse Department of Insurance decision under former G.S. 150A-43 et seq. Porter v. North Carolina Dep't of Ins., 40 N.C. App. 376, 253 S.E.2d 44, cert. denied, 297 N.C. 455, 256 S.E.2d 808 (1979).

Federal Court Jurisdiction. — Where plaintiff filed a petition for rule-making requesting that North Carolina Department of Human Resources remove rule from the North Carolina Food Stamp Manual, cease all further application of rule, and adopt proposed rule, and the Secretary of the United States Department of Agriculture moved to intervene, then removed the case to federal district court, pursuant to 28 U.S.C. § 1441(b) and 1442(a)(1), the case was remanded to the State Supreme Court because the federal court lacked subject matter jurisdiction. Thomas v. North Carolina Dep't of Human Resources, 898 F. Supp. 315 (M.D.N.C. 1995).

Applied in North Carolina Chiropractic Ass'n v. North Carolina State Bd. of Educ., 122 N.C. App. 122, 468 S.E.2d 539 (1996); Beneficial N.C., Inc. v. State ex rel. N.C. State Banking Comm'n, 126 N.C. App. 117, 484 S.E.2d 808

(1997); Affordable Care, Inc. v. N.C. State Bd. of Dental Exam'rs, 153 N.C. App. 527, 571 S.E.2d 52 (2002); Table Rock Chapter of Trout Unlimited v. Envtl. Mgmt. Comm'n, 191 N.C. App. 362, 663 S.E.2d 333, 2008 N.C. App. LEXIS 1323 (2008).

§ 150B-21. Agency must designate rule-making coordinator; duties of coordinator.

(a) Each agency must designate one or more rule-making coordinators to oversee the agency's rule-making functions. The coordinator shall serve as the liaison between the agency, other agencies, units of local government, and the public in the rule-making process. The coordinator shall report directly to the agency head.

(b) The rule-making coordinator shall be responsible for the following:

(1) Preparing notices of public hearings.

(2) Coordinating access to the agency's rules.

(3) Screening all proposed rule actions prior to publication in the North Carolina Register to assure that an accurate fiscal note has been completed as required by G.S. 150B-21.4(b).

(4) Consulting with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities to determine which local governments would be affected by any proposed rule action.

(5) Providing the North Carolina Association of County Commissioners and the North Carolina League of Municipalities with copies of all fiscal notes required by G.S. 150B-21.4(b), prior to publication in the North Carolina Register of the proposed text of a permanent rule change.

(6) Coordinating the submission of proposed rules to the Governor as provided by G.S. 150B-21.26.

(c) At the earliest point in the rule-making process and in consultation with the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and with samples of county managers or city managers, as appropriate, the rule-making coordinator shall lead the agency's efforts in the development and drafting of any rules or rule changes that could:

(1) Require any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;

(2) Increase the cost of providing or delivering a public service funded in whole or in part by any unit of local government; or

(3) Otherwise affect the expenditures or revenues of a unit of local government.

(d) The rule-making coordinator shall send to the Office of State Budget and Management for compilation a copy of each final fiscal note prepared pursuant to G.S. 150B-21.4(b).

(e) The rule-making coordinator shall compile a schedule of the administrative rules and amendments expected to be proposed during the next fiscal year. The coordinator shall provide a copy of the schedule to the Office of State Budget and Management in a manner proposed by that Office.

(f) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the rule-making coordinator shall:

(1) Attach to the proposed rule a certificate prepared by the rule-making coordinator identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth

the reasons for why the proposed rule is required by law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the proposed rule; and

(2) The rule-making coordinator shall maintain a copy of the federal law and shall provide to the Office of State Budget and Management for compilation the citation to the federal law requiring or pertaining to the proposed rule. (1991, c. 418, s. 1; 1995, c. 415, s. 1; c. 507, s. 27.8(v); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

OPINIONS OF ATTORNEY GENERAL

Adoption of Rules. — The Water Quality Committee of the Environmental Management Commission could immediately adopt temporary rules under G.S. 150B-21(a)(5) to establish a permit program for regulating impacts to isolated wetlands and surface waters because a recent decision of the U.S. Supreme Court invalidating the Army Corps of Engineers' exercise of jurisdiction over such isolated waters was a court order under G.S. 150B-21.1(a)(5). See opinion of Attorney General to Dr. Charles H. Peterson, Vice Chairman, Environmental Management Commission, and Ms. Coleen Sullins, Water Quality Section, Division of Water Quality, 2001 N.C. AG LEXIS 33 (9/5/01).

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. — An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) The effective date of a recent act of the General Assembly or the United States Congress.
(3) A recent change in federal or State budgetary policy.
(4) A recent federal regulation.
(5) A recent court order.
(6) The need for a rule establishing review criteria as authorized by G.S. 131E-183(b) to complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.
(7) The need for the Wildlife Resources Commission to establish any of the following:
    a. No wake zones.
    b. Hunting or fishing seasons.
    c. Hunting or fishing bag limits.
    d. Management of public game lands as defined in G.S. 113-129(8a).
(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.
(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
  a. In accordance with the provisions of G.S. 163-22.2.
  b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
  c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:
  a. Repealed by Session Laws 2000-148, s. 5, effective July 1, 2002.
  b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.

(13), (14) Reserved.

(15) Expired pursuant to Session Laws 2002-164, s. 5, effective October 1, 2004.

(16) Expired pursuant to Session Laws 2003-184, s. 3, effective July 1, 2005.

(a1) Recodified as subdivision (a)(16) of this section by Session Laws 2004-156, s. 1.

(a2) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

(a3) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a4) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. — When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. — A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. — A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.
(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. — When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register. (1973, c. 1331, s. 1; 1981, c. 688, s. 12; 1981 (Reg. Sess., 1982), c. 1232, s. 1; 1983, c. 857; c. 927, ss. 4, 8; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), 1(8); 1987, c. 285, ss. 10-12; 1991, c. 418, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 149; 1993, c. 553, s. 54; 1995, c. 507, s. 27.8(c); 1996, 2nd Ex. Sess., c. 18, ss. 7.10(c), (d); 1997-403, ss. 1-3; 1998-127, s. 2; 1998-212, s. 26B(h); 1999-434, s. 16; 1999-453, s. 5(a); 2000-69, ss. 3, 5; 2000-148, ss. 4, 5; 2001-126, s. 12; 2001-421, ss. 2.3, 5.3; 2001-424, ss. 27.17(b), (c), 27.22(a), (b); 2001-487, s. 21(g); 2002-97, ss. 2, 3; 2002-164, s. 4.6; 2003-184, s. 3; 2003-229, s. 2; 2003-413, ss. 27, 29; 2004-156, s. 1.)

Cross References. — As to Commission's ability to adopt temporary rules, notwithstanding this section, to establish maximum mass loads or concentration limits relating to nitrogen and phosphorous discharge limits pursuant to G.S. 143-215.1B, see G.S. 143-215.1B(c).

Coastal Energy Facilities. — Session Laws 1998-221, s. 2.1 provided: "Notwithstanding G.S. 150B-21.1(a) and 26 NCAC 2C.0102(11), the Coastal Resources Commission may adopt temporary rules governing coastal energy facilities until 1 July 2005."

Conservation Reserve Enhancement Program. — Session Laws 1998-165, s. 2 provides that the Soil and Water Conservation Commission may adopt temporary rules to implement the Conservation Reserve Enhancement Program. This section shall constitute a recent act of the General Assembly for purposes of G.S. 150B-21.1(a)(2).

Area Mental Health Programs. — Session Laws 1998-212, s. 12.35C(b) provides: "Notwithstanding G.S. 150B-21.1, the Secretary may adopt temporary rules to implement subsection (a) of this section [which amended G.S. 122C-112(a)], provided that the temporary rules shall not become effective until 60 days after the Secretary has provided notice and opportunity for written comment to the general public of the Secretary's intent to adopt temporary rules, the purpose and subject matter of the rules, and the effective date of the rules. Notice and comment shall be through publication in the North Carolina Register, in the print media, and through mailings to area mental health authorities and other appropriate mental health institutions and providers that will be subject to the temporary rules."

Hurricane Floyd Recovery Act. — Session Laws 1999-463, s. 4 authorizes every State agency to adopt temporary rules necessary to implement the provisions of the act, the Hurricane Floyd Recovery Act of 1999, and provides that notwithstanding § 150B-21.1 (a)(2) and 26 NCAC 2C.0102(11), the authority to adopt temporary rules to implement the provisions of the act shall continue in effect until all rules necessary to implement the provisions of the act have become effective as either temporary rules or permanent rules. Notwithstanding § 150B-21.1 (d), a temporary rule adopted to implement the provisions of the act shall specify the date on which the rule will expire and shall continue in effect until that date. Any agency that adopts a temporary rule to implement the provisions of the act shall report the text of the rule and the agency's written statement of its findings of the need for the rule to the Joint Legislative Administrative Procedure Oversight Committee within 30 days of the adoption of the temporary rule. Section 4 applies to the adoption of temporary rules by the Department of Administration under § 113A-11 (a) and to the adoption of temporary rules that establish minimum criteria by any State agency, as defined in § 113A-9, under § 113A-11 (b).

Adult Care Homes—Short-Term Admission. — Session Laws 2000-50, s. 2, provides: "Notwithstanding G.S. 150B-21.1(a), the Medical Care Commission shall adopt temporary rules for the purpose of defining the circumstances under which adult care homes may admit residents on a short-term basis for the purpose of caregiver respite and the rules that shall apply during the course of their stay. The Commission's authority to adopt temporary rules under this section expires on the date that permanent rules pertaining to the same subject matter adopted by the Commission as authorized under G.S. 143B-165(10) become effective."

Mental Health Facilities. — Session Laws 2000-55, s. 6, provides: "Notwithstanding G.S. 150B-21.1(a), the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt temporary rules to implement G.S. 122C-26(5)."

Abuser Treatment Programs. — Session Laws 2000-67, s. 21.5, provides that, notwithstanding the provisions of G.S. 150B-21.1(a), the Department of Administration may adopt temporary rules to approve abuser treatment programs that apply to the North Carolina Council for Women.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Approval of Temporary Rules Governing Residential Treatment for Children or Adolescents. — Session Laws 2005-276, s. 10.35B, provides: "Notwithstanding G.S. 150B-21.1(b) and G.S. 150B-21.3(b2), the Department of Health and Human Services may adopt as temporary rules the rules governing residential treatment for children or adolescents approved for adoption or revision on May 18, 2005, by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and approved by the Rules Review Commission. The temporary rules shall become effective as provided in G.S. 150B-21.3(a)."

Minimum Separation Distances Between Well Serving Single-Family Dwellings and Certain Other Structures. — Session Laws 2001-113, ss. 1 to 4, provide: "For a well serving a single-family dwelling where lot size or other fixed conditions preclude the separation distances specified in subparagraph (a)(2) of 15A NCAC 2C.0107 (Standards of Construction: Water-Supply Wells), as adopted by the Environmental Management Commission on October 12, 2000, and approved by the Rules Review Commission on November 16, 2000, the required separation distances shall be the maximum possible, but shall in no case be less than the following:

"(1) Septic tank and drainfield	50 feet
"(2) Water-tight sewage or liquid-waste collection or transfer facility	25 feet
"(3) Animal barns	50 feet
"(4) Cesspool or privies	50 feet.

"This act [Session Laws 2001-113] constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1(a). The Environmental Management Commission may adopt a temporary rule that incorporates the provisions of Section 1 of this act [Section 1 of Session Laws 2001-113]. Notwithstanding G.S. 150B-21.1(d), a temporary rule adopted in accordance with this section shall remain in effect until a permanent rule adopted to replace the temporary rule becomes effective.

"Except as provided by Section 1 of this act [Section 1 of Session Laws 2001-113], this act does not limit the authority of the Environmental Management Commission to adopt rules governing the location, construction, repair, and abandonment of wells pursuant to G.S. 87-87 and Article 2A of Chapter 150B of the General Statutes.

"This act is effective retroactively to the date on which it is ratified. If the Environmental Management Commission adopts a temporary rule as provided in Section 2 of this act, Section 1 of this act [Sections 1 and 2 of Session Laws 2001-113] expires when the temporary rule becomes effective."

Air Quality. — Session Laws 2000-134, s. 21, provides that Session Laws 2000-134, relating to air quality emission inspections, and fund expenditures, constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that, notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Environmental Management Commission and the Division of Motor Vehicles of the Department of Transportation may adopt temporary rules to implement the provisions of the act. Section 21 is to continue in effect until all rules necessary to implement the provisions of the act have become effective as either temporary rules or permanent rules.

Tar-Pamlico River Basin. — Session Laws 2001-355, s. 5(b) provides that the Environmental Management Commission may adopt a temporary rule that incorporates the provisions of Sections 2 and 3 of the act (providing for implementation of the Tar-Pamlico River Basin-Nutrient Sensitive Waters Management Strategy: Agricultural Nutrient Control Strategy, as adopted by the Environmental Management Commission on 12 October 2000 and approved by the Rules Review Commission on 20 November 2000, to become effective on 1 September 2001). Notwithstanding G.S. 150B-21.1(d), a temporary rule adopted in accordance with s. 5(b) shall remain in effect until a temporary or permanent rule adopted to replace the temporary rule becomes effective.

Catawba River Basin. — Session Laws 2001-418, s. 4(a), as amended by Session Laws

2003-340, s. 5, provides: "Notwithstanding G.S. 150B-21.1(d), temporary rules 15A NCAC 2B.0243 and 15A NCAC 2B.0244, which were adopted pursuant to Section 7.1 of S.L. 1999-329 and which became effective on or before 1 July 2001, shall continue in effect until 1 September 2004 in order to provide sufficient time for the Environmental Management Commission to further consult with businesses and industries, local governments, landowners, and other interested or potentially affected persons in the upper and lower Catawba River Basin as to the appropriate scope of permanent rules to protect water quality and riparian buffers in that river basin. In developing permanent rules, the Commission shall consider whether riparian buffers on the mainstem of the Catawba River and on lake shorelines are adequate to protect water quality in the river and whether riparian buffer protection requirements should or should not be extended to some or all of the tributary streams in the river basin, taking into account the sources of water quality degradation in the river, the topography of the land in the river basin, and other relevant factors."

Session Laws 2001-418, s. 4(b), provides: "Vested rights recognized or established under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 shall include the right, as provided in this subsection, to undertake and complete development in the Catawba River Basin without application of temporary rule 15A NCAC 2B.0243. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0243 to development with vested rights recognized or established under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to 1 July 2001. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0243 to development with vested rights recognized or established under the common law prior to the date this section [s. 4 of Session Laws 2001-418] becomes effective if the Commission has issued a certification pursuant to G.S. 143B-282(a)(1)u. prior to 1 July 2001. The Commission shall not adopt or enforce rules that confer or restrict a vested right to undertake or complete development. It is the intent of the General Assembly that this subsection [s. 4(b)] apply only to the particular circumstances that are the subject of this section [s. 4 of Session Laws 2001-418]. This subsection [s. 4(b)] does not establish a precedent as to the application of vesting under a zoning or land-use planning program administered by a local government or to any other environmental program."

Session Laws 2001-416, s. 4(c), provides: "Notwithstanding G.S. 150B-21.3(a), this section [s. 4 of Session Laws 2001-416] shall not be construed to authorize the adoption of additional temporary rules related to protection of water quality and riparian buffers."

Medical Coverage Policy Under State Medicaid Program. — Session Laws 2001-424, s. 21.20(a) provides: "(a) In order to promote consistency among providers and to ensure that medical coverage criteria are uniformly applied to Medicaid recipients throughout the State, the Department of Health and Human Services shall adopt medical coverage policies for the State Medicaid Program that are consistent with national standards or Department-defined standards. If the Department determines that application of a national standard would likely cause significant deterioration in the quality of or access to appropriate medical care, then the Department shall substitute for that national standard an evidence-based, best-practice standard that will not compromise quality of or access to appropriate medical care. The adoption of new or amended medical coverage policies under the State Medicaid Program are exempt from the rule-making requirements of Chapter 150B of the General Statutes."

Session Laws 2001-424, s. 21.20(b) sets out criteria for the development, amendment and adoption of medical coverage policy.

Medicaid — Other Mental Health Services. — Session Laws 2003-284, s. 10.19(a)(22), as amended by Session Laws 2004-124, s. 10.4, contains provisions regarding the following services and payment bases: 1) services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS); and 2) for children eligible for certain EPSDT services; and 3) certain services for Medicaid-eligible adults. The subdivision further provides: "Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2 of this subdivision shall be established by the Division of Medical Assistance."

Reorganization of Human Resources Development Program. — Session Laws 2001-424, ss. 30.3(a) to (e), provide:

"(a) The State Board of Community Colleges shall establish a committee to develop and recommend to the Board a core series of employability skills training classes that should be coded in the Continuing Education Master Course List as Human Resources Development.

"(b) The State Board of Community Colleges may waive tuition and fees for enrollment in classes coded in the Continuing Education Master Course List as Human Resources Development if the individual enrolling:

"(1) Is unemployed;

"(2) Has received notification of a pending layoff;

"(3) Is working and is eligible for the Federal Earned Income Tax Credit (FEITC); or

"(4) Is working and earning wages at or below two hundred percent (200%) of the federal poverty guidelines.

"Individuals for whom tuition and fees are waived must sign a form adopted by the State Board of Community Colleges verifying that they meet one of these criteria.

"(c) The State Board of Community Colleges shall study the feasibility of integrating the delivery of human resources development services into the frame work of the JobLink Career Centers. The Board shall report its recommendations to the Joint Legislative Education Oversight Committee by May 1, 2002.

"(d) The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on its reorganization of the Human Resources Development Program by January 1, 2003.

"(e) The State Board of Community Colleges may adopt temporary rules to implement reorganization of the Human Resources Development Program."

Buffer Requirement. — Session Laws 2001-494, s. 3, provides: "The Coastal Resources Commission may adopt a temporary rule to amend 15A NCAC 7H.0209 that incorporates the provision of Section 1 of this act [s. 1 of Session Laws 2001-494, relating to the 30 foot buffer requirement along public trust and estuarine waters]. Notwithstanding G.S. 150B-21.1(d), a temporary rule adopted in accordance with this section [s. 1 of Session Laws 2001-494] shall remain in effect until the permanent rule that incorporates the temporary rule becomes effective. Notwithstanding G.S. 150B-21.1(a)(2), this act [Session Laws 2001-494] shall not be construed to authorize the adoption of temporary rules except as specifically provided in this section [s. 1 of Session Laws 2001-494]."

Motor Vehicle Emissions. — Session Laws 2001-504, s. 19, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Notwithstanding G.S. 150B-21.1(a) (2) and 26 NCAC 2C.0102(11), the Environmental Management Commission and the Division of Motor Vehicles of the Department of Transportation may adopt temporary rules to implement the provisions of this act. This section [s. 19 of Session Laws 2001-504] shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules."

Medicaid Services and Payment Bases. — Session Laws 2009-451, s. 10.58(d), provides: "Services and Payment Bases. — The Department shall spend funds appropriated for Medicaid services in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection. Unless otherwise provided, services and payment bases will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

"(1) Hospital inpatient. — Payment for hospital inpatient services will be prescribed by the State Plan as established by the Department of Health and Human Services.

"(2) Hospital outpatient. — Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.

"(3) Nursing facilities. — Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare.

"(4) Physicians, certified nurse midwife services, certified registered nurse anesthetists, nurse practitioners. — Fee schedules as developed by the Department of Health and Human Services.

"(5) Community Alternative Program, EPSDT Screens. — Payments in accordance with rate schedule developed by the Department of Health and Human Services.

"(6) Home health and related services, durable medical equipment. — Payments according to reimbursement plans developed by the Department of Health and Human Services.

"(7) Hearing aids. — Wholesale cost plus dispensing fee to provider.

"(8) Rural health clinical services. — Provider-based, reasonable cost, nonprovider-based, single-cost reimbursement rate per clinic visit.

"(9) Family planning. — Negotiated rate for local health departments. For other providers see specific services, e.g., hospitals, physicians.

"(10) Independent laboratory and X-ray services. — Uniform fee schedules as developed by the Department of Health and Human Services.

"(11) Ambulatory surgical centers.

"(12) Private duty nursing, clinic services, prepaid health plans.

"(13) Intermediate care facilities for the mentally retarded.

"(14) Chiropractors, podiatrists, optometrists, dentists.

"(15) Limitations on dental coverage. — Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.

"(16) Medicare Buy-In. — Social Security Administration premium.

"(17) Ambulance services. — Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.

"(18) Optical supplies. — Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.

"(19) Medicare crossover claims. — The Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services. The Department may disregard application of this policy in cases where application of the policy would adversely affect patient care.

"(20) Physical therapy, occupational therapy, and speech therapy. — Services for adults and EPSDT-eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services.

"(21) Personal care services. — Payment in accordance with the State Plan developed by the Department of Health and Human Services.

"(22) Case management services. — Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.

"(23) Hospice.

"(24) Medically necessary prosthetics or orthotics. — In order to be eligible for reimbursement, providers must be licensed or certified by the occupational licensing board or the certification authority having authority over the provider's license or certification. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.

"(25) Health insurance premiums.

"(26) Medical care/other remedial care. — Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates.

"(27) Pregnancy-related services. — Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

"(28) Drugs. — Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

"Limitations on quantity. — The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy program, except that the Department shall not impose limitations on brand-name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase 'medically necessary'.

"Dispensing of generic drugs. — Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase 'medically necessary'. An initial prescription order for a drug listed in the narrow therapeutic drug index that does not contain the phrase 'medically necessary' shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled.

Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. As used in this subsection, 'brand name' means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and 'established name' has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. § 352(e)(3).

"Prior authorization. — The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of (i) mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, major depressive disorder or (ii) HIV/AIDS, except that the Department of Health and Human Services shall continually review utilization of medications under the State Medical Assistance Program prescribed for Medicaid recipients for the treatment of mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, or major depressive disorder. The Department may, however, with respect to drugs to treat mental illnesses, develop guidelines and measures to ensure appropriate usage of these medications, including FDA-approved indications and dosage levels. The Department may also require retrospective clinical justification for the use of multiple psychotropic drugs for a Medicaid patient. For individuals 18 years of age and under who are prescribed three or more psychotropic medications, the Department shall implement clinical edits that target inefficient, ineffective, or potentially harmful prescribing patterns. When such patterns are identified, the Medical Director for the Division of Medical Assistance and the Chief of Clinical Policy for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall require a peer-to-peer consultation with the target prescribers. Alternatives discussed during the peer-to-peer consultations shall be based upon:

"a. Evidence-based criteria available regarding efficacy or safety of the covered treatments; and

"b. Policy approval by a majority vote of the North Carolina Physicians Advisory Group (NCPAG).

"The target prescriber has final decision-making authority to determine which prescription drug to prescribe or refill.

"(29) Other mental health services. — Unless otherwise covered by this section, coverage is limited to:

"a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services not to exceed the upper limits established in federal regulations, and

"b. For children eligible for EPSDT services provided by:

"1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and

"2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.

"c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and licensed clinical supervisors, Medicaid-eligible adults may be self-referred.

"d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

"Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2. of this subdivision shall be established by the Division of Medical Assistance."

For prior similar provisions, see Session Laws 2007-323, s. 10.36(d), as amended by Session Laws 2007-345, ss. 1-3, and as amended by Session Laws 2008-107, s. 10.10(b).

Medicaid — Rules, Reports, and Other Matters. — Session Laws 2009-451, s. 10.58(g), provides: "Rules, Reports, and Other Matters. —

"(1) Rules. — The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. The Department of Health and Human Services shall adopt rules requiring providers to attend training as a condition of enrollment and may adopt temporary or emergency rules to implement the training requirement.

"Prior to the filing of the temporary or emergency rules authorized under this subsection with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

"(2) Changes to Medicaid program; reports. — The Department shall report on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). Except for waiver applications, the Department shall submit the report to the entities listed in subdivision (4) of subsection (a) of this section and to the Joint Legislative Health Care Oversight Committee at the same time it submits the proposed changes to CMS for approval. At the time the Department is considering or developing a waiver application, it shall inform the Fiscal Research Division of the proposed waiver and shall provide the Fiscal Research Division with information on (i) how the proposed waiver, if approved, would change or affect services and specific populations and (ii) the estimated fiscal impact of the waiver. The Department shall not submit the proposed waiver application to CMS until after it has provided the proposed waiver information specified in this subdivision to the Fiscal Research Division for its review."

For prior similar provisions, see Session Laws 2007-323, s. 10.36(g).

Editor's Note. — Session Laws 2000-69, s. 4, in part, provides:

"Interpretation of Act.

"(a) Additional Method. This act provides an additional and alternative method for the doing of the things it authorizes and is as supplemental and additional to powers conferred by other laws. Except as otherwise expressly provided, it does not derogate any powers now existing.

"(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as they may be amended from time to time by the General Assembly.

"(c) Liberal Construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2001-424, s. 27.22(b), provides that subsection (a), which added subsection (a9) of this section, expires on June 30, 2003.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

This section, as rewritten by Session Laws 2003-229, s. 2, effective July 1, 2003, is applicable to temporary and emergency rules adopted on or after that date and to permanent rules adopted on or after October 1, 2003.

Session Laws 2003-229, s. 14, provides that nothing in the act shall be construed to limit or repeal any specific grant of temporary rule-making authority to an agency enacted by the General Assembly prior to July 1, 2003.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 10.19(s), provides: "The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. Prior to the filing of these temporary or emergency rules with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments."

Session Laws 2003-284, s. 35.1(c), provides: "Notwithstanding G.S. 150B-21.1, the Department of Environment and Natural Resources may adopt temporary rules to establish fees under G.S. 113-35(b)(3), as amended by subsection (b) of this section, within six months after the effective date of this section."

Session Laws 2003-284, s. 48.1, provides: "Parts 32 through 47 of this act do not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by those parts before the effective date of its amendment or repeal; nor do they affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5, is a severability clause.

Session Laws 2003-352, s. 11, provides: "In order to reduce costs associated with the assessment and cleanup of discharges and releases of petroleum from petroleum underground storage tanks, the Environmental Management Commission may adopt temporary and permanent rules to modify the testing requirements set out in 15A NCAC 2L.0115 (Risk-Based Assessment and Corrective Action for Petroleum Underground Storage Tanks). Reference to this section shall satisfy the requirement for a statement of finding of need for a temporary rule."

Session Laws 2003-413, s. 29, provides in part that, if House Bill 1151, 2003 Regular Session, becomes law, then the amendment to G.S. 150B-21.1(a2) made by s. 27 of the act is instead made to G.S. 150B-21.1(a)(8). House Bill 1151 is Session Laws 2003-229, which was approved on June 19, 2003.

Session Laws 2003-427, ss. 1 and 2 provide: "Pursuant to G.S. 113A-118.1, the Coastal Resources Commission may adopt temporary and permanent rules to establish a general permit to allow the construction of offshore parallel sills made of stone or other suitable riprap materials for shoreline protection in conjunction with existing, created, or restored wetlands. The permit shall be applicable only where a shoreline is experiencing erosion in public trust areas and estuarine waters. The permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the ocean hazard areas of environmental concern except that the permit may apply to those shorelines that exhibit characteristics of estuarine shorelines. Characteristics of estuarine shorelines include the presence of wetland vegetation, lower wave energy, and lower erosion rates than are generally characteristic of ocean erodible areas. Notwithstanding G.S. 150B-21.1(a), the authorization to adopt temporary rules pursuant to this section shall continue in effect until 1 July 2004. Reference to this section shall satisfy the requirement for a statement of finding of need for a temporary rule set out in G.S. 150B-21.1.

"The fee for a general permit established by temporary rules pursuant to Section 1 of this act shall be one hundred dollars ($100.00). In adopting permanent rules pursuant to Section 1 of this act, the Coastal Resources Commission shall set a fee for the general permit as provided in G.S. 113A-119.1."

Session Laws 2003-433, s. 4, provides: "The Environmental Management Commission shall adopt temporary and permanent rules to amend the North Carolina Administrative Code to incorporate the provisions of Section 1 of this act. Notwithstanding G.S. 150B-21.1, this act shall not be construed to authorize the Environmental Management Commission to adopt a temporary rule related to the subject matter of this act except as specifically provided by this section, and the Environmental Management Commission shall not be required to provide prior notice or a hearing to adopt the temporary rule required by this section. Reference to this section shall satisfy the requirement for a statement of finding of need for a temporary rule set out in G.S. 150B-21.1."

Session Laws 2003-184, s. 3, amended this section by enacting a new subsection (a)(11); however, because of the rewrite of this section by Session Laws 2003-229, s. 2, the subsection was redesignated as (a1) at the direction of the Revisor of Statutes. As a result, the last paragraph of subsection (a) and former subsection (a1), as enacted by Session Laws 2003-229, s. 2, were redesignated as subsections (a2) and (a3), respectively, also at the direction of the Revisor of Statutes.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2004-148, s. 3(a), which expires June 30, 2005, provides: "The Secretary of Transportation may adopt temporary rules in accordance with G.S. 150B-21.1 to implement the provisions of G.S. 136-28.1(k) governing the acceptance of bids by electronic means. The authority granted to the Secretary by this section shall expire when the permanent rules necessary to implement this provision are adopted."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 10.3(e), as amended by Session Laws 2006-198, s. 1, provides: "Services and Payment Bases. — Funds appropriated for Medicaid services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection. Unless otherwise provided, services and payment bases will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

"(1) Hospital inpatient.

"(2) Hospital outpatient. — Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.

"(3) Nursing facilities. — Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare. The Division of Medical Assistance shall allow nursing facility providers sufficient time from the effective date of this act to certify additional Medicare beds if necessary. In determining the date that the requirements of this subdivision become effective, the Division of Medical Assistance shall consider the regulations governing certification of Medicare beds and the length of time required for this process to be completed.

"(4) Physicians, certified nurse midwife services, nurse practitioners. — Fee schedules as development by the Department of Health and Human Services.

"(5) Community Alternative Program, EPSDT Screens. — Payments in accordance with rate schedule developed by the Department of Health and Human Services.

"(6) Home health and related services, durable medical equipment. — Payments according to reimbursement plans developed by the Department of Health and Human Services.

"(7) Hearing aids. — Wholesale cost plus dispensing fee to provider.

"(8) Rural health clinical services. — Provider-based, reasonable cost; non-provider-based, single cost reimbursement rate per clinic visit.

"(9) Family planning. — Negotiated rate for local health departments. For other providers see specific services, e.g. hospitals, physicians.

"(10) Independent laboratory and X-ray services. — Uniform fee schedules as developed by the Department of Health and Human Services.

"(11) Ambulatory surgical centers.

"(12) Private duty nursing, clinic services, prepaid health plans.

"(13) Intermediate care facilities for the mentally retarded.

"(14) Chiropractors, podiatrists, optometrists, dentists.

"(15) Limitations on Dental Coverage. — Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.

"(16) Medicare Buy-In. — Social Security Administration premium.

"(17) Ambulance services. — Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.

"(18) Optical supplies. — Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.

"(19) Medicare crossover claims. — The Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services.

"(20) Physical therapy, occupational therapy, and speech therapy. — Services limited to EPSDT-eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services. Physical therapy, occupational therapy, and speech therapy services are subject to prior approval and utilization review.

"(21) Personal care services.

"(22) Case management services. — Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.

"(23) Hospice.

"(24) Medically necessary prosthetics or orthotics. — In order to be eligible for reimbursement, providers must be licensed or certified by the occupational licensing board or the certification authority having authority over the provider's license or certification, or in the case of ocular prosthetists Board certified, licensed, or accredited in accordance with the requirements established by the Department. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.

"(25) Health insurance premiums.

"(26) Medical care/other remedial care. — Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates.

"(27) Pregnancy-related services. — Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

"(28) Drugs. — Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

"Limitations on quantity. — The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy program, except that the Department shall not impose limitations on brand-name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase 'medically necessary'. In addition to the entities listed in subsection (a) of this section, the Department shall report to the Joint Legislative Commission on Governmental Operations on authorizations, limitations, and reviews established under this subparagraph, including limitations on monthly brand-name and generic prescriptions as well as restrictions on the total number of medications. The Department shall submit the report not later than May 1, 2006.

"Dispensing of generic drugs. — Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for atypical antipsychotic drugs and drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase 'medically necessary'. An initial prescription order for an atypical antipsychotic drug or a drug listed in the narrow therapeutic drug index that does not contain the phrase 'medically necessary' shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. As used in this subsection, 'brand name' means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and 'established name' has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

"Prior authorization. — The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance

Program on medications prescribed for Medicaid recipients for the treatment of: (i) mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, and major depressive disorder, or (ii) HIV/AIDS.

"(29) Other mental health services. — Unless otherwise covered by this section, coverage is limited to:

"a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services not to exceed the upper limits established in federal regulations, and

"b. For children eligible for EPSDT services provided by:

"1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and

"2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.

"c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addictions specialists, and licensed clinical supervisors, Medicaid-eligible adults may be self-referred.

"d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

"e. The Department of Health and Human Services shall not enroll licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addiction specialists, and licensed clinical supervisors until all of the following conditions have been met:

"1. The fiscal impact of payments to these qualified providers has been projected;

"2. Funding for any projected requirements in excess of budgeted Division of Medical Assistance funding has been identified from within State funds appropriated to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to support area mental health programs or county programs, or identified from other sources; and

"3. Approval has been obtained from the Office of State Budget and Management to transfer these State or other source funds from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to the Division of Medical Assistance. Upon approval and implementation, the Department of Health and Human Services shall, on a quarterly basis, provide a status report to the Office of State Budget and Management and the Fiscal Research Division.

"Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2 of this subdivision shall be established by the Division of Medical Assistance."

Session Laws 2006-66, s. 10.3(h), provides: "Rules, Reports, and Other Matters. —

"(1) Rules. — The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse.

Prior to the filing of these temporary or emergency rules with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

"(2) Changes to Medicaid program; reports. — The Department shall report on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). The reports shall be provided at the same time they are submitted to CMS for approval. In addition to the entities listed in subsection (a)(4) of this section, the report shall be submitted to the Joint Legislative Health Care Oversight Committee."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-240, s. 5, provides: "The Governor's Commission on Early Childhood Vision Care may adopt temporary rules in accordance with G.S. 150B-21.1 to implement this act."

Session Laws 2006-264, s. 52(b), provides: "This section constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1(a). The Department of Labor shall adopt within 30 days of the effective date of this section temporary rules to clarify when employees who are subject to Article 20 of Chapter 95 of the General Statutes may utilize a preliminary screening procedure involving a single-use test device consistent with this section."

Session Laws 2006-264, s. 102(a) and (b), provides: "(a) The Department of Labor shall adopt rules in connection with its requirements regarding fall protection for tower climbers as follows:

"(1) With regard to employer-provided rescue procedures, employers must ensure that at least two trained and designated rescue employees are on-site when employees are working at heights over six feet on the tower, except that where only two employees are on-site, then an employer may comply with this requirement if one employee is a trained and designated rescue employee and one employee has been employed for less than nine months and has received documented orientation from the employer outlining steps to take in an emergency.

"(2) With regard to third-party-provided rescue procedures, the employer must obtain verification from the third-party rescue service that the service is able to respond to a rescue summons in a timely manner and that the service is proficient in rescue-related tasks and equipment needed to rescue climbers from elevated heights on communication structures. The employer must also provide the selected third-party rescue service with contact information regarding the tower site and allow the service to conduct whatever preparation for rescue it deems necessary.

"(b) Notwithstanding G.S. 150B-21.1(a), the Department of Labor may adopt the rules provided for by this section as temporary rules within 270 days after the effective date of this act."

Session Laws 2009-217, s. 5, provides: "Notwithstanding G.S. 150B-21.1, upon the effective date of this act, the Department of Labor shall immediately adopt a temporary rule that is consistent with the requirements of Section 6 of this act without prior notice or hearing. When the Department adopts the rule, it shall submit the rule and a copy of this act to the Codifier of Rules. Within two business days after submission of the rule, the Codifier must review the rule to determine whether the rule as adopted is consistent with the requirements of this act. If the Codifier of Rules finds that the rule as adopted is consistent with the requirements of this act, the Codifier shall notify the Department and enter the rule in the North Carolina Administrative Code on the sixth business day following approval by the Codifier of Rules. The rule shall become effective and shall expire in accordance with G.S. 150B-21.1(d)." The effective date of this act is June 30, 2009.

Session Laws 2009-217, s. 6, provides: "The Department of Labor shall adopt a temporary rule in accordance with the procedure set forth in Section 5 of this act. The temporary rule shall establish the scope of application for the Department's rules governing the standards for cranes and derricks in a manner substantially identical to the rule disapproved by this act, except that the temporary rule shall include an exclusion for service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries such as digger derricks (radial boom derricks)."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

CASE NOTES

Editor's Note. — The cases below were decided under corresponding provisions of former Article 2.

Rules Not Exempt from Notice and Comment Requirements of Chapter 113A. — Temporary rule issued under this section failed to comply with Coastal Area Management Act's (CAMA's) (G.S. 113A-101 et seq.) notice and comment provisions; the mandatory provisions of this chapter complement the procedural safeguards in the CAMA; the temporary rule provisions of this section exempt agencies only from the notice and comment requirements of this chapter; clearly, the General Assembly did not intend that the Commission use temporary rules promulgated under this chapter to circumvent public review and comment on major projects that could affect the State's coastal resources. Conservation Council v. Haste, 102 N.C. App. 411, 402 S.E.2d 447 (1991).

Failure to Address Merits of Claim. — Where petitioners argued that the North Carolina Coastal Resources Commission (CRC) failed to comply with the procedures for adopting a temporary rule under this section, vice-chairman's order was arbitrary and capricious because it required petitioners to specifically allege that the CRC either acted arbitrarily and capriciously or abused its discretion; this finding did not address the merits of petitioners' claim and imposed on petitioners an additional burden that G.S. 113A-121.1(b) did not require. Conservation Council v. Haste, 102 N.C. App. 411, 402 S.E.2d 447 (1991).

Applied in North Carolina Chiropractic Ass'n v. North Carolina State Bd. of Educ., 122 N.C. App. 122, 468 S.E.2d 539 (1996).

OPINIONS OF ATTORNEY GENERAL

Adoption of Rules. — The Water Quality Committee of the Environmental Management Commission could immediately adopt temporary rules under G.S. 150B-21(a)(5) to establish a permit program for regulating impacts to isolated wetlands and surface waters because a recent decision of the U.S. Supreme Court invalidating the Army Corps of Engineers' exercise of jurisdiction over such isolated waters was a court order under N.C.G.S. G.S. 150B-21.1(a)(5). See opinion of Attorney General to Dr. Charles H. Peterson, Vice Chairman, Environmental Management Commission, and Ms. Coleen Sullins, Water Quality Section, Division of Water Quality, 2001 N.C. AG LEXIS 33 (9/5/01).

§ 150B-21.1A. Adoption of an emergency rule.

(a) Adoption. — An agency may adopt an emergency rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by a serious and unforeseen threat to the public health or safety. When an agency adopts an emergency rule, it must simultaneously commence the process for adopting a temporary rule by submitting the rule to the Codifier of Rules for publication on the Internet in accordance with G.S. 150B-21.1(a3). The Department of Health and Human Services or the appropriate rule-making agency within the Department may adopt emergency rules in accordance with this section when a recent act of the General Assembly or the United States Congress or a recent change in federal regulations authorizes new or increased services or benefits for children and families and the emergency rule is necessary to implement the change in State or federal law.

(b) Review. — An agency must prepare a written statement of its findings of need for an emergency rule. The statement must be signed by the head of the agency adopting the rule. When an agency adopts an emergency rule, it must submit the rule and the agency's written statement of its findings of the need for the rule to the Codifier of Rules. Within two business days after an agency submits an emergency rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria in subsection (a) of this section. In reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code on the sixth business day following approval by the Codifier of Rules.

If the Codifier of Rules finds that the statement does not meet the criteria in subsection (a) of this section, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Codifier of Rules must review the additional findings or new statement within one business day after the agency submits the additional findings or new statement. If the Codifier of Rules again finds that the statement does not meet the criteria in subsection (a) of this section, the Codifier of Rules must immediately notify the head of the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the Codifier of Rules that the agency's findings of need for a rule do not meet the required criteria, the agency must notify the Codifier of Rules of its decision. The Codifier of Rules must then enter the rule in the North Carolina Administrative Code on the sixth business day after receiving notice of the agency's decision. Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. — A person aggrieved by an emergency rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. — An emergency rule becomes effective on the date specified in G.S. 150B-21.3. An emergency rule expires on the earliest of the following dates:

(1) The date specified in the rule.
(2) The effective date of the temporary rule adopted to replace the emergency rule, if the Commission approves the temporary rule.
(3) The date the Commission returns to an agency a temporary rule the agency adopted to replace the emergency rule.
(4) Sixty days from the date the emergency rule was published in the North Carolina Register, unless the temporary rule adopted to replace the emergency rule has been submitted to the Commission.

(e) Publication. — When the Codifier of Rules enters an emergency rule in the North Carolina Administrative Code, the Codifier of Rules must publish the rule in the North Carolina Register. (2003-229, s. 3.)

Medicaid — Rules, Reports, and Other Matters. — Session Laws 2009-451, s. 10.58(g), provides: "Rules, Reports, and Other Matters. —

"(1) Rules. — The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. The Department of Health and Human Services shall adopt rules requiring providers to attend training as a condition of enrollment and may adopt temporary or emergency rules to implement the training requirement.

"Prior to the filing of the temporary or emergency rules authorized under this subsection with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

"(2) Changes to Medicaid program; reports. — The Department shall report on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). Except for waiver applications, the Department shall submit the report to the entities listed in subdivision (4) of subsection (a) of this section and to the Joint Legislative Health Care Oversight Committee at the same time it submits the proposed changes to CMS for approval. At the time the Department is considering or developing a waiver application, it shall inform the Fiscal Research Division of the proposed waiver and shall provide the Fiscal Research Division with information on (i) how the proposed waiver, if approved, would change or affect services and specific populations and (ii) the estimated fiscal impact of the waiver. The Department shall not submit the proposed waiver application to CMS until after it has provided the proposed waiver information specified in this subdivision to the Fiscal Research Division for its review."

For prior similar provisions, see Session Laws 2007-323, s. 10.36(g).

Editor's Note. — Session Laws 2003-229, s. 14, provides that nothing in the act shall be construed to limit or repeal any specific grant of temporary rule-making authority to an agency enacted by the General Assembly prior to July 1, 2003.

Session Laws 2003-284, s. 10.19(s), provides: "The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. Prior to the filing of these temporary or emergency rules with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5, is a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 10.3(h), provides: "Rules, Reports, and Other Matters. —

"(1) Rules. — The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. Prior to the filing of these temporary or emergency rules with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

"(2) Changes to Medicaid program; reports. — The Department shall report on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). The reports shall be provided at the same time they are submitted to CMS for approval. In addition to the entities listed in subsection (a)(4) of this section, the report shall be submitted to the Joint Legislative Health Care Oversight Committee."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2009-451, s. 6.4(b), provides: "Notwithstanding G.S. 150B-21.1A(a), an agency may adopt an emergency rule in accordance with G.S. 150B-21.1A to establish or increase a fee as authorized by this act if the adoption of a rule would otherwise be required under Article 2A of Chapter 150B of the General Statutes."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 150B-21.1B. (Expires June 30, 2012) Adoption of rules to implement the American Recovery and Reinvestment Act.

(a) Purpose. — This section establishes an expedited procedure for the adoption of new or the amendment of existing rules implementing the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5), including any federal rules, regulations, policies, guidance, or goals for the implementation of the ARRA. It is the policy of the State to provide fair regulation, oversight, and transparency for the use of ARRA funds and to quickly and efficiently complete the awards of grants and contracts under the ARRA. The provisions of this section shall be liberally construed to allow agencies maximum flexibility in implementing the ARRA.

(b) Adoption. — An agency may adopt a rule under this section by using the procedure for adoption of an emergency rule set forth in G.S. 150B-21.1A(a) and (b). The provision in subsection (a) of G.S. 150B-21.1A that requires a finding of a serious or unforeseen threat to public health or safety shall not apply to rules adopted under this section. In lieu of the written statement of its findings of need as provided in subsection (b) of G.S. 150B-21.1A, the agency must prepare a written statement of its findings that the rule is needed to implement the ARRA. The emergency rule becomes effective when it is entered into the North Carolina Administrative Code. When an agency adopts an emergency rule under this section, the agency must simultaneously commence the process for adopting a temporary rule by submitting the rule to the Codifier of Rules for publication on the Internet in accordance with G.S. 150B-21.1(a3). For purposes of this section, all references to business days in G.S. 150B-21.1(a3) shall be deemed to be calendar days. If the agency receives written comment objecting to the temporary rule, the temporary rule shall be reviewed in accordance with subsection (c) of this section. If the agency receives no written comment objecting to the temporary rule, the agency shall deliver the rule to the Codifier of Rules. The Codifier of Rules shall enter the temporary rule into the North Carolina Administrative Code on the sixth business day after receipt of the rule, and the temporary rule becomes effective upon entry into the Code.

(c) Review. — If the agency receives written objection to the temporary rule, the agency must submit the temporary rule and a written statement of its findings that the rule is needed to implement the ARRA to the Director of the Office of Economic Recovery and Investment (Director). The Director shall have 14 calendar days to review the statement and the rule to determine whether the rule meets the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.
(2) It is clear and unambiguous.
(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly or Congress, including the ARRA and any federal rules, regulations, policies, guidance, or goals for the implementation of the ARRA. The Director shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
(4) It was adopted in accordance with this section.

If the Director finds that the temporary rule meets all of the criteria set forth in this subsection, the Director shall deliver the rule to the Codifier of Rules for entry into the North Carolina Administrative Code. If the Director finds that the temporary rule fails to meet any of the criteria set forth in this subsection, the Director shall return the rule to the agency with a statement of the Director's objections. The agency may change the rule to satisfy the Director's objections and submit the revised rule to the Director. If the agency fails to satisfy the Director's objections, the rule shall not be entered in the North Carolina Administrative Code. If the Director fails to make a final finding within 14 calendar days of receipt of the statement and rule, the rule shall not be entered in the North Carolina Administrative Code.

(d) Emergency Rule Expiration Date. — An emergency rule adopted in accordance with this section expires on the earliest of the following dates:
(1) The date specified in the rule.
(2) The effective date of the temporary rule adopted to replace the emergency rule, if the Director approves the temporary rule.
(3) The date the Director returns to an agency a temporary rule adopted to replace the emergency rule, if the agency fails to satisfy the Director's objections.
(4) Sixty days from the date the emergency rule was published in the North Carolina Register, unless the temporary rule adopted to replace the emergency rule has been submitted to the Codifier of Rules.

(e) Temporary Rule Expiration Date. — A temporary rule adopted in accordance with this section expires on the earliest of the following dates:
(1) The date specified in the rule.
(2) The effective date of a permanent rule adopted in accordance with G.S. 150B-21.2 to replace the temporary rule.
(3) June 30, 2012.

(f) The Director's determination that a temporary rule meets the criteria set forth in subsection (c) of this section and that the rule is required by ARRA is a final agency decision and may be reviewed in accordance with Article 4 of this Chapter. (2009-475, s. 3.)

Editor's Note. — Session Laws 2009-475, s. 16, made this section effective February 17, 2009, with an expiration of June 30, 2012.

Session Laws 2009-475, s. 15, provides: "The General Assembly finds that it is in the public interest of the State of North Carolina to ensure expeditious awards of ARRA funds to maximize the economic recovery impact of the ARRA. It is the policy of the State to provide fair regulation, oversight, and transparency for the use of ARRA funds and to quickly and efficiently complete the awards of grants and contracts under the ARRA. It is also the policy of this State that, due to the historic level of federal and State oversight of ARRA grant and contract awards, restraint should be exercised in the granting of legal and injunctive relief that might forestall awards to programs and contractors."

§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Steps. — Before an agency adopts a permanent rule, it must take the following actions:

(1) Publish a notice of text in the North Carolina Register.
(2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
(3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
(4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. — A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.
(2) A short explanation of the reason for the proposed rule.
(3) A citation to the law that gives the agency the authority to adopt the rule.
(4) The proposed effective date of the rule.
(5) The date, time, and place of any public hearing scheduled on the rule.
(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
(9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

(d) Mailing List. — An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. — An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published.

An agency may hold a public hearing on a proposed rule in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency shall publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. — An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. — An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

(1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

(h) Explanation. — An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) Record. — An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, and any written explanation made by the agency for adopting the rule. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2; 1983, c. 927, ss. 3, 7; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), (7); 1987, c. 285, ss. 7-9; 1989, c. 5, s. 1; 1991, c. 418, s. 1; 1995, c. 507, s. 27.8(d); 1996, 2nd Ex. Sess., c. 18, s. 7.10(e); 2003-229, s. 4.)

Editor's Note. — Session Laws 1986, Extra Session, c. 2, effective February 18, 1986, s. 1 provided: "Prior to the first publication of the North Carolina Register the notice of publication requirements of G.S. 150B-12(c) [now repealed] are met if an agency publishes in one or more newspapers of general circulation notice which includes:

"(1) A reference to the statutory authority under which the action is proposed.

"(2) The time and place of the public hearing and a statement of the manner in which data, views, and arguments may be submitted to the agency either at the hearing or at other times by any person.

"(3) A statement of the terms or substance of the proposed rule or a description of the subjects and issues involved, and the proposed effective date of the rule."

CASE NOTES

Editor's Note. — *The case below was decided under corresponding provisions of former Chapter 150A.*

Notice and Opportunity to Be Heard Required. — Substantial compliance under former G.S. 150A-9, among other things, requires notice and the opportunity to be heard, as provided by former G.S. 150A-12, before the adoption of a rule. American Guar. & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398, cert. denied, 292 N.C. 729, 235 S.E.2d 782 (1977).

Applied in North Carolina Chiropractic Ass'n v. North Carolina State Bd. of Educ., 122 N.C. App. 122, 468 S.E.2d 539 (1996); Affordable Care, Inc. v. N.C. State Bd. of Dental Exam'rs, 153 N.C. App. 527, 571 S.E.2d 52 (2002).

Cited in N.C. Home Bldrs. Ass'n v. Envtl. Mgmt. Comm'n, 155 N.C. App. 408, 573 S.E.2d 732, 2002 N.C. App. LEXIS 1617 (2002).

OPINIONS OF ATTORNEY GENERAL

Notice Provisions of Other Statutes Controlled over Former § 150A-12. — See opinion of Attorney General to Mr. Gary K. Berman, Administrative Procedures Office, Department of Human Resources, 45 N.C.A.G. 217 (1976), issued under corresponding provisions of former Chapter 150A.

§ 150B-21.3. Effective date of rules.

(a) Temporary and Emergency Rules. — A temporary rule or an emergency rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

(b) Permanent Rule. — A permanent rule approved by the Commission becomes effective on the first day of the month following the month the rule is approved by the Commission, unless the Commission received written objections to the rule in accordance with subsection (b2) of this section, or unless the agency that adopted the rule specifies a later effective date.

(b1) Delayed Effective Dates. — If the Commission received written objections to the rule in accordance with subsection (b2) of this section, the rule becomes effective on the earlier of the thirty-first legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule, unless a different effective date applies under this section. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. If the agency adopting the rule specifies a later effective date than the date that would otherwise apply under this subsection, the later date applies. A permanent rule that is not approved by the Commission or that is specifically disapproved by a bill enacted into law before it becomes effective does not become effective.

A bill specifically disapproves a rule if it contains a provision that refers to the rule by appropriate North Carolina Administrative Code citation and states that the rule is disapproved. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove a rule that has been approved by the Commission and that either has not become effective or has become effective by executive order under subsection (c) of this section.

(b2) Objection. — Any person who objects to the adoption of a permanent rule may submit written comments to the agency. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the Commission. If the Commission receives written objections from 10 or more persons, no later than 5:00 P.M. of the day following the day the Commission approves the rule, clearly requesting review by the legislature in accordance with instructions contained in the notice pursuant to G.S. 150B-21.2(c)(9), and the Commission approves the rule, the rule will become effective as provided in subsection (b1) of this section. The Commission shall notify the agency that the rule is subject to legislative disapproval on the day following the day it receives 10 or more written objections. When the requirements of this subsection have been met and a rule is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North Carolina Register. If the Commission receives objections from 10 or more persons clearly requesting review by the legislature, and the rule objected to is one of a group of related rules adopted by the agency at the same time, the agency that adopted the rule may cause any of the other rules in the group to become effective as provided in subsection (b1) of this section by submitting a written statement to that effect to the Commission before the other rules become effective.

(c) Executive Order Exception. — The Governor may, by executive order, make effective a permanent rule that has been approved by the Commission but the effective date of which has been delayed in accordance with subsection (b1) of this section upon finding that it is necessary that the rule become effective in order to protect public health, safety, or welfare. A rule made effective by executive order becomes effective on the date the order is issued or at a later date specified in the order. When the Codifier of Rules enters in the North Carolina Administrative Code a rule made effective by executive order, the entry must reflect this action.

A rule that is made effective by executive order remains in effect unless it is specifically disapproved by the General Assembly in a bill enacted into law on or before the day of adjournment of the regular session of the General Assembly that begins at least 25 days after the date the executive order is issued. A rule that is made effective by executive order and that is specifically disapproved by a bill enacted into law is repealed as of the date specified in the bill. If a rule that is made effective by executive order is not specifically disapproved by a bill enacted into law within the time set by this subsection, the Codifier of Rules must note this in the North Carolina Administrative Code.

(c1) Fees. — Notwithstanding any other provision of this section, a rule that establishes a new fee or increases an existing fee shall not become effective until the agency has complied with the requirements of G.S. 12-3.1.

(d) Legislative Day and Day of Adjournment. — As used in this section:

(1) A "legislative day" is a day on which either house of the General Assembly convenes in regular session.

(2) The "day of adjournment" of a regular session held in an odd-numbered year is the day the General Assembly adjourns by joint resolution for more than 10 days.

(3) The "day of adjournment" of a regular session held in an even-numbered year is the day the General Assembly adjourns sine die.

(e) OSHA Standard. — A permanent rule concerning an occupational safety and health standard that is adopted by the Occupational Safety and Health Division of the Department of Labor and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor becomes effective on the date the Division delivers the rule to the Codifier of Rules, unless the Division specifies a later effective date. If the Division specifies a later effective date, the rule becomes effective on that date.

(f) Technical Change. — A permanent rule for which no notice or hearing is required under G.S. 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(e); 1995 (Reg. Sess., 1996), c. 742, s. 43; 1996, 2nd Ex. Sess., c. 18, s. 7.10(f); 1997-34, s. 3; 2001-487, s. 80(b); 2002-97, s. 5; 2003-229, s. 5; 2004-156, ss. 2, 3.)

Cross References. — For section regarding rulemaking to implement ABC plan, see G.S. 115C-17.

Administrative Rules Governing Sanitation of Hospitals, Nursing Homes, Rest Homes, and Other Institutions. — Session Laws 2002-160, ss. 1-5, effective October 17, 2002, provide: "Notwithstanding G.S. 150B-21.3(b), amendments to the following rules governing sanitation of hospitals, nursing homes, rest homes, and other institutions, adopted by the Commission for Health Services [now the Commission for Public Health] and approved by the Rules Review Commission on October 18, 2001, become effective March 1, 2003: 15A NCAC 18A.1301 (Definitions), 15A NCAC 18A.1302 (Approval of Plans), 15A NCAC 18A.1304 (Inspections), 15A NCAC 18A.1305 (Grading Residential Care Facilities in Institutions), 15A NCAC 18A.1306 (Public Display of Grade Card), 15A NCAC 18A.1307 (Reinspections), 15A NCAC 18A.1308 (Approved Institutions), 15A NCAC 18A.1309 (Floors), 15A NCAC 18A.1310 (Walls and Ceilings), 15A NCAC 18A.1312 (Toilet: Handwashing: Laundry: and Bathing Facilities), 15A NCAC 18A.1313 (Water Supply), 15A NCAC 18A.1314 (Drinking Water Facilities: Ice Handling), 15A NCAC 18A.1315 (Liquid Wastes), 15A NCAC 18A.1316 (Solid Wastes), 15A NCAC 18A.1317 (Vermin Control: Premises: Animal Maintenance), 15A NCAC 18A.1318 (Miscellaneous), 15A NCAC 18A.1319 (Furnishings and Patient Contact Items), 15A NCAC 18A.1320 (Food Service Utensils and Equipment), 15A NCAC 18A.1322 (Milk and Milk Products), 15A NCAC 18A.1323 (Food Protection), and 15A NCAC 18A.1324 (Employees).

"Notwithstanding G.S. 150B-21.3(b), 15A NCAC 18A.1327 (Incorporated Rules) adopted by the Commission for Health Services [now the Commission for Public Health] and approved by the Rules Review Commission on October 18, 2001 becomes effective March 1, 2003.

"Notwithstanding G.S. 150B-21.3(b), amendments to 15A NCAC 18A.1311 (Lighting, Ventilation and Moisture Control) and 15A NCAC 18A.1321 (Food Supplies) adopted by the Commission for Health Services [now the Commission for Public Health] and approved by the Rules Review Commission on November 15, 2001 become effective March 1, 2003.

"The Division of Environmental Health of the Department of Environment and Natural Resources, with the assistance of local health departments, shall field test the amended rules listed in Sections 1 through 3 of this act by conducting trial inspections of a representative sample of facilities subject to the amended rules throughout the State. Trial inspections under the amended rules shall be performed during the period 1 October 2002 through 1 February 2003 in conjunction with the regular inspection of the representative sample of facilities under rules in effect during the field test period. A facility that is subject to a trial inspection shall not be liable for an enforcement action for any violation of an amended rule that is observed during a trial inspection but may be liable for an enforcement action under rules in effect during the field test period. The purposes of the field test shall be to determine what expenditures, if any, will be required of facilities in order to comply with the amended rules and whether the amended rules will result in lower inspection grades for facilities. As a part of the field test, the Division shall also review the amended rules, giving particular attention to applicable federal regulations and to the incorporation by reference of any other rules or standards in the amended rules, to determine whether the amended rules will result in any duplication or conflict in applicable requirements or standards and whether the amended rules will result in duplicative or conflicting inspection or enforcement policies or procedures. The Division of Environmental Health shall compile and analyze field test data to determine whether any of the amended rules should be revised. The Division shall report the results of the field test required by this section, any recommendations to the Commission for Health Services [now the Commission for Public Health] regarding revisions to the amended rules, and the status of any recommended rule revisions to the Environmental Review Commission on or before March 1, 2003.

"The Division of Environmental Health of the Department of Environment and Natural Resources shall offer training to staff of facilities that are subject to the amended rules listed in Sections 1 through 3 of this act. Training shall be offered in the various regions of the State as appropriate and shall include information on the requirements of the amended rules, enforcement policies and procedures, and updated information as to any revisions to the amended rules that may be recommended as a result of the field test of the amended rules required by Section 4 of this act."

Temporary and Permanent Rules Governing Licensing of Family Care Homes and Homes for the Aged and Infirm. — Session Laws 2002-160, s. 6(a)-(d), effective October 17, 2002, as amended by Session Laws 2003-284, s. 10.8C, effective July 1, 2003, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1(a).

"Notwithstanding Sections 1 through 3 of this act, the Commission for Health Services [now the Commission for Public Health] may adopt temporary and permanent rules to further delay the effective date of any of the rules listed in Sections 1 through 3 of this act. The Commission for Health Services may adopt temporary and permanent rules to revise any of the rules listed in Sections 1 through 3 of this act.

"The Medical Care Commission may adopt temporary and permanent rules to amend Subchapter 42C (Licensing of Family Care Homes) and Subchapter 42D (Licensing of Homes for the Aged and Infirm) of Chapter 42 (Individual and Family Support) of Title 10 (Department of Health and Human Services) of the North Carolina Administrative Code. Prior to the adoption of temporary rules under this subsection, the Commission shall:

"(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

"(2) Notify persons on the mailing list that the Commission maintains pursuant to G.S. 150B-21.2(d) of its intent to adopt a temporary rule.

"(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comment on the proposed rule may be submitted. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule is published in the North Carolina Register.

"(4) Hold at least one public hearing on the proposed temporary rule.

"Notwithstanding 26 NCAC 2C.0102(11), the Medical Care Commission may adopt temporary rules as provided in this section until July 1, 2004."

Disapproval of Life Insurance Replacement Rules. — Session Laws 2003-143, s. 1, effective June 4, 2003, provides: "Pursuant to G.S. 150B-21.3(b), the following Life Insurance Replacement Rules that were adopted by the Department of Insurance and approved by the Rules Review Commission on December 19, 2002, are disapproved:

"(1) 11 NCAC 12.0601 — Purpose and Scope.

"(2) 11 NCAC 12.0602 — Definition of Replacement.

"(3) 11 NCAC 12.0603 — Other Definitions.

"(4) 11 NCAC 12.0604 — Exemptions.

"(5) 11 NCAC 12.0605 — Duties of Producers.

"(6) 11 NCAC 12.0606 — Duties of Existing Insurer.

"(7) 11 NCAC 12.0607 — Duties of Insurers That Use Producers.

"(8) 11 NCAC 12.0608 — Duties of Insurers With Respect to Direct Response Sales.

"(9) 11 NCAC 12.0609 — Violations and Penalties.

"(10) 11 NCAC 12.0611 — Notice Regarding Replacement.

"(11) 11 NCAC 12.0612 — Duties of Replacing Insurers That Use Producers."

Approval of Rules Governing Residential Treatment for Children or Adolescents. — Session Laws 2005-276, s. 10.35B, provides: "Notwithstanding G.S. 150B-21.1(b) and G.S. 150B-21.3(b2), the Department of Health and Human Services may adopt as temporary rules the rules governing residential treatment for children or adolescents approved for adoption or revision on May 18, 2005, by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and approved by the Rules Review Commission. The temporary rules shall become effective as provided in G.S. 150B-21.3(a)."

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 27.36, provides: "G.S. 150B-21.3(c) does not apply to a rule that extends the data set in 15A NCAC 13B.1627(c)(10)(A) for closure of a municipal solid waste landfill facility beyond January 1, 2000."

Session Laws 1999-237, s. 11.30 provides that, notwithstanding G.S. 150B-21.3(b), Administrative Rules 10 NCAC 41S and 41T, adopted by the Social Services Commission on January 13, 1999, and approved by the Rules Review Commission on February 18, 1999, and Administrative Rules 10 NCAC 41E, 41G, and 41R, repealed by the Social Services Commission on January 13, 1999, and approved by the Rules Review Commission on February 18, 1999, become effective July 1, 1999.

Session Laws 2000-172, s. 2.2, as amended by Session Laws 2000-140, s. 92.1(b), provides that notwithstanding G.S. 150B-21.3(a) and 25 NCAC 2C.0102(11), the Coastal Resources Commission shall adopt a temporary rule to establish use standards for waterfront development in urban areas to replace G.S. 113A-120.2 when it expires. The temporary rule shall become effective April 1, 2000, and shall remain in effect until a permanent rule that replaces the temporary rule becomes effective.

Session Laws 2000-142, s. 3, provides that, notwithstanding G.S. 150B-21.3(a) and 26 NCAC 2C.0102(11), the Coastal Resources Commission may adopt a temporary rule to establish criteria for exceptions to the regulatory requirement, effective August 1, 2000, of a 30-foot development setback along public trust and estuarine waters to allow construction of residences on previously platted undeveloped lots of 5,000 square feet or less that are located in intensively developed areas and that would otherwise be prohibited under rules adopted by the Commission pursuant to Article 7 of Chapter 113A of the General Statutes. The temporary rule shall become effective upon its adoption by the Commission and shall remain in effect until a permanent rule that replaces the temporary rule becomes effective.

Session Laws 2001-361, s.1, provides: "Notwithstanding G.S. 150-21.3(b), 15 NCAC 2B.0315 (Neuse River Basin), as amended by the Environmental Management Commission on 12 October 2000 and approved by the Rules Review Commission on 16 November 2000, becomes effective 1 July 2004 unless the 2004 Regular Session of the 2003 General Assembly specifically disapproves 15A NCAC 2B.0315 (Neuse River Basin), as amended by the Environmental Commission of 12 October 2000 and approved by the Rules Review Commission on 16 November 2000, by enactment of a bill as provided in G.S. 150B-21.3(b)."

Session Laws 2001-418, ss. 1 to 3, authorize the Coastal Resources Commission to adopt temporary rules to establish additional exceptions to the 30-foot buffer requirement along public trust and estuarine waters in certain circumstances and to allow structural modifications to piers to prevent or minimize storm damage.

Session Laws 2002-116, s. 1, effective September 17, 2002, provides: "Pursuant to G.S. 150B-21.3(b), the amendment to 15A NCAC 07H.0309 (Use Standards for Ocean Hazard Areas: Exceptions), as adopted by the Coastal Resources Commission and approved by the Rules Review Commission on 15 November 2001, by which subdivision '(9) swimming pools;' would be deleted from subsection (a) of the rule is disapproved and shall not become effective. The remainder of the amendments to 15A NCAC 7H.0309, as adopted by the Coastal Resources Commission and approved by the Rules Review Commission on 15 November 2001, shall become effective on 1 August 2002."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2003-433, s. 1, provides: "Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B.0225 (Outstanding Resource Waters) and 15A NCAC 2B.0316 (Tar-Pamlico River Basin), as adopted by the Environmental Management Commission on 11 July 2002 and approved by the Rules Review Commission on 15 August 2002, are approved effective 1 August 2003 with respect to all waters and lands that are located west of Nash County State Road 1003 (Red Oak Road)."

Session Laws 2003-433, s. 2, provides: "With respect to all waters and lands that are located east of Nash County State Road 1003 (Red Oak Road), 15A NCAC 2B.0225 (Outstanding Resource Waters) and 15A NCAC 2B.0316 (Tar-Pamlico River Basin), as adopted by the Environmental Management Commission on 11 July 2002 and approved by the Rules Review Commission on 15 August 2002, shall not become effective as provided in G.S. 150B-21.3(b) and shall become effective only as the 2004 Regular Session of the 2003 General Assembly may provide by law."

Session Laws 2003-433, s. 4, provides: "The Environmental Management Commission shall adopt temporary and permanent rules to amend the North Carolina Administrative Code to incorporate the provisions of Section 1 of this act. Notwithstanding G.S. 150B-21.1, this act shall not be construed to authorize the Environmental Management Commission to adopt a temporary rule related to the subject matter of this act except as specifically provided by this section, and the Environmental Management Commission shall not be required to provide prior notice or a hearing to adopt the temporary rule required by this section. Reference to this section shall satisfy the requirement for a statement of finding of need for a temporary rule set out in G.S. 150B-21.1."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-442, s. 3(b), provides: "Notwithstanding G.S. 150B-21.3(b1), 10A NCAC 21B.0314, adopted by the Department of Health and Human Services on January 19, 2007, and approved by the Rules Review Commission on March 15, 2007, is disapproved."

Session Laws 2007-442, s. 3.6, provides: "Unless required by federal law, the Department of Health and Human Services, Division of Medical Assistance shall limit notification of estate recovery to the application process for Medicaid and to following the death of the recipient."

Session Laws 2009-217, s. 1, provides: "Pursuant to G.S. 150B-21.3(b1), 21 NCAC 32X.0103 (Reporting of Medical Judgments, Awards, Payments or Settlements) and 21 NCAC 32X.0105 (Publication of Judgments, Awards, Payments or Settlements), as adopted by the North Carolina Medical Board on July 16, 2008, and approved by the Rules Review

Commission on August 21, 2008, are disapproved."

Session Laws 2009-217, s. 4, provides: "Notwithstanding G.S. 150B-21.3(b1), 13 NCAC 07F.0901 (Scope) as adopted by the Department of Labor on February 19, 2009, and approved by the Rules Review Commission on March 19, 2009, is disapproved."

CASE NOTES

Cited in Frye Regional Medical Ctr., Inc. v. Hunt, 350 N.C. 39, 510 S.E.2d 159 (1999).

§ 150B-21.4. Fiscal notes on rules.

(a) State Funds. — Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Director of the Budget and obtain certification from the Director that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Director of the Budget must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. — In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation before the agency publishes the proposed text of the rule change in the North Carolina Register. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. — Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of the Governor as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. — Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or prepare a fiscal note for the proposed rule change and have the note approved by that Office. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that

Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change may prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management must review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency may ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact.

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least three million dollars ($3,000,000) in a 12-month period.

(b2) Content. — A fiscal note required by subsection (b1) of this section must contain the following:

(1) A description of the persons who would be affected by the proposed rule change.
(2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.
(3) A description of the purpose and benefits of the proposed rule change.
(4) An explanation of how the estimate of expenditures was computed.

(c) Errors. — An erroneous fiscal note prepared in good faith does not affect the validity of a rule. (1973, c. 1331, s. 1; 1979, 2nd Sess., c. 1137, s. 41.1; 1983, c. 761, s. 185; 1985, c. 746, s. 1; 1987, c. 827, s. 54; 1991, c. 418, s. 1; 1995, c. 415, s. 2; c. 507, s. 27.8(b); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 6; 2005-276, s. 28.8(a); 2006-203, s. 124.)

Cross References. — For section regarding rulemaking to implement ABC plan, see G.S. 115C-17.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Applied in Affordable Care, Inc. v. N.C. State Bd. of Dental Exam'rs, 153 N.C. App. 527, 571 S.E.2d 52 (2002).

§ 150B-21.5. Circumstances when notice and rule-making hearing not required.

(a) Amendment. — An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to amend a rule to do one of the following:

(1) Reletter or renumber the rule or subparts of the rule.
(2) Substitute one name for another when an organization or position is renamed.

(3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
(4) Change information that is readily available to the public, such as an address or a telephone number.
(5) Correct a typographical error in the North Carolina Administrative Code.
(6) Change a rule in response to a request or an objection by the Commission, unless the Commission determines that the change is substantial.

(b) Repeal. — An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:
(1) The law under which the rule was adopted is repealed.
(2) The law under which the rule was adopted or the rule itself is declared unconstitutional.
(3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. — The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection.

(d) State Building Code. — The Building Code Council is not required to publish a notice of text in the North Carolina Register when it proposes to adopt a rule that concerns the North Carolina State Building Code. The Building Code Council is required to publish a notice in the North Carolina Register when it proposes to adopt a rule that concerns the North Carolina State Building Code. The notice must include all of the following:
(1) A statement of the subject matter of the proposed rule making.
(2) A short explanation of the reason for the proposed action.
(3) A citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making.
(4) The person to whom questions or written comments may be submitted on the subject matter of the proposed rule making.

The Building Code Council is required to submit to the Commission for review a rule for which notice of text is not required under this subsection. In adopting a rule, the Council shall comply with the procedural requirements of G.S. 150B-21.3. (1991, c. 418, s. 1; 1995, c. 504, s. 12; 1997-34, s. 4; 2001-141, s. 5; 2001-421, s. 1.3; 2003-229, s. 7.)

§ 150B-21.6. Incorporating material in a rule by reference.

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:
(1) Another rule or part of a rule adopted by the agency.
(2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.
(3) Repealed by Session Laws 1997-34, s. 5.

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 64; 1981 (Reg. Sess., 1982), c. 1359, s. 5; 1983, c. 641, s. 3; c. 768, s. 19; 1985, c. 746, s. 1; 1987, c. 285, s. 13; 1991, c. 418, s. 1; 1997-34, s. 5.)

§ 150B-21.7. Effect of transfer of duties or termination of agency on rules.

When a law that authorizes an agency to adopt a rule is repealed and another law gives the same or another agency substantially the same authority to adopt a rule, the rule remains in effect until the agency amends or repeals the rule. When a law that authorizes an agency to adopt a rule is repealed and another law does not give the same or another agency substantially the same authority to adopt a rule, a rule adopted under the repealed law is repealed as of the date the law is repealed.

When an executive order abolishes part or all of an agency and transfers a function of that agency to another agency, a rule concerning the transferred function remains in effect until the agency to which the function is transferred amends or repeals the rule. When an executive order abolishes part or all of an agency and does not transfer a function of that agency to another agency, a rule concerning a function abolished by the executive order is repealed as of the effective date of the executive order.

The Director of Fiscal Research of the General Assembly must notify the Codifier of Rules when a rule is repealed under this section. When notified of a rule repealed under this section, the Codifier of Rules must enter the repeal of the rule in the North Carolina Administrative Code. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1.)

Part 3. Review by Commission.

§ 150B-21.8. Review of rule by Commission.

(a) Emergency Rule. — The Commission does not review an emergency rule.

(b) Temporary and Permanent Rules. — An agency must submit temporary and permanent rules adopted by it to the Commission before the rule can be included in the North Carolina Administrative Code. The Commission reviews a temporary or permanent rule in accordance with the standards in G.S. 150B-21.9 and follows the procedure in this Part in its review of a rule.

(c) Scope. — When the Commission reviews an amendment to a permanent rule, it may review the entire rule that is being amended. The procedure in G.S. 150B-21.12 applies when the Commission objects to a part of a permanent rule that is within its scope of review but is not changed by a rule amendment.

(d) Judicial Review. — When the Commission returns a permanent rule to an agency in accordance with G.S. 150B-21.12(d), the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. (1991, c. 418, s. 1; 2003-229, s. 8.)

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. — The Commission must determine whether a rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.

(4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. — The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

Editor's Note. — Session Laws 2003-229, s. 15 provides that the amendments to subsections (a) and (b) by s. 9 of the act are applicable to temporary and emergency rules adopted on or after that date and to permanent rules adopted on or after October 1, 2003. Subsection (a1), as amended by s. 9 of the act, applies only to rules adopted on or after July 1, 2003.

Session Laws 2009-216, as amended by Session Laws 2009-484, s. 7(a) and (b), provided for improvements in the management of the Jordan Watershed in order to restore water quality in the Jordan Reservoir. See Editor's note at G.S. 143-214.7 for details.

Session Laws 2009-216, s. 2(c), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Wastewater Discharge Rule 15A NCAC 02B.0270. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)." Section 2 of Session Laws 2009-216 pertains to wastewater discharge into the Jordan Lake Reservoir.

Session Laws 2009-216, s. 3(j), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Sections 3(c) through 3(i) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Sections 3(c) through 3(f) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)." Section 3 of Session Laws 2009-216 pertains to stormwater management, Jordan Lake Reservoir.

CASE NOTES

Rules Properly Adopted. — Trial court did not err in determining that the North Carolina Environmental Management Commission complied with the North Carolina Administrative Procedure Act in adopting the wetlands rules, because the rules were entered in the North Carolina Administrative Code; therefore, under G.S. 150B-21.9(a), conclusive evidence existed that the rules were adopted in accordance with Act's requirements. N.C. Home Bldrs. Ass'n v. Envtl. Mgmt. Comm'n, 155 N.C. App. 408, 573 S.E.2d 732, 2002 N.C. App. LEXIS 1617 (2002), cert. denied, 357 N.C. 62, 579 S.E.2d 392 (2003).

Commission's Authority. — General assembly has given the North Carolina Rules Review Commission the authority to determine whether a proposed rule is within the authority delegated to the agency by the legislature; where, only after the pharmacy board received an unfavorable outcome regarding its proposed pharmacist hours rule did it allege the process was unconstitutional, the board was estopped from raising a constitutional challenge to the commission's authority, and the trial court did not err by refusing to rule on that challenge. N.C. Bd. of Pharm. v. Rules Review Comm'n, 174 N.C. App. 301, 620 S.E.2d 893, 2005 N.C. App. LEXIS 2362 (2005), rev'd, in part on other grounds, remanded, review improvidently allowed, 360 N.C. 638, 637 S.E.2d 515 (2006).

Cited in Holly Ridge Assocs., LLC v. N.C. Dep't of Env't & Natural Res., 361 N.C. 531, 648 S.E.2d 830, 2007 N.C. LEXIS 811 (2007).

§ 150B-21.10. Commission action on permanent rule.

At the first meeting at which a permanent rule is before the Commission for review, the Commission must take one of the following actions:

(1) Approve the rule, if the Commission determines that the rule meets the standards for review.

(2) Object to the rule, if the Commission determines that the rule does not meet the standards for review.

(3) Extend the period for reviewing the rule, if the Commission determines it needs additional information on the rule to be able to decide whether the rule meets the standards for review.

In reviewing a new rule or an amendment to an existing rule, the Commission may request an agency to make technical changes to the rule and may condition its approval of the rule on the agency's making the requested technical changes. (1991, c. 418, s. 1.)

Editor's Note. — Session Laws 2009-216, as amended by Session Laws 2009-484, s. 7(a) and (b), provided for improvements in the management of the Jordan Watershed in order to restore water quality in the Jordan Reservoir. See Editor's note at G.S. 143-214.7 for details.

Session Laws 2009-216, s. 2(c), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Wastewater Discharge Rule 15A NCAC 02B.0270. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)." Section 2 of Session Laws 2009-216 pertains to wastewater discharge into the Jordan Lake Reservoir.

Session Laws 2009-216, s. 3(j), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Sections 3(c) through 3(i) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Sections 3(c) through 3(f) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)." Section 3 of Session Laws 2009-216 pertains to stormwater management, Jordan Lake Reservoir.

§ 150B-21.11. Procedure when Commission approves permanent rule.

When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's approval, deliver the approved rule to the Codifier of Rules, and include the text of the approved rule and a summary of the rule in its next report to the Joint Legislative Administrative Procedure Oversight Committee.

If the approved rule will increase or decrease expenditures or revenues of a unit of local government, the Commission must also notify the Governor of the Commission's approval of the rule and deliver a copy of the approved rule to the Governor by the end of the month in which the Commission approved the rule. (1991, c. 418, s. 1; 1995, c. 415, s. 4; c. 507, s. 27.8(g).)

Editor's Note. — Session Laws 2009-216, as amended by Session Laws 2009-484, s. 7(a) and (b), provided for improvements in the management of the Jordan Watershed in order to restore water quality in the Jordan Reservoir. See Editor's note at G.S. 143-214.7 for details.

Session Laws 2009-216, s. 2(c), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Wastewater Discharge Rule 15A NCAC 02B.0270. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)." Section 2 of Session Laws 2009-216 pertains to wastewater discharge into the Jordan Lake Reservoir.

Session Laws 2009-216, s. 3(j), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Sections 3(c) through 3(i) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Sections 3(c) through 3(f) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)." Section 3 of Session Laws 2009-216 pertains to stormwater management, Jordan Lake Reservoir.

§ 150B-21.12. Procedure when Commission objects to a permanent rule.

(a) Action. — When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

(b) Time Limit. — An agency that is not a board or commission must take one of the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

(c) Changes. — When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection. The Commission must also determine whether the change is substantial. In making this determination, the Commission shall use the standards set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

(d) Return of Rule. — A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it must notify the Codifier of Rules of its action and must send a copy of the record of the Commission's review of the rule to the Joint Legislative Administrative Procedure Oversight Committee in its next report to that Committee. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule. (1991, c. 418, s. 1; 1995, c. 415, s. 5; c. 507, s. 27.8(h), (y); 2003-229, s. 10.)

Editor's Note. — Session Laws 2009-216, as amended by Session Laws 2009-484, s. 7(a) and (b), provided for improvements in the management of the Jordan Watershed in order to restore water quality in the Jordan Reservoir. See Editor's note at G.S. 143-214.7 for details.

Session Laws 2009-216, s. 2(c), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Wastewater Discharge Rule 15A NCAC 02B.0270. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)." Section 2 of Session Laws 2009-216 pertains to wastewater discharge into the Jordan Lake Reservoir.

Session Laws 2009-216, s. 3(j), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Sections 3(c) through 3(i) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Sections 3(c) through 3(f) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)." Section 3 of Session Laws 2009-216 pertains to stormwater management, Jordan Lake Reservoir.

CASE NOTES

Applied in Affordable Care, Inc. v. N.C. State Bd. of Dental Exam'rs, 153 N.C. App. 527, 571 S.E.2d 52 (2002).

§ 150B-21.13. Procedure when Commission extends period for review of permanent rule.

When the Commission extends the period for review of a permanent rule, it must notify the agency that adopted the rule of the extension and the reason for the extension. After the Commission extends the period for review of a rule, it may call a public hearing on the rule. Within 70 days after extending the period for review of a rule, the Commission must decide whether to approve the rule, object to the rule, or call a public hearing on the rule. (1991, c. 418, s. 1.)

Editor's Note. — Session Laws 2009-216, as amended by Session Laws 2009-484, s. 7(a) and (b), provided for improvements in the management of the Jordan Watershed in order to restore water quality in the Jordan Reservoir. See Editor's note at G.S. 143-214.7 for details.

Session Laws 2009-216, s. 2, pertains to wastewater discharge into the Jordan Lake Reservoir.

Session Laws 2009-216, s. 2(c), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Wastewater Discharge Rule 15A NCAC 02B.0270. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)."

Session Laws 2009-216, s. 3, pertains to stormwater management of the Jordan Lake Reservoir.

Session Laws 2009-216, s. 3(j), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Sections 3(c) through 3(i) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Sections 3(c) through 3(f) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)."

§ 150B-21.14. Public hearing on a rule.

The Commission may call a public hearing on a rule when it extends the period for review of the rule. At the request of an agency, the Commission may call a public hearing on a rule that is not before it for review. Calling a public hearing on a rule not already before the Commission for review places the rule before the Commission for review. When the Commission decides to call a public hearing on a rule, it must publish notice of the public hearing in the North Carolina Register.

After a public hearing on a rule, the Commission must approve the rule or object to the rule in accordance with the standards and procedures in this Part. The Commission must make its decision of whether to approve or object to the rule within 70 days after the public hearing. (1991, c. 418, s. 1.)

Editor's Note. — Session Laws 2009-216, as amended by Session Laws 2009-484, s. 7(a) and (b), provided for improvements in the management of the Jordan Watershed in order to restore water quality in the Jordan Reservoir. See Editor's note at G.S. 143-214.7 for details.

Session Laws 2009-216, s. 2, pertains to wastewater discharge into the Jordan Lake Reservoir.

Session Laws 2009-216, s. 2(c), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Wastewater Discharge Rule 15A NCAC 02B.0270. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)."

Session Laws 2009-216, s. 3, pertains to stormwater management of the Jordan Lake Reservoir.

Session Laws 2009-216, s. 3(j), provides: "Additional Rule-Making Authority. — The Commission shall adopt a rule to replace Sections 3(c) through 3(i) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Sections 3(c) through 3(f) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)."

§ 150B-21.15: Repealed by Session Laws 1995, c. 507, s. 27.8(i), effective December 1, 1995.

§ 150B-21.16. Report to Joint Legislative Administrative Procedure Oversight Committee.

The Commission must make monthly reports to the Joint Legislative Administrative Procedure Oversight Committee. The reports are due by the last day of the month. A report must include the rules approved by the Commission at its meeting held in the month in which the report is due and the rules the Commission returned to agencies during that month after the Commission objected to the rule. A report must include any other information requested by the Joint Legislative Administrative Procedure Oversight Committee. When the Commission sends a report to the Joint Legislative Administrative Procedure Oversight Committee, the Commission must send a copy of the report to the Codifier of Rules. (1995, c. 507, s. 27.8(j).)

Part 4. Publication of Code and Register.

§ 150B-21.17. North Carolina Register.

(a) Content. — The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

(1) Temporary rules entered in the North Carolina Administrative Code.
(1a) The text of proposed rules and the text of permanent rules approved by the Commission.
(1b) Emergency rules entered into the North Carolina Administrative Code.
(2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.
(3) Executive orders of the Governor.
(4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.
(5) Orders of the Tax Review Board issued under G.S. 105-241.2.
(6) Other information the Codifier determines to be helpful to the public.

(b) Form. — When an agency publishes notice in the North Carolina Register of the proposed text of a new rule, the Codifier of Rules must publish the complete text of the proposed new rule. In publishing the text of a proposed new rule, the Codifier must indicate the rule is new by underlining the proposed text of the rule.

When an agency publishes notice in the North Carolina Register of the proposed text of an amendment to an existing rule, the Codifier must publish the complete text of the rule that is being amended unless the Codifier determines that publication of the complete text of the rule being amended is not necessary to enable the reader to understand the proposed amendment. In publishing the text of a proposed amendment to a rule, the Codifier must indicate deleted text with overstrikes and added text with underlines.

When an agency publishes notice in the North Carolina Register of the proposed repeal of an existing rule, the Codifier must publish the complete text of the rule the agency proposes to repeal unless the Codifier determines that publication of the complete text is impractical. In publishing the text of a rule the agency proposes to repeal, the Codifier must indicate the rule is to be repealed.

(c) The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Register. (1991, c. 418, s. 1; 1995, c.

507, s. 27.8(k); 2001-141, s. 6; 2001-421, s. 1.4; 2003-229, s. 11; 2006-66, s. 18.1.)

Editor's Note. — Session Laws 1985, c. 746, s. 4, effective January 1, 1986, provided: "All personnel and equipment presently assigned to the Department of Justice for the purpose of carrying out the provisions of Article 5, Chapter 150A [recodified as this Article] of the General Statutes, are transferred to the Office of Administrative Hearings by a Type I transfer as defined by G.S. 143A-6(a)."

§ 150B-21.18. North Carolina Administrative Code.

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means. The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Code. The Codifier must keep superseded rules. (1973, c. 1331, s. 1; 1979, c. 69, ss. 3, 7; c. 541, s. 2; c. 688, s. 1; 1979, 2nd Sess., c. 1266, ss. 1-3; 1981 (Reg. Sess., 1982), c. 1359, s. 6; 1983, c. 641, s. 6; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1003, s. 2; c. 1022, s. 1(1), (19); c. 1032, s. 12; 1987, c. 774, ss. 2-4; 1987 (Reg. Sess., 1988), c. 1111, s. 3; 1989, c. 500, s. 43(a); 1991, c. 418, s. 1; 1993 (Reg. Sess., 1994), c. 777, s. 2.)

§ 150B-21.19. Requirements for including rule in Code.

To be acceptable for inclusion in the North Carolina Administrative Code, a rule must:

(1) Cite the law under which the rule is adopted.
(2) Be signed by the head of the agency or the rule-making coordinator for the agency that adopted the rule.
(3) Be in the physical form specified by the Codifier of Rules.
(4) Have been approved by the Commission, if the rule is a permanent rule.
(5) Have complied with the provisions of G.S. 12-3.1, if the rule establishes a new fee or increases an existing fee. (1973, c. 1331, s. 1; 1979, c. 571, s. 1; 1981, c. 688, s. 14; 1983, c. 927, ss. 6, 9; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1); c. 1028, s. 35; 1987, c. 285, s. 16; 1991, c. 418, s. 1; 1995, c. 507, s. 27.8(*l*); 2002-97, s. 4.)

§ 150B-21.20. Codifier's authority to revise form of rules.

(a) Authority. — After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code within 10 business days after the rule is submitted to do one or more of the following:

(1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.
(2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.
(3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.
(4) Rearrange definitions and lists.

(5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.

(6) Omit from the published rule a map, a diagram, an illustration, a chart, or other graphic material, if the Codifier of Rules determines that the Office of Administrative Hearings does not have the capability to publish the material or that publication of the material is not practicable. When the Codifier of Rules omits graphic material from the published rule, the Codifier must insert a reference to the omitted material and information on how to obtain a copy of the omitted material.

(b) Effect. — Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official rule, unless the rule was revised under subdivision (a)(6) of this section to omit graphic material. When a rule is revised under that subdivision, the official rule is the published text of the rule plus the graphic material that was not published. (1973, c. 1331, s. 1; 1979, c. 571, s. 1; 1981, c. 688, s. 14; 1983, c. 927, ss. 6, 9; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1); c. 1028, s. 35; 1987, c. 285, s. 16; 1987 (Reg. Sess., 1988), c. 1111, s. 23; 1991, c. 418, s. 1; 1997-34, s. 6.)

Editor's Note. — Session Laws 2007-444, s. 5.5(a) and(b), provides: "(a) Wherever the name 'Division of Facility Services' appears in the North Carolina Administrative Code, the Codifier of Rules shall replace 'Division of Facility Services' with 'Division of Health Service Regulation.'

"(b) Wherever the name 'Health Services Commission' appears in the North Carolina Administrative Code, the Codifier of Rules shall replace 'Health Services Commission' with 'Commission for Public Health.'"

§ 150B-21.21. Publication of rules of North Carolina State Bar, Building Code Council, and exempt agencies.

(a) State Bar. — The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within 30 days after it is entered in the minutes of the Supreme Court. The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this subsection in the same manner as other rules in the Code.

(a1) Building Code Council. — The Building Code Council shall publish the North Carolina State Building Code as provided in G.S. 143-138(g). The Codifier of Rules is not required to publish the North Carolina State Building Code in the North Carolina Administrative Code.

(b) Exempt Agencies. — Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled "North Carolina Utilities Laws and Regulations." The Utilities Commission must submit a rule required to be included in the Code within 30 days after it is adopted.

Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. These exempt agencies must submit a rule to the Codifier of Rules within 30 days after adopting the rule.

(c) Publication. — A rule submitted to the Codifier of Rules under this section must be in the physical form specified by the Codifier of Rules. The Codifier of Rules must compile, make available for public inspection, and publish a rule submitted under this section in the same manner as other rules in the North Carolina Administrative Code. (1991, c. 418, s. 1; 1997-34, s. 7; 2001-141, s. 7.)

§ 150B-21.22. Effect of inclusion in Code.

Official or judicial notice can be taken of a rule in the North Carolina Administrative Code and shall be taken when appropriate. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; 1997-34, s. 8.)

CASE NOTES

Editor's Note. — *The case below was decided under corresponding provisions of former Chapter 150A.*

Judicial Notice of Regulations. — Where promulgating agency is not subject to the Administrative Procedure Act, the court is only required to take judicial notice of its regulations if submitted in accordance with certain procedures designed to insure their accuracy. Southern Ry. v. O'Boyle Tank Lines, 70 N.C. App. 1, 318 S.E.2d 872 (1984).

§ 150B-21.23. Rule publication manual.

The Codifier of Rules must publish a manual that sets out the form and method for publishing a notice of rule-making proceedings and a notice of text in the North Carolina Register and for filing a rule in the North Carolina Administrative Code. (1973, c. 1331, s. 1; 1979, c. 571, s. 1; 1981, c. 688, s. 14; 1983, c. 927, ss. 6, 9; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1); c. 1028, s. 35; 1987, c. 285, s. 16; 1991, c. 418, s. 1; 1997-34, s. 9.)

§ 150B-21.24. Access to Register and Code.

(a) Register. — The Codifier of Rules shall make available the North Carolina Register on the Internet at no charge. Upon request the Codifier shall provide a free copy of the current volume of the Register to any person who receives a free copy of the North Carolina Administrative Code or any member of the General Assembly.

(b) Code. — The Codifier of Rules shall make available the North Carolina Administrative Code on the Internet at no charge. The Codifier shall distribute copies of the North Carolina Administrative Code as soon after publication as practical, without charge, to the following:

(1) One copy to the board of commissioners of each county that specifically requests a printed copy, to be placed at the county clerk of court's office or at another place selected by the board of commissioners. The Codifier of Rules is not required to provide a copy of the Administrative Code to any board of county commissioners unless a request is made.
(2) One copy to the Commission.
(3) One copy to the Clerk of the Supreme Court and to the Clerk of the Court of Appeals of North Carolina.
(4) One copy to the Supreme Court Library and one copy to the library of the Court of Appeals.
(5) One copy to the Administrative Office of the Courts.
(6) One copy to the Governor.

(7) One copy to the Legislative Services Commission for the use of the General Assembly.
(8) Repealed by Session Laws 2002-97, s. 1, effective August 29, 2002.
(9) One copy to the Division of State Library of the Department of Cultural Resources pursuant to G.S. 125-11.7. (1973, c. 1331, s. 1; c. 69, ss. 3, 7; c. 688, s. 1; 1979, c. 541, s. 2; 1979, 2nd Sess., c. 1266, ss. 1-3; 1981 (Reg. Sess., 1982), c. 1359, s. 6; 1983, c. 641, s. 6; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1003, s. 2; c. 1022, s. 1(1), (19); c. 1032, s. 12; 1987, c. 774, ss. 2-4; 1987 (Reg. Sess., 1988), c. 1111, s. 3; 1989, c. 500, s. 43(a); 1991, c. 418, s. 1; 2002-97, s. 1.)

Legal Periodicals. — For article, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

Editor's Note. — *The case below was decided under corresponding provisions of former Chapter 150A.*

Administrative remedies prescribed by environmental regulations were inadequate where they were not published as required by Article 5 of former Chapter 150A. Orange County Sensible Hwys. & Protected Env'ts, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 150B-21.25. Paid copies of Register and Code.

A person who is not entitled to a free copy of the North Carolina Administrative Code or North Carolina Register may obtain a copy by paying a fee set by the Codifier of Rules. The Codifier must set separate fees for the North Carolina Register and the North Carolina Administrative Code in amounts that cover publication, copying, and mailing costs. All monies received under this section must be credited to the General Fund. (1991, c. 418, s. 1.)

Part 5. Rules Affecting Local Governments.

§ 150B-21.26. Governor to conduct preliminary review of certain administrative rules.

(a) Preliminary Review. — At least 30 days before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, the agency must submit all of the following to the Governor for preliminary review:
(1) The text of the proposed rule change.
(2) A short explanation of the reason for the proposed change.
(3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(b) Scope. — The Governor's preliminary review of a proposed permanent rule change that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:
(1) The agency's explanation of the reason for the proposed change.
(2) Any unanticipated effects of the proposed change on local government budgets.
(3) The potential costs of the proposed change weighed against the potential risks to the public of not taking the proposed change. (1995, c. 415, s. 3; c. 507, s. 27.8(w).)

Editor's Note. — This Part was enacted by Session Laws 1995, c. 415, s. 3, as Part 4 of Article 2A. It has been renumbered as Part 5 at the direction of the Revisor of Statutes.

§ 150B-21.27. Minimizing the effects of rules on local budgets.

In adopting permanent rules that would increase or decrease the expenditures or revenues of a unit of local government, the agency shall consider the timing for implementation of the proposed rule as part of the preparation of the fiscal note required by G.S. 150B-21.4(b). If the computation of costs in a fiscal note indicates that the proposed rule change will disrupt the budget process as set out in the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes, the agency shall specify the effective date of the change as July 1 following the date the change would otherwise become effective under G.S. 150B-21.3. (1995, c. 415, s. 3; c. 507, s. 27.8(x).)

§ 150B-21.28. Role of the Office of State Budget and Management.

The Office of State Budget and Management shall:

(1) Compile an annual summary of the projected fiscal impact on units of local government of State administrative rules adopted during the preceding fiscal year.

(2) Compile from information provided by each agency schedules of anticipated rule actions for the upcoming fiscal year.

(3) Provide the Governor, the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities with a copy of the annual summary and schedules by no later than March 1 of each year. (1995, c. 415, s. 3; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

ARTICLE 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. If the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case." (1985 (Reg. Sess., 1986), c. 1022, s. 1(11); 1991, c. 418, s. 16.)

Appeal to State MH/DD/SA Appeals Panel. — Session Laws 2008-107, s. 10.15A(h1)-(h6), as amended and added to by Session Laws 2008-118, s. 3.13(a), (b), and as amended by Session Laws 2009-526, s. 2(a) and (b), and Session Laws 2009-550, s. 1.1(a) and (b), provides:

"(h1)(1) **General Rule.** — Notwithstanding any provision of State law or rules to the contrary, this subsection shall govern the process used by a Medicaid applicant or recipient to appeal a determination made by the Department of Health and Human Services to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, the phrase 'adverse determination' means a determination by the Department to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, all references to an applicant or recipient include the applicant or recipient's parent, guardian, or legal representative; however, notice need only be given to a parent, guardian, or legal representative who has requested in writing to receive the notice.

"(2) **Notice.** — Except as otherwise provided by federal law or regulation, at least 10 days before the effective date of an adverse determination, the Department shall notify the applicant or recipient, and the provider, if applicable, in writing of the determination and of the applicant's or recipient's right to appeal the determination. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:

"a. An identification of the applicant or recipient whose services are being affected by the adverse determination, including full name and Medicaid identification number.

"b. An explanation of what service is being denied, terminated, suspended, or reduced and the reason for the determination.

"c. The specific regulation, statute, or medical policy that supports or requires the adverse determination.

"d. The effective date of the adverse determination.

"e. An explanation of the applicant's or recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an administrative law judge.

"f. An explanation of how the applicant or recipient can request a hearing and a statement that the applicant or recipient may represent himself or use legal counsel, a relative, or other spokesperson.

"g. A statement that the applicant or recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the applicant or recipient, whichever is less, if the applicant or recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.

"h. The name and telephone number of a contact person at the Department to respond in a timely fashion to the applicant's or recipient's questions.

"i. The telephone number by which the applicant or recipient may contact a Legal Aid/Legal Services office.

"j. The appeal request form described in subdivision (4) of this subsection that the applicant or recipient may use to request a hearing.

"(3) **Appeals.** — Except as provided by this subsection and subsection 10.15A(h2) of this act, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. The applicant or recipient must request a hearing within 30 days of the mailing of the notice required by subdivision (2) of this subsection by sending an appeal request form to the Office of Administrative Hearings and the Department. Where a request for hearing concerns the reduction, modification, or termination of Medicaid services, upon the receipt of a timely appeal, the Department shall reinstate the services to the level or manner prior to action by the Department as permitted by federal law or regulation. The Department shall immediately forward a copy of the notice to the Office of Administrative Hearings electronically. The information contained in the notice is confidential unless the recipient appeals. The Office of Administrative Hearings may dispose of the records after one year. The Department may not influence, limit, or interfere with the applicant's or recipient's decision to request a hearing.

"4. **Appeal Request Form.** — Along with the notice required by subdivision (2) of this subsection, the Department shall also provide the applicant or recipient with an appeal request form which shall be no more than one side of one page. The form shall include the following:

"a. A statement that in order to request an appeal, the applicant or recipient must send the form by mail or fax to the address or fax number listed on the form within 30 days of mailing of the notice.

"b. The applicant's or recipient's name, address, telephone number, and Medicaid identification number.

"c. A preprinted statement that indicates that the applicant or recipient would like to appeal the specific adverse determination of which the applicant or recipient was notified in the notice.

"d. A statement informing the applicant or recipient that he or she may choose to be represented by a lawyer, a relative, a friend, or other spokesperson.

"e. A space for the applicant's or recipient's signature and date.

"(5) **Final Decision.** — After a hearing before an administrative law judge, the judge shall return the decision and record to the Department in accordance with subsection 10.15A(h2) of this act. The Department shall make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly notify the applicant or recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes.

"(h2)(1) **Application.** — This subsection applies only to contested Medicaid cases commenced by Medicaid applicants or recipients under subsection 10.15A(h1) of this act. Except as otherwise provided by subsection 10.15A(h1) and this subsection governing time lines and procedural steps, a contested Medicaid case commenced by a Medicaid applicant or recipient is subject to the provisions of Article 3 of Chapter 150B. To the extent any provision in this subsection or subsection 10.15A(h1) of this act conflicts with another provision in Article 3 of Chapter 150B, this subsection and subsection 10.15A(h1) controls.

"(2) **Simple Procedures.** — Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid applicant or recipient in order to complete the case as quickly as possible. To the extent possible, the Office of Administrative Hearings shall schedule and hear all contested Medicaid cases within 55 days of submission of a request for appeal. Hearings shall be conducted telephonically or by video technology, however the recipient or applicant, or the recipient's or applicant's representative may request that the hearing be conducted before the administrative law judge in-person. An in-person hearing shall be conducted in Wake County, however for good cause shown, the in-person hearing may be conducted in the county of residence of the recipient or applicant. Good cause shall include but is not limited to the applicant's or recipient's impairments limiting travel or the unavailability of the applicant's or recipient's treating professional witnesses. The Department shall provide written notice to the recipient or applicant of the use of telephonic hearings, hearings by video conference, and in-person hearings before the administrative law judge, and how to request a hearing in the recipient's or applicant's county of residence. The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An administrative law judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing. The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances. Continuances shall only be granted in accordance with rules adopted by the Office of Administrative Hearings, and shall not be granted on the day of the hearing, except for good cause shown. If a petitioner fails to make an appearance at a hearing that has been properly noticed via certified mail by the Office of Administrative Hearings, the Office of Administrative Hearings shall immediately dismiss the contested case provision.

"(3) **Mediation.** — Upon receipt of an appeal request form as provided by subdivision 10.15A(h1)(4) of this act or other clear request for a hearing by a Medicaid applicant or recipient, the Office of Administrative Hearings shall immediately notify the Mediation Network of North Carolina which shall within five days contact the petitioner to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. Upon completion of the mediation, the mediator shall inform the Office of Administrative Hearings and the Department within 24 hours of the resolution by facsimile or electronic messaging. If the parties have resolved matters in the mediation, the case shall be dismissed by the Office of Administrative Hearings. The Office of Administrative Hearings shall not conduct any contested Medicaid cases hearings until it has received notice from the mediator assigned that either: (i) the mediation was unsuccessful, or (ii) the petitioner has rejected the offer of mediation, or (iii) the petitioner has failed to appear at a scheduled mediation. Nothing in this subdivision shall restrict the right to a contested case hearing.

"(4) **Burden of Proof.** — The petitioner has the burden of proof to show entitlement to a requested benefit or the propriety of requested agency action when the agency has denied the benefit or refused to take the particular action. The agency has the burden of proof when the appeal is from an agency determination to impose a penalty or reduce, terminate, or suspend a benefit previously granted. The party with the burden of proof on any issue has the burden of going forward, and the administrative law judge shall not make any ruling on the preponderance of evidence until the close of all evidence.

"(4a) **New Evidence.** — The petitioner shall be permitted to submit evidence regardless of whether obtained prior to or subsequent to the Department's actions and regardless of whether the Department had an opportunity to consider the evidence in making its determination to deny, reduce, terminate or suspend a benefit. When such evidence is received, at the request of the Department, the administrative law judge shall continue the hearing for a minimum of 15 days and a maximum of 30 days to allow for the Department's review of the evidence. Subsequent to review of the evidence, if the Department reverses its original decision, it shall immediately inform the administrative law judge.

"(4b) **Issue for Hearing.** — For each penalty imposed or benefit reduced, terminated, or suspended, the hearing shall determine whether the Department substantially prejudiced the rights of the petitioner and if the Department, based upon evidence at the hearing:

"a. Exceeded its authority or jurisdiction;

"b. Acted erroneously;

"c. Failed to use proper procedure;

"d. Acted arbitrarily or capriciously; or,

"e. Failed to act as required by law or rule.

"(5) **Decision.** — The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. The Office of Administrative Hearings shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing. The judge shall prepare a written decision and send it to the parties. The decision must be sent together with the record to the agency within 20 days of the conclusion of the hearing.

"(h3) From funds available to the Department of Health and Human Services for the 2008-2009 fiscal year, the sum of two million dollars ($2,000,000) shall be transferred by the Department of Health and Human Services to the Office of Administrative Hearings. These funds shall be allocated by the Office of Administrative Hearings for mediation services provided for Medicaid applicant and recipient appeals and to contract for other services necessary to conduct the appeals process.

"(h4) Effective October 1, 2008, the Department of Health and Human Services shall discontinue its current informal appeals process for Medicaid applicants and recipients appealing a determination made by the Department to deny, terminate, suspend, or reduce Medicaid covered services. All such informal appeals by Medicaid applicants or recipients under the current system which are pending on that date and for which a hearing has not been held shall be discontinued and the applicant or recipient offered an opportunity to appeal to the Office of Administrative Hearings in accordance with the provisions of subsection 10.15A(h1) of this act. The Department shall make every effort to resolve or settle all of the backlogged cases prior to the effective date of this act.

"(h5) Nothing in this act shall prevent the Department of Health and Human Services from engaging in an informal review of the case with the applicant or recipient prior to issuing a notice of adverse determination as provided by subsection 10.15A(h1) of this act.

"(h6) The appeals process for Medicaid applicants and recipients established under this section shall expire July 1, 2010. The Department of Health and Human Services and the Office of Administrative Hearings shall each report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the costs, effectiveness, and efficiency of the appeals process for Medicaid applicants and recipients and make recommendations regarding the continuation of the process."

Community Support Providers Appeals Process. — Session Laws 2008-107, s. 10.15A(e1)-(e4), as amended by Session Laws 2009-526, s. 2(c), provides for administrative appeals by community support providers. See notes under G.S. 150B-1, 122C-115.4, and 122C-151.4.

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Legal Periodicals. — For note on the Brownfields Property Reuse Act of 1997, see 78 N.C.L. Rev. 1015 (1998).

CASE NOTES

Editor's Note. — *Many of the cases below were decided prior to the 1991 amendments to this Chapter.*

Timely Petition. — Failure to timely petition for a hearing before the Office of Administrative Hearings constituted waiver of any right to that administrative remedy. Citizens for Responsible Road-Ways v. North Carolina DOT, 145 N.C. App. 497, 550 S.E.2d 253, 2001 N.C. App. LEXIS 655 (2001).

Petitioner's allegation that he had been "demoted in rank without sufficient cause" stated grounds for his department's action to be deemed "disciplinary" within the meaning and intent of G.S. 126-35 and for his case to be considered "contested" within the meaning and intent of G.S. 126-37(a). Because he had properly pursued all informal procedures mandated by the State Personnel Act and by the North Carolina Administrative Code for the resolution of his grievance, petitioner's appeal also fit the procedural profile of a "contested case" for purposes of its review by the Office of Administrative Hearings under this chapter. Batten v. North Carolina Dep't of Cor., 326 N.C. 338, 389 S.E.2d 35 (1990), overruled on other grounds, Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 168 (1994).

Dispute as "Contested Case". — Wildlife Resources Commission's rejection of sewer district's study and of its request for lower streamflow requirements constituted agency action giving rise to a dispute which ultimately became a "contested case" over which the Office of Administrative Hearings has jurisdiction. Metropolitan Sewerage Dist. v. North Carolina Wildlife Resources Comm'n, 100 N.C. App. 171, 394 S.E.2d 668 (1990).

Where a trade association, adversely affected by certain licensing procedures, was a "person aggrieved" under G.S. 150B-2(6), and where licensing issues were deemed to be "contested cases" under G.S. 150B-2(2), (3) and G.S. 150B-22, the association had standing to bring a contested case challenging the state agencies' general permitting procedures for wood chip mills. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 357 N.C. 640, 588 S.E.2d 880, 2003 N.C. LEXIS 1413 (2003).

State Employee's Attempt to Recover for Surgery Costs. — State employee's dispute with the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan (now State Health Plan for Teachers and State Employees), an administrative agency, seeking to recover costs of surgery should have been brought under this Chapter. Vass v. Board of Trustees, 89 N.C. App. 333, 366 S.E.2d 1 (1988), modified and aff'd, 324 N.C. 402, 379 S.E.2d 26 (1989).

Authority To Settle. — Where the North Carolina Department of Health and Human Services and the applicant engaged in litigation to determine whether the applicant's assisted living center projects were exempt from a moratorium on such projects, the Department and the North Carolina Attorney General properly exercised their statutory authority under N.C. Gen. Stat. § 150B-22 to settle the litigation. Carillon Assisted Living, L.L.C. v. N.C. HHS, 175 N.C. App. 265, 623 S.E.2d 629, 2006 N.C. App. LEXIS 60 (2006), cert. denied, 360 N.C. 531, 633 S.E.2d 675,676 (2006).

Applied in North Buncombe Ass'n of Concerned Citizens v. Rhodes, 100 N.C. App. 24, 394 S.E.2d 462 (1990); Homoly v. North Carolina State Bd. of Dental Exmrs., 125 N.C. App. 127, 479 S.E.2d 215 (1997); Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

Cited in Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 768; Vass v. Board of Trustees, 324 N.C. 402, 379 S.E.2d 26 (1989); Ocean Hill Joint Venture v. North Carolina Dep't of Environment, Health & Natural Resources, 333 N.C. 318, 426 S.E.2d 274 (1993); Walker v. North Carolina Dep't of Env't, Health & Natural Resources, 111 N.C. App. 851, 433 S.E.2d 767 (1993); Jackson v. North Carolina Dep't of Human Res., 131 N.C. App. 179, 505 S.E.2d 899, 1998 N.C. App. LEXIS 1306 (1998); Howell v. Morton, 131 N.C. App. 626, 508 S.E.2d 804 (1998); Prentiss v. Allstate Ins. Co., 87 F. Supp. 2d 514, 1999 U.S. Dist. LEXIS 21397 (W.D.N.C. 1999); DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001); N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004).

§ 150B-22.1. Special education petitions.

(a) Notwithstanding any other provision of this Chapter, timelines and other procedural safeguards required to be provided under IDEA and Article 9 of Chapter 115C of the General Statutes must be followed in an impartial due process hearing initiated when a petition is filed under G.S. 115C-109.6 with the Office of Administrative Hearings.

(b) The administrative law judge who conducts a hearing under G.S. 115C-109.6 shall not be a person who has a personal or professional interest that conflicts with the judge's objectivity in the hearing. Furthermore, the judge must possess knowledge of, and the ability to understand, IDEA and legal interpretations of IDEA by federal and State courts. The judges are encouraged to participate in training developed and provided by the State Board of Education under G.S. 115C-107.2(h)[(g)].

(c) For the purpose of this section, the term "IDEA" means The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and its regulations. (2006-69, s. 5.)

Editor's Note. — Session Laws 2006-69, s. 8, made this section effective July 10, 2006. The bracketed reference, "[(g)]" in subsection (b), was added at the direction of the Revisor of Statutes as it appears to be the intended reference.

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;
(2) Acted erroneously;
(3) Failed to use proper procedure;,
(4) Acted arbitrarily or capriciously; or
(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article, except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority.

(a1) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1022, s. 1(9).

(a2) An administrative law judge assigned to a contested case may require a party to the case to file a prehearing statement. A party's prehearing statement must be served on all other parties to the contested case.

(b) The parties to a contested case shall be given a notice of hearing not less than 15 days before the hearing by the Office of Administrative Hearings. If prehearing statements have been filed in the case, the notice shall state the date, hour, and place of the hearing. If prehearing statements have not been filed in the case, the notice shall state the date, hour, place, and nature of the hearing, shall list the particular sections of the statutes and rules involved, and shall give a short and plain statement of the factual allegations.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the administrative law judge.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 65; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, ss. 1(9), (10), 6(2), (3); 1987, c. 878, ss. 3-5; c. 879, s. 6.1; 1987 (Reg. Sess., 1988), c. 1111, s. 5; 1991, c. 35, s. 1; 1993 (Reg. Sess., 1994), c. 572, s. 2; 2009-451, s. 21A.1(a).)

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 21A.1(a), effective October 1, 2009, and applicable to contested cases filed on and after that date, inserted "paying a fee in an amount established in G.S. 150B-23.2 and by" in the first sentence of the introductory language of subsection (a).

Legal Periodicals. — For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

For article, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

For survey of 1980 administrative law, see 59 N.C.L. Rev. 1017 (1981).

For survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2252 (1997).

CASE NOTES

Editor's Note. *— Some of the cases below were decided under corresponding provisions of former Chapter 150A, or under this Chapter prior to the 1991 amendments thereto.*

Filing of Petition for "Contested Case" Hearing. — The language of G.S. 131E-188(a) leaves no room for judicial construction. The statute clearly contemplates that a petition for a contested case hearing must be filed — not mailed or served — with the Office of Administrative Hearings within the 30-day deadline. Gummels v. North Carolina Dep't of Human Resources, 98 N.C. App. 675, 392 S.E.2d 113 (1990).

Under the 1986 version of G.S. 131E-188(a) in effect at time of petitioner's request for a contested case hearing, request was timely "filed" with the Division of Facility Services [now the Division of Health Service Regulation] where it was received within 30 days of the contested decision; the version of the subdivision in effect at that time read in pertinent part: "... any affected person shall be entitled to a contested case hearing under Article 3 of

Chapter 150A [now Chapter 150B] of the General Statutes, if the department receives a request therefor within 30 days after its decision." Under the current statutes, a request must be filed within 30 days, not just received. Huntington Manor v. North Carolina Dep't of Human Resources, 99 N.C. App. 52, 393 S.E.2d 104 (1990).

North Carolina Administrative Procedure Act provides in G.S. 150B-23(a) that any person aggrieved may commence a contested case hearing. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 154 N.C. App. 18, 571 S.E.2d 602, 2002 N.C. App. LEXIS 1411 (2002), review denied sub nom. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Nat'l Res., 357 N.C. 251, 582 S.E.2d 276 (2003).

"Representative" Not Coterminous with "Attorney." — Dismissal of petition for review of a department's decision to retract a corporate owner's eligibility for reimbursement of environmental clean-up costs was in error because, although the petition was signed by a non-attorney agent for owner, 26 N.C. Admin. Code 3.0120(e) stated that a party did not need to be represented by an attorney at administrative hearings; the term "representative" as used in G.S. 150B-23, was not coterminous with the term "attorney." Allied Envtl. Servs., PLLC v. N.C. Dep't of Envtl. & Natural Res., Div. of Waste Mgmt., 187 N.C. App. 227, 653 S.E.2d 11, 2007 N.C. App. LEXIS 2369 (2007).

Burden of Proof. — While neither G.S. 150B-23(a) nor G.S. 150B-29(a) specifically allocated the burden of proof in an administrative appeal, it had been held that that an administrative law judge was to determine whether a petitioner had met its burden in showing that the agency acted or failed to act as provided in G.S. 150B-23(a)(1) — (5), and it had been observed that caselaw held that unless a statute provided otherwise, a petitioner had the burden of proof in Office of Administrative Hearings contested cases. Overcash v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 635 S.E.2d 442, 2006 N.C. App. LEXIS 2168 (2006).

Construction with Other Laws. — It was within the ALJ's discretion to dismiss the petition as untimely under the North Carolina Administrative Procedures Act (APA), because although the Individuals with Disabilities Education Act (IDEA) instructs states to make a free appropriate public education (FAPE) available, it has left to the states the procedural mechanisms for putting the same in place, and application of the APA's 60-day limitation was not inconsistent with the underlying policies of the IDEA. M.E. v. Board of Educ., 88 F. Supp. 2d 493, 1999 U.S. Dist. LEXIS 21394 (W.D.N.C. 1999).

The court held that the 60-day limitations period in this section is the period associated with former G.S. 115C-116 (repealed) and rejected the idea that North Carolina's catch-all three-year statute of limitations for statutory actions for which no limitations period is otherwise provided, pursuant to G.S. 1-52(2), constituted a better borrowing choice and one more consistent with federal policies. CM v. Board of Educ., 241 F.3d 374, 2001 U.S. App. LEXIS 2555 (4th Cir. 2001), cert. denied, 534 U.S. 818, 122 S. Ct. 48, 151 L. Ed. 2d 18 (2001).

The Administrative Procedure Act does not apply to a case involving the Outdoor Advertising Control Act, G.S. 136-126 through 136-140, because there is no statute or administrative rule which requires the Department of Transportation to make an agency decision after providing an opportunity for an adjudicatory hearing, and the subject controversy is therefore not a "contested case" within the meaning of former G.S. 150A-23. National Adv. Co. v. Bradshaw, 48 N.C. App. 10, 268 S.E.2d 816, cert. denied and appeal dismissed, 301 N.C. 400, 273 S.E.2d 446 (1980).

Delay Due to Rehearing Not "Undue". — The delay caused when the full State Personnel Commission ordered a rehearing of the dismissal case of a Department of Transportation employee after declining to accept the recommendation of the hearing officer that a default be entered against the department for its failure to appear was not an "undue delay" within the meaning of subsection (a) of former G.S. 150A-23, nor such a delay as would allow the Court of Appeals to treat the order for rehearing as a final agency decision under former G.S. 150A-43. Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978), cert. denied, 296 N.C. 735, 254 S.E.2d 177 (1979).

Erroneous Assertion of Jurisdiction Tolls Time Limit. — In appropriate circumstances, the 60-day time limitation of subsection (f) may be tolled. Specifically, such tolling is appropriate where a court's erroneous assertion of jurisdiction brings a dispute over an administrative agency's ruling into the court which would normally review decisions of that agency, and — in reliance on this assertion of jurisdiction — a party fails to seek administrative review within the statutory time limit. House of Raeford Farms, Inc. v. State ex rel. Envt'l Mgt. Comm'n, 338 N.C. 262, 449 S.E.2d 453 (1994).

Address Supplied by Agency Must Be Correct to Trigger Time Limitation. — If an agency supplies a petitioner the address of the entity to which the appeal from its actions must be sent, it must do so accurately in order to trigger the running of the 30-day filing period under G.S. 150B-23(f). Gray v. N.C. Dep't of Env't, Health & Natural Res., 149 N.C. App. 374, 560 S.E.2d 394, 2002 N.C. App. LEXIS 201 (2002).

The time limitation of subsection (f) of this section was tolled by the superior court's erroneous assertion of subject matter jurisdiction over respondents' penalty assessment and remained tolled until the court's assertion of jurisdiction was vacated by the Court of Appeals' mandate. The Office of Administrative Hearings (OAH) had subject matter jurisdiction over petitioners' contested case petition, since this petition was timely filed in the OAH following the issuance of the Court of Appeals' mandate. House of Raeford Farms, Inc. v. State ex rel. Envt'l Mgt. Comm'n, 338 N.C. 262, 449 S.E.2d 453 (1994).

Failure to Comply with Time Limitation. — Plaintiffs who did not file a petition for a contested case, under former G.S. 115C-116 (repealed) within the time limit prescribed by this section, abandoned the process and sought relief in the courts without exhausting the available administrative remedies, were therefore barred from seeking relief in federal district court. Glen ex rel. Glen v. Charlotte-Mecklenburg Sch. Bd. of Educ., 903 F. Supp. 918 (W.D.N.C. 1995).

Where petitioner mailed his petition to the Office of Administrative Hearings at the incorrect address it had supplied, and a copy was also faxed to OAH, and did not file a subsequent original petition until after the agency moved to dismiss, petition would be considered timely. By failing to object to this omission, and by actively participating in the pre-hearing procedures and hearing, the agency waived its objection. Gray v. N.C. Dep't of Env't, Health & Natural Res., 149 N.C. App. 374, 560 S.E.2d 394, 2002 N.C. App. LEXIS 201 (2002).

The notice requirements in former § 150A-23 were strictly construed. Parrish v. North Carolina Real Estate Licensing Bd., 41 N.C. App. 102, 254 S.E.2d 268 (1979).

Factual Allegations to Be Specific. — The same rationale applicable in criminal proceedings, that an indictment must charge the offense with sufficient certainty to apprise the defendant of the specific accusation against him so as to enable him to prepare his defense, is applicable to factual allegations in proceedings pursuant to former G.S. 150A-23. Parrish v. North Carolina Real Estate Licensing Bd., 41 N.C. App. 102, 254 S.E.2d 268 (1979).

Notice Sufficient. — Notice of hearing did not list the statutes and rules involved or give a short and plain statement of the facts, but those details were unnecessary since the department had filed its prehearing statement. Lincoln v. N.C. HHS, Nutrition Branch, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

Notice Held Sufficient to Comply with Due Process. — Notice published in a newspaper and provided to each member of the county board of elections and each candidate whose name appeared on the ballot for a county office, to the effect that a public hearing would be held at a specified time and place to inquire into the processes relative to a general election conducted in the county, particularly the processes involving absentee ballots, was sufficient to comply with due process, it not being necessary for the State Board of Elections to particularize any charges in the notice of public hearing. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

Any variance between notice and proof was insignificant in notice served defendant real estate broker that Commission would present evidence that defendant doctored tapes he used in his defense, since defendant was not surprised nor deprived of an opportunity to present his defense when he attempted to use tapes to defend himself. Watson v. North Carolina Real Estate Comm'n, 87 N.C. App. 637, 362 S.E.2d 294 (1987), cert. denied, 321 N.C. 746, 365 S.E.2d 296 (1988).

Notice Held Insufficient to Comply with Due Process. — A notice which failed to inform petitioner of her right to contest the designation of her position as "exempt policymaking," the procedure for contesting the designation, or the time limits for filing her objection to the designation was not sufficient to start the limitation period running. Jordan v. DOT, 140 N.C. App. 771, 538 S.E.2d 623, 2000 N.C. App. LEXIS 1272 (2000), cert denied, 353 N.C. 376, 547 S.E.2d 412 (2001).

Defendants-school systems failed to adequately notify the parents of disabled children, as required by this section, that school authorities had reached a final decision regarding reimbursement of their special educational costs that could be challenged only in a due process hearing, which had to be requested within sixty days; the letters which the schools relied on were written during negotiations with the parents and were not express enough to trigger the limitations period, and distribution of the Handbook of Parents' Rights could not remedy the letters' inadequacies. CM v. Board of Educ., 241 F.3d 374, 2001 U.S. App. LEXIS 2555 (4th Cir. 2001), cert. denied, 534 U.S. 818, 122 S. Ct. 48, 151 L. Ed. 2d 18 (2001).

Letter to an employee after her termination while on medical leave that expressed sympathy for her medical condition and reiterated facts regarding the employee's termination did not constitute sufficient notice of the decision or action regarding the grievance filed by the employee, which triggered the right to appeal for purposes of G.S. 126-38; because the employer, the Department of Social Services (DSS), failed to provide the notice required under G.S. 150B-23(f) as to appealing her termination, an administrative law judge properly denied the DSS' motion to dismiss the appeal as untimely. Early v. County of Durham Dep't of Soc. Servs., 172 N.C. App. 344, 616 S.E.2d 553, 2005 N.C. App. LEXIS 1788 (2005).

Notice Held Insufficient to Support Suspension of License. — Notice to professional engineer that charges against him involved gross negligence, incompetence or misconduct resulting from his noncompliance with certain statutes and administrative regulations in the preparation and sealing of certain plans was insufficient to support suspension of his license for misconduct in placing his seal on engineering work not prepared under his direction and for gross negligence in sealing the work of another in order to procure planning board approval when he knew that the plans did not conform to the State Building Code. In re Trulove, 54 N.C. App. 218, 282 S.E.2d 544 (1981), cert. denied, 304 N.C. 727, 288 S.E.2d 808 (1982).

Evidentiary Hearing in Contested Case. — The exercise of the right to an evidentiary hearing under the contested case provision of G.S. 131E-188(a) does not commence a de novo proceeding by the administrative law judge (ALJ) intended to lead to a formulation of the final decision pursuant to subsection (a), the ALJ, in a contested case hearing under the certificate of need law and this Act, determines whether the petitioner has met its burden in showing that the agency substantially prejudiced petitioner's rights, and that the agency also acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule, based on a hearing limited to the evidence that is presented or available to the agency during the review period. Britthaven, Inc. v. North Carolina Dep't of Human Resources, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

The administrative hearing provisions of this article do not establish the right of a person "aggrieved" by agency action to Office of Administrative Hearings review of that action, but only describe the procedures for such review. Batten v. North Carolina Dep't of Cor., 326 N.C. 338, 389 S.E.2d 35 (1990), overruled on other grounds, Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 168 (1994).

Compliance with Procedures Required for Jurisdiction. — Because Chapter 126 makes compliance with the procedures of this article mandatory, jurisdiction over a contested case hearing arising under Chapter 126 is not conferred upon the Office of Administrative Hearings unless petitioner follows such procedures. Nailing v. UNC-CH, 117 N.C. App. 318, 451 S.E.2d 351 (1994), cert. denied, 339 N.C. 614, 454 S.E.2d 255 (1995).

County employee, as a person aggrieved by the North Carolina Office of State Personnel's determination that a county's personnel regulations were substantially equivalent to the North Carolina State Personnel Act, G.S. 126-1 et seq., was able to commence a contested case pursuant to G.S. 150B-23(a) by filing a petition with the North Carolina Office of Administrative Hearings. Steward v. Green, 189 N.C. App. 131, 657 S.E.2d 719, 2008 N.C. App. LEXIS 423 (2008).

No statutory authority exists for the State Personnel Commission to review an administrative law judge's recommended decision in a case involving an exempt employee. Johnson v. Natural Resources & Community Dev., 98 N.C. App. 334, 391 S.E.2d 48 (1990).

Discretionary Intervention Under Former § 150A-23(d). — While G.S. 1A-1, Rule 24 contains specific requirements which control and limit intervention, subsection (d) of former G.S. 150A-23 clearly provides for discretionary intervention by the Commissioner of Insurance by providing that the agency may permit any interested person to intervene "and participate in [the] proceeding to the extent deemed appropriate." This discretionary intervention is without limitation, and the statutory language has been construed to provide intervention broader than the permissive intervention under G.S. 1A-1, Rule 24. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 460, 269 S.E.2d 538 (1980).

Commissioner of Insurance acted within his discretion in permitting a consumer group to intervene in an automobile insurance rate case and in allowing hearings to be held throughout the State. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 460, 269 S.E.2d 538 (1980).

Intervention Not Approved. — For purposes of meeting appeal requirements of G.S. 131E-188(b), appellant, proposed intervenor below, was not and could not be a party to the contested hearing at issue below until its motion to intervene was approved. Since this motion was not approved, appellant was not a party to contested case and, therefore, did not meet jurisdictional requirements of G.S. 131E-188(b). HCA Crossroads Residential Centers, Inc. v. North Carolina Dep't of Human Resources, 99 N.C. App. 193, 392 S.E.2d 398 (1990).

While the intervenors had a general interest in an underlying issue, whether the property owner was exempt from the Sedimentation Pollution Control Act of 1973, they did not have a direct interest in the civil penalty imposed by the North Carolina Department of Environment and Natural Resources, which was the property or transaction at issue pursuant to G.S. 113A-64(a)(5); accordingly, the ALJ erred by granting intervention as of right. Holly

Ridge Assocs., LLC v. N.C. Dep't of Env't & Natural Res., 361 N.C. 531, 648 S.E.2d 830, 2007 N.C. LEXIS 811 (2007).

Because the time and expense involved in a second, unanticipated round of discovery in an environmental civil penalty matter was prejudicial to the property owner, as was the requirement that the property owner meet its burden of proof against both intervenors and the state agency authorized to impose the civil penalty, the ALJ abused his discretion in allowing permissive intervention. Holly Ridge Assocs., LLC v. N.C. Dep't of Env't & Natural Res., 361 N.C. 531, 648 S.E.2d 830, 2007 N.C. LEXIS 811 (2007).

The 60-day time limitation of subsection (f) was tolled by the superior court's assertion of subject matter jurisdiction over assessment and remained tolled until the court's assertion of jurisdiction was vacated by the Court of Appeals, accordingly, the Office of Administrative Hearings (OAH) had subject matter jurisdiction over petition since it was filed in the OAH within 60 days of the Court of Appeals' decision. House of Raeford Farms, Inc. v. State ex rel. Envt'l Mgt. Comm'n, 338 N.C. 262, 449 S.E.2d 453 (1994).

Review of Agency Decision. — Although a trial court properly reviewed, under G.S. 150B-51(b)(5), a final agency decision of a contested case petition filed pursuant to G.S. 150B-23, the trial court incorrectly applied the standard of review by making its own findings of fact on unappealed issues. Town of Wallace v. N.C. Dep't of Env't & Natural Res., Div. of Water Quality, 160 N.C. App. 49, 584 S.E.2d 809, 2003 N.C. App. LEXIS 1673 (2003).

Substantial Prejudice Shown. — Issuance of a "No Review" letter by the North Carolina DHHS was properly contested because a branch office proposed by a hospice was not located within the service area of the hospice; therefore, the proposed branch office was a new institutional health service for which the hospice had to obtain a certificate of need. Hospice at Greensboro, Inc. v. N.C. HHS Div. of Facility Servs., 185 N.C. App. 1, 647 S.E.2d 651, 2007 N.C. App. LEXIS 1714 (2007).

Substantial Prejudice Not Shown. — In a hospital's contested case petition under G.S. 131E-188(a) to challenge the conditional approval of a certificate of need (CON) permitting a medical center to expand its emergency room facilities, the medical center was entitled to summary judgment because the hospital did not prove substantial prejudice from the CON under G.S. 150B-23(a); the hospital's claim of prejudice from challenges by the medical center to a facility it was building had been declared moot in another action, and judicial estoppel did not bar the medical center from claiming that the hospital was not substantially prejudiced because the other action was not related and did not stem from a common set of circumstances. Presbyterian Hosp. v. N.C. HHS, 177 N.C. App. 780, 630 S.E.2d 213, 2006 N.C. App. LEXIS 1184 (2006), appeal dismissed, cert. denied, 361 N.C. 221, 642 S.E.2d 446 (2007).

Applied in North Buncombe Ass'n of Concerned Citizens v. Rhodes, 100 N.C. App. 24, 394 S.E.2d 462 (1990); Gaskill v. State ex rel. Cobey, 109 N.C. App. 656, 428 S.E.2d 474 (1993); Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995).

Cited in Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 768; Lenoir Mem. Hosp. v. North Carolina Dep't of Human Resources, 98 N.C. App. 178, 390 S.E.2d 448 (1990); North Carolina Dep't of Cor. v. Hodge, 99 N.C. App. 602, 394 S.E.2d 285 (1990); State ex rel. Envtl. Mgt. Comm'n v. House of Raeford Farms, Inc., 101 N.C. App. 433, 400 S.E.2d 107 (1991); North Carolina DOT v. Davenport, 102 N.C. App. 476, 402 S.E.2d 477 (1991); North Carolina DOT v. Davenport, 108 N.C. App. 178, 423 S.E.2d 327 (1992); Ocean Hill Joint Venture v. North Carolina Dep't of Environment, Health & Natural Resources, 333 N.C. 318, 426 S.E.2d 274 (1993); Professional Food Servs. Mgt., Inc. v. North Carolina Dep't of Admin., 109 N.C. App. 265, 426 S.E.2d 447 (1993); Citizens for Clean Indus., Inc. v. Lofton, 109 N.C. App. 229, 427 S.E.2d 120 (1993); North Carolina DOT v. Davenport, 334 N.C. 428, 432 S.E.2d 303 (1993); In re Sullivan, 112 N.C. App. 795, 436 S.E.2d 862 (1993); Davis v. North Carolina Dep't of Cors., 48 F.3d 134 (4th Cir. 1995); Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995); Gainey v. North Carolina Dep't of Justice, 121 N.C. App. 253, 465 S.E.2d 36 (1996); Cunningham v. Catawba County, 128 N.C. App. 70, 493 S.E.2d 82 (1997); Bryant v. Hogarth, 127 N.C. App. 79, 488 S.E.2d 269 (1997); Shell Island Homeowners Ass'n v. Tomlinson, 134 N.C. App. 286, 517 S.E.2d 401 (1999); Dialysis Care of N.C., LLC v. Department of Health & Human Servs., 137 N.C. App. 638, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000); Blalock v. State Dep't of Health & Human Servs., 143 N.C. App. 470, 546 S.E.2d 177, 2001 N.C. App. LEXIS 317 (2001); M.E. v. Board of Educ., 186 F. Supp. 2d 630, 2002 U.S. Dist. LEXIS 2984 (W.D.N.C. 2002); Kea v. Dep't of Health & Human Servs., 153 N.C. App. 595, 570 S.E.2d 919, 2002 N.C. App. LEXIS 1246 (2002); Shackleford-Moten v. Lenoir County Dep't of Soc. Servs., 155 N.C. App. 568, 573 S.E.2d 767, 2002 N.C. App. LEXIS 1630 (2002); County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002); N.C. Dep't of Env't & Natural Res.

v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions below were issued prior to the 1991 amendments to this Chapter.*

Applicability of Subsection (a). — Subsection (a) of this section, as amended by Session Laws 1987, Chapter 878, is not applicable to agencies governed by Article 3A of this Chapter. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, 57 N.C.A.G. 85 (1987).

Appeals by applicants and recipients of public assistance or social services from adverse decisions of county agencies or boards are governed by the substantive provisions and procedural requirements of G.S. 108A-79, including the procedural provisions of the Administrative Procedure Act (G.S. 150B-1 et seq.) consistent with the statute, to the extent that substance and procedure are not in conflict with applicable federal law and regulations. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 55 N.C.A.G. 91 (1986).

Procedural, Not Substantive Provisions of Act Applicable to Appeals of County Agency Decisions. — Given the detailed substantive provisions of G.S. 108A-79, designed specifically to apply to appeals of county agency decisions, and the fact that the Administrative Procedure Act (APA), by its terms, does not apply to such appeals, the Legislature, by reference to the APA, did not intend to substitute the Act's substantive requirements for those of G.S. 108A-79. The citation to the APA simply indicates a legislative intent to incorporate the powers of hearing officers and the hearing procedures detailed in the Act into G.S. 108A-79(i) by reference. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 55 N.C.A.G. 91 (1986).

When a contested case hearing is conducted by an agency governed by Article 3A of this Chapter, a petition or other notice need not be filed with the Office of Administrative Hearings. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, 57 N.C.A.G. 85 (1987).

§ 150B-23.1. Mediated settlement conferences.

(a) Purpose. — This section authorizes a mediation program in the Office of Administrative Hearings in which the chief administrative law judge may require the parties in a contested case to attend a prehearing settlement conference conducted by a mediator. The purpose of the program is to determine whether a system of mediated settlement conferences may make the operation of the Office of Administrative Hearings more efficient, less costly, and more satisfying to the parties.

(b) Definitions. — The following definitions apply in this section:

(1) Mediated settlement conference. — A conference ordered by the chief administrative law judge involving the parties to a contested case and conducted by a mediator prior to a contested case hearing.

(2) Mediator. — A neutral person who acts to encourage and facilitate a resolution of a contested case but who does not make a decision on the merits of the contested case.

(c) Conference. — The chief administrative law judge may order a mediated settlement conference for all or any part of a contested case to which an administrative law judge is assigned to preside. All aspects of the mediated settlement conference shall be conducted insofar as possible in accordance with the rules adopted by the Supreme Court for the court-ordered mediation pilot program under G.S. 7A-38.

(d) Attendance. — The parties to a contested case in which a mediated settlement conference is ordered, their attorneys, and other persons having authority to settle the parties' claims shall attend the settlement conference unless excused by the presiding administrative law judge.

(e) Mediator. — The parties shall have the right to stipulate to a mediator. Upon the failure of the parties to agree within a time limit established by the presiding administrative law judge, a mediator shall be appointed by the presiding administrative law judge.

(f) Sanctions. — Upon failure of a party or a party's attorney to attend a mediated settlement conference ordered under this section, the presiding administrative law judge may impose any sanction authorized by G.S. 150B-33(b)(8) or (10).

(g) Standards. — Mediators authorized to conduct mediated settlement conferences under this section shall comply with the standards adopted by the Supreme Court for the court-ordered mediation pilot program under G.S. 7A-38.

(h) Immunity. — A mediator acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice.

(i) Costs. — Costs of a mediated settlement conference shall be paid one share by the petitioner, one share by the respondent, and an equal share by any intervenor, unless otherwise apportioned by the administrative law judge.

(j) Inadmissibility of Negotiations. — All conduct or communications made during a mediated settlement conference are presumed to be made in compromise negotiations and shall be governed by Rule 408 of the North Carolina Rules of Evidence.

(k) Right to Hearing. — Nothing in this section restricts the right to a contested case hearing. (1993, c. 321, s. 25(b); c. 363, ss. 1, 3; 1995, c. 145, s. 1.)

Editor's Note. — Section 7A-38, referred to in this section, was repealed by Session Laws, 1995, c. 500, s. 3.

Legal Periodicals. — For comment, "Good Faith Mediation: Improving Efficiency, Cost, and Satisfaction in North Carolina's Pre-Trial Process," 18 Campbell L. Rev. 281 (1996).

§ 150B-23.2. Fee for filing a contested case hearing.

(a) Filing Fee. — In every contested case commenced in the Office of Administrative Hearings by a person aggrieved, the petitioner shall pay a filing fee, and the administrative law judge shall have the authority to assess that filing fee against the losing party, in the amount of one hundred twenty-five dollars ($125.00), unless the Office of Administrative Hearings establishes a lesser filing fee by rule.

(b) Time of Collection. — All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected by the Office of Administrative Hearings at the time of commencement of the contested case (except in suits in forma pauperis).

(c) Forms of Payment. — The Office of Administrative Hearings may by rule provide for the acceptable forms for payment and transmission of the filing fee.

(d) Wavier or Refund. — The Office of Administrative Hearings shall by rule provide for the fee to be waived in a contested case in which the petition is filed in forma pauperis and supported by such proofs as are required in G.S. 1-110 and in a contested case involving a mandated federal cause of action. The Office of Administrative Hearings shall by rule provide for the fee to be refunded in a contested case in which the losing party is the State. (2009-451, s. 21A.1(b).)

Editor's Note. — Session Laws 2009-451, s. 21A.1(c), made this section effective October 1, 2009, and applicable to contested cases filed on and after that date.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 150B-24. Venue of hearing.

(a) The hearing of a contested case shall be conducted:

(1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;

(2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or

(3) In any county determined by the administrative law judge in his discretion to promote the ends of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 6.)

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150B-25. Conduct of hearing; answer.

(a) If a party fails to appear in a contested case after proper service of notice, and if no adjournment or continuance is granted, the administrative law judge may proceed with the hearing in the absence of the party.

(b) Repealed by Session Laws 1991, c. 35, s. 2.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. Any party may submit rebuttal evidence. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(13); 1987, c. 878, s. 6; 1991, c. 35, s. 2.)

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

For article, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

***Editor's Note.** — The cases below were decided under corresponding provisions of former Chapter 150A, or under this Chapter prior to the 1991 amendments thereto.*

Former § 150A-25 was permissive, not mandatory. Frieson v. North Carolina Real Estate Licensing Bd., 72 N.C. App. 665, 325 S.E.2d 293 (1985).

Subsection (a) of Former § 150A-25 Was Permissive and Not Mandatory. — The language of subsection (a) of former G.S. 150A-25, providing that if a party fails to appear after proper service of notice the agency may proceed and render its decision in the absence of that party, is permissive and not mandatory. Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978), cert. denied, 296 N.C. 735, 254 S.E.2d 177 (1979).

Contested Case Hearing Appropriate. — Where parties forecast evidence to support recommendation by the administrative law judge and final agency decision which were contrary, a genuine issue of material fact existed regarding hospital's application for a certificate of need so that a contested case hearing would be required. Presbyterian-Orthopaedic Hosp. v. North Carolina Dep't of Human Resources, 122 N.C. App. 529, 470 S.E.2d 831 (1996), discretionary review improvidently allowed, 346 N.C. 267, 485 S.E.2d 294 (1997).

Applied in Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995); Mission Hosps., Inc. v. N.C. HHS, 189 N.C. App. 263, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

Cited in Britthaven, Inc. v. North Carolina Dep't of Human Resources, 118 N.C. App. 379, 455 S.E.2d 455 (1995); Blalock v. State Dep't of Health & Human Servs., 143 N.C. App. 470, 546 S.E.2d 177, 2001 N.C. App. LEXIS 317 (2001); N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004).

§ 150B-26. Consolidation.

When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending, the Director of the Office of Administrative Hearings may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985, (Reg. Sess., 1986), c. 1022, s. 1(1), 1(14).)

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150B-27. Subpoena.

After the commencement of a contested case, subpoenas may be issued and served in accordance with G.S. 1A-1, Rule 45. In addition to the methods of service in G.S. 1A-1, Rule 45, a State law enforcement officer may serve a subpoena on behalf of an agency that is a party to the contested case by any method by which a sheriff may serve a subpoena under that Rule. Upon a motion, the administrative law judge may quash a subpoena if, upon a hearing, the administrative law judge finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed.

Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 66; 1985, c. 746, s. 1; 1987, c. 878, s. 6; 1991, c. 35, s. 3.)

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

CASE NOTES

Editor's Note. — *The case below was decided under corresponding provisions of former Chapter 150A.*

One of the purposes of a subpoena duces tecum is to insure that documents are described with sufficient particularity and with such definiteness that they can be identified without prolonged or extensive search. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

§ 150B-28. Depositions and discovery.

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in contested cases may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 2007-491, s. 2.)

Editor's Note. — Session Laws 2007-491, s. 47, provides in part: "The remainder of this act becomes effective January 1, 2008. The procedures for review of disputed tax matters enacted by this act apply to assessments of tax that are not final as of the effective date of this act and to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a petition for review was filed with the Tax Review Board under G.S. 105-241.2 before the effective date of this act. The repeal of G.S. 105-122(c) and G.S. 105-130.4(t) and Sections 11 and 12 apply to requests for alternative apportionment formulas filed on or after the effective date of this act. A petition filed with the Tax Review Board for an apportionment formula before the effective date of this act is considered a request under G.S. 105-122(c1) or G.S. 105-130.4(t1), as appropriate."

Effect of Amendments. — Session Laws 2007-491, s. 2, effective January 1, 2008, deleted former subsection (b) which read: "On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall promptly make the records available to a party."

CASE NOTES

Cited in Davenport v. North Carolina DOT, 3 F.3d 89 (4th Cir. 1993); Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383.

§ 150B-29. Rules of evidence.

(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a decision, by the agency in making a final decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 7; 1991, c. 35, s. 4; 2000-190, s. 4.)

Legal Periodicals. — For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

For article, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

For article, "Administrative Justice: No Longer Just a Recommendation," see 79 N.C.L. Rev. 1639 (2001).

CASE NOTES

Editor's Note. *— The cases below were decided under corresponding provisions of former Chapter 150A, or under this Chapter prior to the 1991 amendments thereto.*

The standard of review, known as the "whole record test," presents to the trial judge a task which must be distinguished from both de novo review and the any competent evidence standard of review. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

The whole record test is not a tool of judicial intrusion; instead it merely gives a reviewing court the capability to determine whether an administrative decision has a rational basis in the evidence. Thus, the task before the trial court is to consider all the evidence, both that which supports the decision of the board and that which detracts from it. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

The whole record test does not allow the reviewing court to replace the board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. On the other hand, the whole record rule requires the court, in determining the substantiality of evidence supporting the board's decision, to take into account whatever in the record fairly detracts from the weight of the board's evidence. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

Under the whole evidence rule, the court may not consider the evidence which in and of itself justifies the board's result, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

Standard of Proof. — The standard of proof in administrative matters is by the greater weight of the evidence, and it is error to require a showing by clear, cogent, and convincing evidence. Dillingham v. North Carolina Dep't of Human Resources, 132 N.C. App. 704, 513 S.E.2d 823 (1999).

Burden of Proof. — While neither G.S. 150B-23(a) nor G.S. 150B-29(a) specifically allocated the burden of proof in an administrative appeal, it had been held that that an administrative law judge was to determine whether a petitioner had met its burden in showing that the agency acted or failed to act as provided in G.S. 150B-23(a)(1) — (5), and it had been observed that caselaw held that unless a statute provided otherwise, a petitioner had the burden of proof in Office of Administrative Hearings contested cases. Overcash v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 635 S.E.2d 442, 2006 N.C. App. LEXIS 2168 (2006).

Board of Adjustment Not Required to Sound-Record Hearings. — Municipal corporations were specifically excluded from requirements under former G.S. 150A-29 and former G.S. 150A-37 that trial rules of evidence and production of evidence be followed in proceedings before State agencies. Thus, a Board of Adjustment was not required to sound-record its hearings. Washington Park Neighborhood Ass'n v. Winston-Salem Zoning Bd. of Adjustment, 35 N.C. App. 449, 241 S.E.2d 872, cert. denied and appeal dismissed, 295 N.C. 91, 244 S.E.2d 263 (1978).

As to admissibility of evidence in proceeding before Property Tax Commission, see In re McLean Trucking Co., 281 N.C. 375, 189 S.E.2d 194, rehearing denied, 282 N.C. 156 (1972), cert. denied and appeal dismissed, 409 U.S. 1099, 93 S. Ct. 909, 34 L. Ed. 2d 681 (1973).

Reports of physicians are acceptable as evidence, since an agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it. Lackey v. North Carolina Dep't of Human Resources, 306 N.C. 231, 293 S.E.2d 171 (1982).

Burden of Proof on Unemployment Claimant. — Where a claimant for unemployment previously quit her job to retire and was presently claiming to have reentered the labor market, the degree of proof required of the claimant was by the greater weight of the evidence. In re Thomas, 281 N.C. 598, 189 S.E.2d 245 (1972).

School Board's Dismissal of At-Will Employee Upheld. — It was not arbitrary or capricious, nor an abuse of discretion, for school board to terminate an at-will employee for making a racial comment in a school setting. Cooper v. Board of Educ., 135 N.C. App. 200, 519 S.E.2d 536 (1999).

Applied in Mission Hosps., Inc. v. N.C. HHS, 189 N.C. App. 263, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

Cited in Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383; In re Freeman, 109 N.C. App. 100, 426 S.E.2d 100 (1993); Davenport v. North Carolina DOT, 3 F.3d 89 (4th Cir. 1993); Dialysis Care of N.C., LLC v. Department of Health & Human Servs., 137 N.C. App. 638, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000); Living Centers-Southeast, Inc. v. North Carolina Health & Human

Servs., 138 N.C. App. 572, 532 S.E.2d 192, 2000 N.C. App. LEXIS 782 (2000); Kea v. Dep't of Health & Human Servs., 153 N.C. App. 595, 570 S.E.2d 919, 2002 N.C. App. LEXIS 1246 (2002); Woodburn v. N.C. State Univ., 156 N.C. App. 549, 577 S.E.2d 154, 2003 N.C. App. LEXIS 305 (2003); Town of Wallace v. N.C. Dep't of Env't & Natural Res., Div. of Water Quality, 160 N.C. App. 49, 584 S.E.2d 809, 2003 N.C. App. LEXIS 1673 (2003); Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005); McGladrey & Pullen, LLP v. N.C. State Bd. of CPA Exam'rs, 171 N.C. App. 610, 615 S.E.2d 339, 2005 N.C. App. LEXIS 1274 (2005); Total Renal Care of N.C., LLC v. N.C. HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005); Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005); Overcash v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 635 S.E.2d 442, 2006 N.C. App. LEXIS 2168 (2006); Moore v. Charlotte-Mecklenburg Bd. of Educ., 185 N.C. App. 566, 649 S.E.2d 410, 2007 N.C. App. LEXIS 1936 (2007); Early v. County of Durham, Dep't of Soc. Servs., — N.C. App. —, 667 S.E.2d 512, 2008 N.C. App. LEXIS 1818 (2008).

§ 150B-30. Official notice.

Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

For article, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

For article, "Administrative Justice: No Longer Just a Recommendation," see 79 N.C.L. Rev. 1639 (2001).

For article, "What Were We Thinking?: Legislative Intent and the 2000 Amendments to the North Carolina APA," see 79 N.C.L. Rev. 1657 (2001).

CASE NOTES

Editor's Note. — *The cases below were decided under corresponding provisions of former Chapter 150A and earlier statutes.*

One of the purposes behind the creation of administrative agencies was the necessity for the supervision and experience of specialists in difficult and complicated fields. Lackey v. North Carolina Dep't of Human Resources, 306 N.C. 231, 293 S.E.2d 171 (1982).

Reports of physicians are acceptable as evidence, since an agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it. Lackey v. North Carolina Dep't of Human Resources, 306 N.C. 231, 293 S.E.2d 171 (1982).

Reliance on Paper Presented in Hearing on Prior Rate Filing. — While it is the better practice to produce a witness in a rate-making hearing rather than to rely on exhibits furnished by the witness in earlier hearings, the Commissioner of Insurance did not commit prejudicial error in a homeowners' insurance rate hearing in taking official notice of a paper presented by a witness in a hearing on a prior rate filing and made a part of the order disapproving the prior filing, where the commissioner gave the rate bureau adequate notice in the notice of public hearing that he would rely on the paper in the present hearing. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 474, 269 S.E.2d 595 (1980).

State Board of Assessment (now Department of Revenue) is neither required nor permitted to shut its eyes to an established fact of common knowledge. In re Valuation of Property Located at 411-417 W. Fourth St., 282 N.C. 71, 191 S.E.2d 692 (1972).

For discussion of respective powers and duties of Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

Applied in Mission Hosps., Inc. v. N.C. HHS, 189 N.C. App. 263, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

Cited in Kea v. Dep't of Health & Human Servs., 153 N.C. App. 595, 570 S.E.2d 919, 2002 N.C. App. LEXIS 1246 (2002); Woodburn v.

N.C. State Univ., 156 N.C. App. 549, 577 S.E.2d 154, 2003 N.C. App. LEXIS 305 (2003); Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005); McGladrey & Pullen, LLP v. N.C. State Bd. of CPA Exam'rs, 171 N.C. App. 610, 615 S.E.2d 339, 2005 N.C. App. LEXIS 1274 (2005); Total Renal Care of N.C., LLC v. N.C. HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005); Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005); Overcash v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 635 S.E.2d 442, 2006 N.C. App. LEXIS 2168 (2006); Moore v. Charlotte-Mecklenburg Bd. of Educ., 185 N.C. App. 566, 649 S.E.2d 410, 2007 N.C. App. LEXIS 1936 (2007); Early v. County of Durham, Dep't of Soc. Servs., — N.C. App. —, 667 S.E.2d 512, 2008 N.C. App. LEXIS 1818 (2008).

§ 150B-31. Stipulations.

(a) The parties in a contested case may, by a stipulation in writing filed with the administrative law judge, agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 6.)

CASE NOTES

Cited in Kea v. Dep't of Health & Human Servs., 153 N.C. App. 595, 570 S.E.2d 919, 2002 N.C. App. LEXIS 1246 (2002); Woodburn v. N.C. State Univ., 156 N.C. App. 549, 577 S.E.2d 154, 2003 N.C. App. LEXIS 305 (2003); Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005); McGladrey & Pullen, LLP v. N.C. State Bd. of CPA Exam'rs, 171 N.C. App. 610, 615 S.E.2d 339, 2005 N.C. App. LEXIS 1274 (2005); Total Renal Care of N.C., LLC v. N.C. HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005); Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005); Overcash v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 635 S.E.2d 442, 2006 N.C. App. LEXIS 2168 (2006); Moore v. Charlotte-Mecklenburg Bd. of Educ., 185 N.C. App. 566, 649 S.E.2d 410, 2007 N.C. App. LEXIS 1936 (2007); Mission Hosps., Inc. v. N.C. HHS, 189 N.C. App. 263, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008); Early v. County of Durham, Dep't of Soc. Servs., — N.C. App. —, 667 S.E.2d 512, 2008 N.C. App. LEXIS 1818 (2008).

§ 150B-31.1. Contested tax cases.

(a) Application. — This section applies only to contested tax cases. A contested tax case is a case involving a disputed tax matter arising under G.S. 105-241.15. To the extent any provision in this section conflicts with another provision in this Article, this section controls.

(b) Simple Procedures. — The Chief Administrative Law Judge may limit and simplify the procedures that apply to a contested tax case involving a taxpayer who is not represented by an attorney. An administrative law judge assigned to a contested tax case must make reasonable efforts to assist a taxpayer who is not represented by an attorney in order to assure a fair hearing.

(c) Venue. — A hearing in a contested tax case must be conducted in Wake County, unless the parties agree to hear the case in another county.

(d) Reports. — The following agency reports are admissible without testimony from personnel of the agency:

(1) Law enforcement reports.

(2) Government agency lab reports used for the enforcement of motor fuel tax laws.

(e) Confidentiality. — The record, proceedings, and decision in a contested tax case are confidential until the final decision is issued in the case. (2007-491, s. 42; 2008-134, s. 9.)

Editor's Note. — Session Laws 2007-491, s. 47, made this section effective January 1, 2008.

Session Laws 2007-491, s. 47, provides, in part: "The procedures for review of disputed tax matters enacted by this act apply to assessments of tax that are not final as of the effective date of this act and to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a petition for review was filed with the Tax Review Board under G.S. 105-241.2 [repealed] before the effective date of this act. The repeal of G.S. 105-122(c) and G.S. 105-130.4(t) and Sections 11 and 12 apply to requests for alternative apportionment formulas filed on or after the effective date of this act. A petition filed with the Tax Review Board for an apportionment formula before the effective date of this act is considered a request under G.S. 105-122(c1) or G.S. 105-130.4(t1), as appropriate."

Effect of Amendments. — Session Laws 2008-134, s. 9, effective July 28, 2008, rewrote subsection (d).

§ 150B-32. Designation of administrative law judge.

(a) The Director of the Office of Administrative Hearings shall assign himself or another administrative law judge to preside over a contested case.

(a1) Repealed by Sessions Laws 1985 (Regular Session, 1986), c. 1022, s. 1(15).

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of an administrative law judge, the administrative law judge shall determine the matter as a part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When an administrative law judge is disqualified or it is impracticable for him to continue the hearing, the Director shall assign another administrative law judge to continue with the case unless it is shown that substantial prejudice to any party will result, in which event a new hearing shall be held or the case dismissed without prejudice. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), 1(12), 1(15); c. 1028, s. 40; 1987, c. 878, s. 8.)

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

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Cited in Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995); Gainey v. North Carolina Dep't of Justice, 121 N.C. App. 253, 465 S.E.2d 36 (1996).

§ 150B-33. Powers of administrative law judge.

(a) An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) An administrative law judge may:

(1) Administer oaths and affirmations;

(2) Sign, issue, and rule on subpoenas in accordance with G.S. 150B-27 and G.S. 1A-1, Rule 45;

(3) Provide for the taking of testimony by deposition and rule on all objections to discovery in accordance with G.S. 1A-1, the Rules of Civil Procedure;

(3a) Rule on all prehearing motions that are authorized by G.S. 1A-1, the Rules of Civil Procedure;

(4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;

(6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;

(7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and

(8) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court.

(9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly.

(10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for noncompliance with applicable procedural rules.

(11) Order the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved in contested cases decided under Chapter 126 where the administrative law judge finds discrimination, harassment, or orders reinstatement or back pay.

(12) Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 5, 9, 10, 26; 1987 (Reg. Sess., 1988), c. 1111, ss. 18, 19; 1991, c. 35, s. 5; 2000-190, s. 5; 2004-156, s. 4.)

Editor's Note. — Subdivision (b)(12), added by Session Laws 2004-156, s. 4, effective October 1, 2004, is applicable to contested cases commenced on or after that date.

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

For article, "Powers of Administrative Law Judges, Agencies, and Courts: An Analytical and Empirical Assessment," see 79 N.C.L. Rev. 1571 (2001).

CASE NOTES

Editor's Note. — *The cases below were decided under corresponding provisions of former Chapter 150A and earlier statutes, or under this Chapter prior to the 1991 amendments thereto.*

Powers Generally. — When an agency of State government determines to use the services of a hearing officer (now administrative law judge), it is former G.S. 150A-33 that prescribes his powers. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983).

Proposal for Decision Required of Hearing Officer (Now Administrative Law Judge). — Under the Administrative Procedure Act, when the services of a hearing officer (now administrative law judge) are used, there must be a "proposal for decision" by the hearing officer. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983).

Administrative Law Judge's Decision Reviewed by Personnel Commission. — The administrative law judge must render a decision on the motion which is presented, but the administrative law judge's ruling is subject to review by the ultimate factfinder, the Personnel Commission. Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

Procedural Due Process. — Lumber company was never unconstitutionally deprived of its permit as a result of the state agency failing to provide proper due process, since it was through due process provided by G.S. 150B that the lumber company's permit was reinstated. Godfrey Lumber Co. v. Howard, 151 N.C. App. 738, 566 S.E.2d 825, 2002 N.C. App. LEXIS 880 (2002), review denied, 356 N.C. 435, 572 S.E.2d 430 (2002).

For discussion of respective powers and duties of Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

Commissioner of Insurance Has No Statutory Power to Issue Restraining Orders or Injunctions. — The statutes creating the Department of Insurance and prescribing the powers and duties of the Commissioner do not purport to grant him the power of issuing restraining orders and injunctions. Charlotte Liberty Mut. Ins. Co. v. State ex rel. Lanier, 16 N.C. App. 381, 192 S.E.2d 57 (1972).

But He May Apply to the Courts Therefor. — In administering the laws relative to the insurance industry, the Commissioner, if he deems it necessary, may apply to the courts for restraining orders and injunctions. Charlotte Liberty Mut. Ins. Co. v. State ex rel. Lanier, 16 N.C. App. 381, 192 S.E.2d 57 (1972).

Attempted grant to the Commissioner of Insurance of judicial power to impose a penalty upon an insurance agent for a violation of the insurance laws, varying in the Commissioner's discretion from a nominal sum to $25,000, violated N.C. Const., Art. IV, there being no reasonable necessity for conferring such judicial power upon the Commissioner. State ex rel. Lanier v. Vines, 274 N.C. 486, 164 S.E.2d 161 (1968).

Authority to Determine Validity of Rules. — This section provides that an Administrative Law Judge (ALJ) may determine that a rule as applied in a particular case is void; however, it does not authorize an ALJ to make a final decision with respect to the validity of agency rules. Fearrington v. University of N.C., 126 N.C. App. 774, 487 S.E.2d 169 (1997).

When the North Carolina Department of Health and Human Resources, Division of Facility Services, Certificate of Need Section, denied a health system's request for a certificate of need (CON) to build a hospital and granted a CON to the system's competitor, an administrative law judge was authorized to find that 10A N.C. Admin. Code 14C.2303(3), regarding findings of the utilization of computerized axial tomography equipment in a geographic area, was "void as applied" to the facts because the rule required consideration of the health system's underutilization of such equipment in a hospital that was about to close in determining whether to authorize the competitor to install such equipment in the hospital the competitor proposed for the area, and the system's underutilization was irrelevant to the area's need for such equipment, and G.S. 150B-33(b)(9)(3) allowed the administrative law judge to find that a rule was void in a particular case because the rule was not reasonably necessary to enable an agency to fulfill a duty delegated to the agency by the general assembly. Good Hope Health Sys., LLC v. N.C. HHS, 188 N.C. App. 68, 658 S.E.2d 665, 2008 N.C. App. LEXIS 79 (2008).

Applied in Mission Hosps., Inc. v. N.C. HHS, 189 N.C. App. 263, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

Cited in Lenoir Mem. Hosp. v. North Carolina Dep't of Human Resources, 98 N.C. App. 178, 390 S.E.2d 448 (1990); Alexander v. Wilkerson, 99 N.C. App. 340, 392 S.E.2d 765 (1990); Ji Da Dai v. Univ. of N.C., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 15880 (M.D.N.C. Sept.

2, 2003); Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005).

§ 150B-34. Decision of administrative law judge.

(a) Except as provided in G.S. 150B-36(c), and subsection (c) of this section, in each contested case the administrative law judge shall make a decision that contains findings of fact and conclusions of law and return the decision to the agency for a final decision in accordance with G.S. 150B-36. The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. All references in this Chapter to the administrative law judge's decision shall include orders entered pursuant to G.S. 150B-36(c).

(b) Repealed by Session Laws 1991, c. 35, s. 6.

(c) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not apply to cases decided under this subsection.

(d) Except for the exemptions contained in G.S. 150B-1(c) and (e), and subsection (c) of this section, the provisions of this section regarding the decision of the administrative law judge shall apply only to agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 5, 23; 1987 (Reg. Sess., 1988), c. 1111, s. 21; 1991, c. 35, s. 6; 2000-190, s. 6.)

Editor's Note. — Session Laws 2005-276, s. 10.40(B)(a), expiring 30 days from the date of the Department's decision on the new certificate of need or adjournment sine die of the 2005 General Assembly, whichever occurs later, provides: "Notwithstanding provisions to the contrary in Chapter 150B and Article 9 of Chapter 131E of the General Statutes, a licensed health care facility in operation on July 1, 2005, under a certificate of need issued by the Department of Health and Human Services prior to that date and subsequently invalidated based on a procedural defect in the awarding of the certificate of need, may remain in operation for the purpose of applying for a new certificate of need in accordance with Article 9 of Chapter 131E of the General Statutes. The health care facility may remain in operation for the period pending the decision of the Department on the application for the new certificate of need."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

For article, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

For article, "Administrative Justice: No Longer Just a Recommendation," see 79 N.C.L. Rev. 1639 (2001).

For article, "What Were We Thinking?: Legislative Intent and the 2000 Amendments to the North Carolina APA," see 79 N.C.L. Rev. 1657 (2001).

CASE NOTES

***Editor's Note.** — The cases below were decided prior to the 1991 amendments to this Chapter.*

Powers of Hearing Officer (Now Administrative Law Judge) Generally. — When an agency of State government determined to use the services of a hearing officer (now administrative law judge), it was former G.S. 150A-33 that prescribed his powers. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983), decided under corresponding provisions of Chapter 150A.

Proposal for Decision Required. — Under the Administrative Procedure Act, when the services of a hearing officer (now administrative law judge) are used, there must be a "proposal for decision" by the hearing officer. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983), decided under corresponding provisions of Chapter 150A.

Administrative Law Judge's Decision Reviewed by Personnel Commission. — The administrative law judge must render a decision on the motion which is presented, but the administrative law judge's ruling is subject to review by the ultimate factfinder, the Personnel Commission. Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

No statutory authority exists for the State Personnel Commission to review an administrative law judge's recommended decision in a case involving an exempt employee. Johnson v. Natural Resources & Community Dev., 98 N.C. App. 334, 391 S.E.2d 48, cert. denied, 327 N.C. 140, 394 S.E.2d 176 (1990), rev'd on other grounds, 328 N.C. 689, 394 S.E.2d 469 (1991).

Administrative agency's failure to comply with the mandate of G.S. 150B-34(c) and address all unadopted findings of an administrative law judge (ALJ) in its final agency decision prejudiced a party's right to meaningful appellate review to the limited extent that the party was not afforded the opportunity to address the agency's reasoning for rejecting material and essential findings by the ALJ. Upon remand, the agency was to address all unadopted findings of the ALJ in its final agency decision. Mission Hosps., Inc. v. N.C. HHS, 189 N.C. App. 263, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

Standard of Review for Certificate of Need. — Final sentence of G.S. 150B-34(c) exempts certificate of need proceedings from the newly amended portions of G.S. 150B-51 and requires an appellate court to review those decisions under the previous version of G.S. 150B-51. Total Renal Care of N.C., LLC v. N.C. HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005).

Agency Decision Reversed. — Final agency decision of the North Carolina Department of Health and Human Services (DHHS), which upheld two settlement agreements between the DHHS Certificate of Need (CON) section and a group of medical centers and issued a CON to the group for a hospital project was reversed on appeal, because the DHHS failed to follow statutory procedure when it rejected an administrative law judge's recommendation to deny the CON applications of the group by erroneously considering new evidence, which it had no statutory authority to do. Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

Applied in Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995).

Cited in HCA Crossroads Residential Ctrs. Inc. v. North Carolina Dep't of Human Resources, 327 N.C. 573, 398 S.E.2d 466 (1990); Ford v. North Carolina Dep't of Env't, Health, & Natural Resources, 107 N.C. App. 192, 419 S.E.2d 204 (1992); Britthaven, Inc. v. North Carolina Dep't of Human Resources, 118 N.C. App. 379, 455 S.E.2d 455 (1995); Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995); N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004); Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005); Ramsey v. N.C. DMV, 184 N.C. App. 713, 647 S.E.2d 125, 2007 N.C. App. LEXIS 1594 (2007).

§ 150B-35. No ex parte communication; exceptions.

Unless required for disposition of an ex parte matter authorized by law, neither the administrative law judge assigned to a contested case nor a member or employee of the agency making a final decision in the case may communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 11.)

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Former employee's proposed amendment to a federal district court action under 42 U.S.C.S. § 1983, which would have added an alleged violation of G.S. 150B-35, was denied because the proposed amendments could have been addressed in the earlier state court proceedings and did not change the fact that the employee's claim was barred under the doctrine of res judicata and the Rooker-Feldman doctrine. Hearne v. Sherman, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 25256 (M.D.N.C. Nov. 12, 2002).

Ex parte communication by a director for an administrative agency to counsel for a party following a contested case hearing in the preparation of a final agency decision violated G.S. 150B-35 and constituted an error of law under G.S. 150B-51(b). Mission Hosps., Inc. v. N.C. HHS, 189 N.C. App. 263, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

§ 150B-36. Final decision.

(a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision made by the administrative law judge, and to present written arguments to those in the agency who will make the final decision or order. If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of a member of the agency making the final decision, the agency shall determine the matter as a part of the record in the case, and the determination is subject to judicial review at the conclusion of the case.

(b) Except as provided in G.S. 150B-34(c) or subsection (d) of this section, a final decision in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The agency shall adopt each finding of fact contained in the administrative law judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the opportunity of the administrative law judge to evaluate the credibility of witnesses. For each finding of fact not adopted by the agency and each finding of fact made by the agency that is not contained in the administrative law judge's decision, the agency shall follow the procedures set forth in subsections (b1) and (b2) of this section.

(b1) For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the following:

(1) The reasons for not adopting the findings of fact.

(2) The evidence in the record relied upon by the agency in not adopting the finding of fact contained in the administrative law judge's decision.

Any finding of fact not specifically rejected as required by this subsection shall be deemed accepted for purposes of judicial review of the final decision pursuant to Article 4 of this Chapter.

(b2) For each finding of fact made by the agency that is not contained in the administrative law judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact. Any new finding of fact made by the agency shall be supported by a preponderance of the admissible evidence in the record. The agency shall not make any new finding of fact that is inconsistent with a finding of fact contained in the administrative law judge's decision unless the finding of fact in the administrative law judge's decision is not adopted as required by subsection (b1) of this section.

(b3) Except as provided in G.S. 150B-34(c), the agency shall adopt the decision of the administrative law judge unless the agency demonstrates that the decision of the administrative law judge is clearly contrary to the preponderance of the admissible evidence in the record. If the agency does not adopt the administrative law judge's decision as its final decision, the agency shall set forth its reasoning for the final decision in light of the findings of fact and conclusions of law in the final decision, including any exercise of discretion by the agency. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision. A copy of the decision shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record and the Office of Administrative Hearings.

(c) The following decisions made by administrative law judges in contested cases are final decisions appealable directly to superior court under Article 4 of this Chapter:

(1) A determination that the Office of Administrative Hearings lacks jurisdiction.
(2) An order entered pursuant to the authority in G.S. 7A-759(e).
(3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.
(4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.
(5) An order entered pursuant to the authority in G.S. 150B-31(b) when the stipulation or waiver confers final decision authority on the administrative law judge.

(d) An administrative law judge may grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. Notwithstanding subsection (b) of this section, a decision granting a motion for judgment on the pleadings or summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c) or Rule 56. For any decision by the administrative law judge granting judgment on the pleadings or summary judgment that disposes of all issues in the contested case, the agency shall make a final decision. If the agency does not adopt the administrative law judge's decision, it shall set forth the basis for failing to adopt the decision and shall remand the case to the administrative law judge for hearing. The party aggrieved by the agency's decision shall be entitled to immediate judicial review of the decision under Article 4 of this Chapter. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 67; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(16); 1987, c. 878, ss. 12, 24; 1987 (Reg. Sess., 1988), c. 1111, s. 20; 1991, c. 35, s. 7; 2000-190, s. 7; 2009-51, s. 1.)

Effect of Amendments. — Session Laws 2009-51, s. 1, effective June 1, 2009, and applicable to contested cases commenced on or after that date, added subdivision (c)(5).

Legal Periodicals. — For article, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

For article, "Administrative Justice: No Longer Just a Recommendation," see 79 N.C.L. Rev. 1639 (2001).

For article, "What Were We Thinking?: Legislative Intent and the 2000 Amendments to the North Carolina APA," see 79 N.C.L. Rev. 1657 (2001).

CASE NOTES

Editor's Note. *— Many of the cases below were decided under corresponding provisions of former Chapter 150A, or under this Chapter prior to the 1991 amendments thereto.*

Remand Required Where Findings Are Found Insufficient. — Where, on review of an order of a state commission permitting petitioner savings and loan association to open a branch office, the trial court determined that the commission's findings were insufficient in that they lacked the specificity required by this section, the trial court should never have reached the question of whether reversal under former G.S. 150A-51(5) was appropriate, as remand for further findings was essential upon concluding that the findings of record presented an inadequate basis for review. Under no applicable theory of law would it be appropriate for the trial court to reverse the commission and substitute its judgment for the commission's. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979).

Administrative agencies should be encouraged to continue cases under active deliberation until rendition of a final decision, to assure that that decision is the product of adequate, sound deliberation. In re Alamance Sav. & Loan Ass'n, 53 N.C. App. 326, 280 S.E.2d 748, cert. denied, 304 N.C. 588, 291 S.E.2d 148 (1981).

Final agency decision in writing envisioned by former § 150A-36 was not merely a memorialization of the decision, but was the decision itself, without which agency action did not become final. In re Alamance Sav. & Loan Ass'n, 53 N.C. App. 326, 280 S.E.2d 748, cert. denied, 304 N.C. 588, 291 S.E.2d 148 (1981).

Under subsection (b) of this section, a final agency decision in a contested case hearing must be based on the official record prepared pursuant to G.S. 150B-37l; the agency is not permitted to hear new evidence, and if it does so, the trial court on review is required to reverse or remand the agency decision. Everhart & Assocs. v. Department of Env't, Health & Natural Resources, 127 N.C. App. 693, 493 S.E.2d 66 (1997), cert. denied, 347 N.C. 575, 502 S.E.2d 590 (1998).

Local Appointing Authority. — A "local appointing authority," within the meaning of G.S. 126-37, is required to render its decision in accordance with subsection (b) of this section. Cunningham v. Catawba County, 128 N.C. App. 70, 493 S.E.2d 82 (1997).

DSS was required, in rejecting the recommended decision of the Commission, to state the specific reasons why it did not adopt the recommended decision and serve a copy of its final decision on the petitioner; however, because the legislature did not specifically require that the "local appointing authority" comply with subsection (b), there was no obligation to enter findings of fact and conclusions of law, as required by subsection (b). Cunningham v. Catawba County, 128 N.C. App. 70, 493 S.E.2d 82 (1997).

In discrimination cases, G.S. 126-37(b1) and G.S. 150B-36 provide that when the State Personnel Commission makes a finding of discrimination, this is binding upon the local appointing authority; the case is then subject to judicial review. Due process concerns are not as strong in discrimination cases because the local appointing authority will never have an opportunity to reverse a finding of discrimination by the State Personnel Commission. Enoch v. Alamance County Dep't of Soc. Servs., 164 N.C. App. 233, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Duty of Agency to Allow Adequate Opportunity to File Exceptions. — This section places an affirmative duty on the agency to allow parties an adequate opportunity to file exceptions to the recommended decision, but in no way obligates parties to file specific exceptions to the recommended decision before issuance of the final agency decision. Owen v. UNC-G Physical Plant, 121 N.C. App. 682, 468 S.E.2d 813 (1996), discretionary review improvidently allowed, 344 N.C. 73, 477 S.E.2d 33 (1996).

Subsection (a) simply provides the parties with an opportunity to file written exceptions and/or written arguments; it does not create an additional exhaustion hurdle. Jackson v. Department of Admin., 127 N.C. App. 434, 490 S.E.2d 248 (1997).

No Obligation to File Specific Exceptions. — Although this section places an affirmative duty on the agency to provide the opportunity to file exceptions to the parties, the plain language in no way obligates petitioners to file specific exceptions to the recommended decision before issuance of the final agency decision. Jackson v. Department of Admin., 127 N.C. App. 434, 490 S.E.2d 248 (1997).

Decision Not Made on Unlawful Procedure. — A decision of the State Board of

Elections ordering a new election for certain county officers was not made on "unlawful procedure" without findings of fact where the chairman orally announced the board's decision on December 6, 1978, to order a new election because of irregularities in assistance rendered to persons who voted by absentee ballots and in the collection and return of voted absentee ballots; a written decision was filed on the same day incorporating the oral decision; and order was entered December 14, 1978, setting a date for the new election and setting out the rules and procedures for its conduct; and on February 13, 1979, the state board filed a written order containing its findings of fact and conclusions of law. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

Service of Final Decision. — Plain language of G.S. 150B-36(b3) and G.S. 150B-42(a) applies to agencies, not the North Carolina Office of Administrative Hearings, and there was no requirement that the Office of Administrative Hearings serve a final decision personally or by certified mail; in any event, a day care did not deny receiving a copy of the final decision and its substantial rights were not prejudiced in any way. Lincoln v. N.C. HHS, Nutrition Branch, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

University of North Carolina's State Residence Committee (SRC) is exempt from the entire Administrative Procedure Act; therefore, although provisions in the act requiring judicial review of final administrative review were applicable, the SRC was not governed by this section, which requires agencies to state reasons for their decisions. Wilson v. State Residence Comm., 92 N.C. App. 355, 374 S.E.2d 415 (1988), cert. denied, 324 N.C. 252, 377 S.E.2d 764 (1989).

Recusal From Decision Review. — Failure of the Director of the Division of Facility Services [now the Division of Health Service Regulation] of DHHS to recuse herself from reviewing her own decision did not amount to a violation of the applicant's competitor's due process rights. Bio-Medical Applications of N.C., Inc. v. North Carolina Dep't of Human Resources, 136 N.C. App. 103, 523 S.E.2d 677, 1999 N.C. App. LEXIS 1372 (1999).

Administrative Law Judge's Decision Reviewed by Personnel Commission. — The administrative law judge must render a decision on the motion which is presented, but the administrative law judge's ruling is subject to review by the ultimate factfinder, the Personnel Commission. Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

No statutory authority exists for the State Personnel Commission to review an administrative law judge's recommended decision in a case involving an exempt employee. Johnson v. Natural Resources & Community Dev., 98 N.C. App. 334, 391 S.E.2d 48 (1990).

Failure to Adequately Explain Rejection of Administrative Law Judge's Decision. — In light of the fact that the North Carolina Department of Health and Human Services had never revoked licenses of ambulance providers for understaffing their ambulances and had no guidelines for such license revocation, the Department failed to explain adequately both its revocation of a provider's license for understaffing and its rejection of an administrative law judge's decision to stay revocation, as required by G.S. 150B-36(b1). Cape Med. Transp., Inc. v. N.C. HHS, 162 N.C. App. 14, 590 S.E.2d 8, 2004 N.C. App. LEXIS 17 (2004).

Dismissal Proper. — Substantial evidence in the record supported an administrative law judge's findings and its dismissal of a day care's petition for a contested case hearing where the day care filed nothing in nearly six months following the filing of the petition, despite receiving several orders from the administrative law judge to file and serve prehearing statements and other responses to motions. Lincoln v. N.C. HHS, Nutrition Branch, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

Memorandum of Consideration Not Final Decision. — Trial court properly held that an administrative law judge's (ALJ's) recommended decision became the final decision of the North Carolina State Personnel Commission where the Commission was evenly divided and its Memorandum of Consideration did not recite any findings of fact or conclusions of law; as the Memorandum of Consideration did not constitute a final decision, the Commission failed to make a final decision within the time set forth in G.S. 150B-44 and in order to protect the employee from unreasonable delay resulting from the Commission's failure to issue a final decision, the ALJ's recommended decision became the final decision by operation of law. Teague v. N.C. DOT, 177 N.C. App. 215, 628 S.E.2d 395, 2006 N.C. App. LEXIS 863 (2006).

Applied in Ford v. North Carolina Dep't of Env't, Health, & Natural Resources, 107 N.C. App. 192, 419 S.E.2d 204 (1992); Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995); Citizens for Responsible Road-Ways v. North Carolina DOT, 145 N.C. App. 497, 550 S.E.2d 253, 2001 N.C. App. LEXIS 655 (2001).

Cited in North Carolina Dep't of Cor. v. Hodge, 99 N.C. App. 602, 394 S.E.2d 285 (1990); Jarrett v. North Carolina Dep't of Cultural Resources, 101 N.C. App. 475, 400 S.E.2d

66 (1991); State ex rel. Envtl. Mgt. Comm'n v. House of Raeford Farms, Inc., 101 N.C. App. 433, 400 S.E.2d 107 (1991); Webb v. North Carolina Dep't of Env't, Health & Natural Resources, Coastal Resources Comm'n, 102 N.C. App. 767, 404 S.E.2d 29 (1991); Williams v. New Hanover County Bd. of Educ., 104 N.C. App. 425, 409 S.E.2d 753 (1991); Professional Food Servs. Mgt., Inc. v. North Carolina Dep't of Admin., 109 N.C. App. 265, 426 S.E.2d 447 (1993); Britthaven, Inc. v. North Carolina Dep't of Human Resources, 118 N.C. App. 379, 455 S.E.2d 455 (1995); Ritter v. Department of Human Resources, 118 N.C. App. 564, 455 S.E.2d 901 (1995); North Carolina Dep't of Cors. v. Harding, 120 N.C. App. 451, 462 S.E.2d 671 (1995); McHugh v. North Carolina Dep't of Envtl., Health & Natural Resources, 126 N.C. App. 469, 485 S.E.2d 861 (1997); Bryant v. Hogarth, 127 N.C. App. 79, 488 S.E.2d 269 (1997); Howell v. Morton, 131 N.C. App. 626, 508 S.E.2d 804 (1998); Hearne v. Sherman, 350 N.C. 612, 516 S.E.2d 864 (1999); Blalock v. State Dep't of Health & Human Servs., 143 N.C. App. 470, 546 S.E.2d 177, 2001 N.C. App. LEXIS 317 (2001); Shackleford-Moten v. Lenoir County Dep't of Soc. Servs., 155 N.C. App. 568, 573 S.E.2d 767, 2002 N.C. App. LEXIS 1630 (2002); N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004); Richardson v. Wilson, 404 F. Supp. 2d 887, 2005 U.S. Dist. LEXIS 36160 (W.D.N.C. 2005); Ramsey v. N.C. DMV, 184 N.C. App. 713, 647 S.E.2d 125, 2007 N.C. App. LEXIS 1594 (2007).

§ 150B-37. Official record.

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;
(2) Questions and offers of proof, objections, and rulings thereon;
(3) Evidence presented;
(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
(5) Repealed by Session Laws 1987, c. 878, s. 25.
(6) The administrative law judge's decision, or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final decision and shall forward a copy of the administrative law judge's decision to each party. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 13, 25; 2000-190, s. 8.)

CASE NOTES

Editor's Note. — *The cases below were decided prior to the 1991 amendments to this Chapter.*

Board of Adjustment Not Required to Sound-Record Hearings. — Municipal corporations are specifically excluded from requirements under former G.S. 150A-37 and former G.S. 150A-29 that trial rules of evidence and production of evidence be followed in proceedings before State agencies. Thus a Board of Adjustment is not required to sound-record its hearings. Washington Park Neighborhood Ass'n v. Winston-Salem Zoning Bd. of Adjustment, 35 N.C. App. 449, 241 S.E.2d 872, cert. denied and appeal dismissed, 295 N.C. 91, 244 S.E.2d 263 (1978), decided under corresponding provisions of former Chapter 150A.

No statutory authority exists for the State Personnel Commission to review an administrative law judge's recommended decision in a case involving an exempt employee. Johnson v. Natural Resources & Community Dev., 98 N.C. App. 334, 391 S.E.2d 48 (1990).

Official Record Required. — Under G.S. 150B-36(b), a final agency decision in a contested case hearing must be based on the official record prepared pursuant to this section; the agency is not permitted to hear new evidence, and if it does so, the trial court on review is required to reverse or remand the agency decision. Everhart & Assocs. v. Department of Env't, Health & Natural Resources, 127 N.C. App. 693, 493 S.E.2d 66 (1997), cert. denied, 347 N.C. 575, 502 S.E.2d 590 (1998).

Offers of Proof Part of Official Record. —

Commission properly considered offers of proof included in the record since offers of proof are part of the official record under subdivision (a)(2) of this section and not "new evidence" violative of G.S. 150B-51(a). Everhart & Assocs. v. Department of Env't, Health & Natural Resources, 127 N.C. App. 693, 493 S.E.2d 66 (1997), cert. denied, 347 N.C. 575, 502 S.E.2d 590 (1998).

Applied in Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995); Total Renal Care of N.C. LLC v. N.C. HHS, — N.C. App. —, 673 S.E.2d 137, 2009 N.C. App. LEXIS 202 (2009).

Cited in Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., 138 N.C. App. 572, 532 S.E.2d 192, 2000 N.C. App. LEXIS 782 (2000); N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004); Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005); Total Renal Care of N.C., LLC v. N.C. HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005); Mission Hosps., Inc. v. N.C. HHS, 189 N.C. App. 263, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinion below was issued prior to the 1991 amendments to this Chapter.*

Tapes Must Be Included in Official Record. — The tapes of a contested case which have not been transcribed must be included in the official record prepared by the Office of Administrative Hearings pursuant to subdivision (a)(3) and forwarded to the final agency decision maker pursuant to subsection (c). See opinion of Attorney General to Mr. John B. DeLuca, Assistant Director, Office of Legal Affairs, Dept. of Human Resources, 58 N.C.A.G. 85 (1988).

ARTICLE 3A.

Other Administrative Hearings.

§ 150B-38. Scope; hearing required; notice; venue.

(a) The provisions of this Article shall apply to:

(1) Occupational licensing agencies.

(2) The State Banking Commission, the Commissioner of Banks, and the Credit Union Division of the Department of Commerce.

(3) The Department of Insurance and the Commissioner of Insurance.

(4) The State Chief Information Officer in the administration of the provisions of Article 3D of Chapter 147 of the General Statutes.

(5) The North Carolina State Building Code Council.

(b) Prior to any agency action in a contested case, the agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

(1) A statement of the date, hour, place, and nature of the hearing;

(2) A reference to the particular sections of the statutes and rules involved; and

(3) A short and plain statement of the facts alleged.

(c) Notice shall be given personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party who has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response must be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by an administrative law judge requested under G.S. 150B-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the administrative law judge may designate another county. A person whose property or rights are the subject matter of the hearing waives his objection to venue if he proceeds in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article. (1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 6(3); 1989, c. 76, s. 30; c. 751, s. 7(45); 1991 (Reg. Sess., 1992), c. 959, s. 76; 1999-434, s. 17; 2001-141, s. 8; 2001-193, s. 12; 2001-487, s. 21(h).)

Legal Periodicals. — For note, "Contested Case Hearings Under the North Carolina Administrative Procedure Act: 1985 Rewrite Contains Dual System of Administrative Adjudication," see 64 N.C.L. Rev. 852 (1986).

CASE NOTES

Applicability of Article. — Article 3 of the North Carolina Administrative Procedure Act applies to administrative hearings conducted by the Office of Administrative Hearings before an administrative law judge, while Article 3A applies to "other administrative hearings" which are conducted by state agencies enumerated in this section. Homoly v. North Carolina State Bd. of Dental Examrs., 121 N.C. App. 695, 468 S.E.2d 481 (1996).

Action Sufficient to Trigger Contested Case Provisions. — Petitioner's letter, requesting expungement of a record, and requesting an opportunity to meet with the administrative board, was sufficient to trigger the contested case provisions of this section, and respondent's subsequent denial of the request constituted agency action on a contested case which affected the substantive rights of petitioner. In re Sullivan, 112 N.C. App. 795, 436 S.E.2d 862 (1993).

Revocation of Law Enforcement Officer's License. — Petitioner was entitled to both notice and an opportunity to be heard prior to the revocation of his license as a law enforcement officer by the Criminal Justice Education and Training Standards Commission, where such adjudicatory action constituted agency action on a contested case affecting substantive rights. Scroggs v. North Carolina Criminal Justice Educ. & Training Stds. Comm'n, 101 N.C. App. 699, 400 S.E.2d 742 (1991) (decided prior to the 1991 amendments to this Chapter).

Charges Against Licensees of a Board. — The General Assembly intended that any person who prefers charges against, inter alia, a licensee of the Board is entitled to a hearing and decision on those charges. Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 338 N.C. 288, 449 S.E.2d 188 (1994).

Notice of disciplinary hearings by the North Carolina Psychology Board must be given not less than 15 days before the hearing, under G.S. 150B-38(b); under G.S. 150B-40(a), such hearings shall be conducted in a fair and impartial manner and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy. Farber v. N.C. Psychology Bd., 153 N.C. App. 1, 569 S.E.2d 287, cert. denied, 356 N.C. 612, 574 S.E.2d 679 (2002).

Board of Examiners of Electrical Contractors Required to Hold Hearing. — Though the language is not explicit in requiring that the Board of Examiners of Electrical Contractors hold a hearing on charges, such a requirement is implicit both in the language referring to "hearings of charges" and in the stated purpose of the statute governing the jurisdiction of the Board to hear such charges. Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 338 N.C. 288, 449 S.E.2d 188 (1994).

Intent of Statute Mandated Hearing. — It would be contrary to the intent expressed in G.S. 87-47(a1), that of protecting the public, to determine that plaintiff was not entitled to a hearing and decision on charges brought to effectuate that very purpose. Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 338 N.C. 288, 449 S.E.2d 188 (1994).

Applied in Cameron v. North Carolina State Bd. of Dental Exmrs., 95 N.C. App. 332, 382 S.E.2d 864 (1989); McCollough v. North Carolina State Bd. of Dental Exmrs., 111 N.C. App. 186, 431 S.E.2d 816 (1993); Act-Up Triangle v. Commission for Health Servs., 345 N.C. 699, 483 S.E.2d 388 (1997); In re Lustgarten, 177 N.C. App. 663, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006).

Cited in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992); Adams v. North Carolina State Bd. of Registration, 129 N.C. App. 292, 501 S.E.2d 660 (1998); Brooks v. Southern Nat'l Corp., 131 N.C. App. 80, 505 S.E.2d 306 (1998).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions below were issued prior to the 1991 amendments to this Chapter.*

Applicability of § 150B-23(a). — Subsection (a) of G.S. 150B-23, as amended by Session Laws 1987, Chapter 878, is not applicable to agencies governed by Article 3A of this Chapter. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, 57 N.C.A.G. 85 (1987).

When a contested case hearing is conducted by an agency governed by this article, a petition or other notice need not be filed with the Office of Administrative Hearings. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, 57 N.C.A.G. 85 (1987).

Intended Sanction Not Required in Notice of Hearing. — While subdivision (b)(2) of this section requires licensing boards to include in their notices a reference to the particular sections of the statutes and rules involved, it does not appear to require a board to state which sanction under the applicable disciplinary statute it intends to impose. However, once a board states with specificity that it is proposing to impose only one or two sanctions available under a referenced disciplinary statute for the stated alleged infractions, the board is then precluded from imposing a greater sanction for these infractions. Miller v. North Carolina State Bd. of Registration for Professional Eng'rs & Land Surveyors, 322 N.C. 465, 368 S.E.2d 605 (1988).

§ 150B-39. Depositions; discovery; subpoenas.

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) Upon a request for an identifiable agency record involving a material fact in a contested case, the agency shall promptly provide the record to a party, unless the record relates solely to the agency's internal procedures or is exempt from disclosure by law.

(c) In preparation for, or in the conduct of, a contested case subpoenas may be issued and served in accordance with G.S. 1A-1, Rule 45. Upon a motion, the agency may quash a subpoena if, upon a hearing, the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6. (1985, c. 746, s. 1; 1991, c. 35, s. 8.)

§ 150B-40. Conduct of hearing; presiding officer; ex parte communication.

(a) Hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy.

If a party fails to appear in a contested case after he has been given proper notice, the agency may continue the hearing or proceed with the hearing and make its decision in the absence of the party.

(b) Except as provided under subsection (e) of this section, hearings under this Article shall be conducted by a majority of the agency. An agency shall designate one or more of its members to preside at the hearing. If a party files in good faith a timely and sufficient affidavit of the personal bias or other reason for disqualification of any member of the agency, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. If a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer shall be assigned to continue with the case, except that if assignment of a new presiding officer will cause substantial prejudice to any party, a new hearing shall be held or the case dismissed without prejudice.

(c) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;

(3) Provide for the taking of testimony by deposition;

(4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and

(6) Apply to any judge of the superior court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt of the agency and its processes, and the court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(d) Unless required for disposition of an ex parte matter authorized by law, a member of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case under this Article shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually-related case. This section does not apply to an agency employee or party representative with professional training in accounting, actuarial science, economics or financial analysis insofar as the case involves financial practices or conditions.

(e) When a majority of an agency is unable or elects not to hear a contested case, the agency shall apply to the Director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case under this Article. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case.

The provisions of this Article, rather than the provisions of Article 3, shall govern a contested case in which the agency requests an administrative law judge from the Office of Administrative Hearings.

The administrative law judge assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law.

An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

The agency may make its final decision only after the administrative law judge's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. (1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, ss. 1(1), 6(3), 6(4).)

Legal Periodicals. — For article, "Powers of Administrative Law Judges, Agencies, and Courts: An Analytical and Empirical Assessment," see 79 N.C.L. Rev. 1571 (2001).

CASE NOTES

Changes Against Licensees of a Board. — The General Assembly intended that any person who prefers charges against, inter alia, a licensee of a board is entitled to a hearing and decision on those charges. Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 338 N.C. 288, 449 S.E.2d 188 (1994).

Notice of disciplinary hearings by the North Carolina Psychology Board must be given not less than 15 days before the hearing, under G.S. 150B-38(b); under G.S. 150B-40(a), such hearings shall be conducted in a fair and impartial manner and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy. Farber v. N.C. Psychology Bd., 153 N.C. App. 1, 569 S.E.2d 287, cert. denied, 356 N.C. 612, 574 S.E.2d 679 (2002).

Intent of Statute Mandated Hearing. — It would be contrary to the intent expressed in G.S. 87-47(a1), that of protecting the public, to determine that plaintiff was not entitled to a hearing and decision on charges brought to effectuate that very purpose. Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 338 N.C. 288, 449 S.E.2d 188 (1994).

Spirit Not Violated. — Under the plain language of G.S. 150B-40(d), the prohibition on ex parte communication by agency members "begins at the time of the notice of hearing;" where the probable cause hearing took place two months before the North Carolina Psychology Board issued its statement of charges, and nine months before it issued the notice of hearing, as the probable cause hearing occurred well before the statutory prohibition on ex parte communications arose, the trial court erred in concluding that the Board violated the spirit of G.S. 150B-40(d). Farber v. N.C. Psychology Bd., 153 N.C. App. 1, 569 S.E.2d 287, cert. denied, 356 N.C. 612, 574 S.E.2d 679 (2002).

Board of Examiners of Electrical Contractors Required to Hold Hearing. — Though the language is not explicit in requiring that the Board of Examiners of Electrical Contractors hold a hearing on charges, such a requirement is implicit both in the language referring to "hearings of charges" and in the stated purpose of the statute governing the jurisdiction of the Board to hear such charges. Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 338 N.C. 288, 449 S.E.2d 188 (1994).

The provisions of this section do not apply to hearings conducted by the Commission for Health Services [now the Commission for Public Health]. Act-Up Triangle v. Commission for Health Servs., 345 N.C. 699, 483 S.E.2d 388 (1997).

Cited in Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 111 N.C. App. 875, 433 S.E.2d 814 (1993); Farber v. N.C. Psychology Bd., 153 N.C. App. 1, 569 S.E.2d 287.

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions below were issued prior to the 1991 amendments to this Chapter.*

Applicability of § 150B-23(a). — Subsection (a) of G.S. 150B-23, as amended by Session Laws 1987, Chapter 878, is not applicable to agencies governed by Article 3A of this Chapter. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, 57 N.C.A.G. 85 (1987).

When a contested case hearing is conducted by an agency governed by this article, a petition or other notice need not be filed with the Office of Administrative Hearings. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, 57 N.C.A.G. 85 (1987).

§ 150B-41. Evidence; stipulations; official notice.

(a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object to evidence at the hearing in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court of judicial review.

(b) Evidence in a contested case, including records and documents shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(c) The parties in a contested case under this Article by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable. Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it. (1985, c. 746, s. 1.)

CASE NOTES

Peer Review. — Court of Appeals of North Carolina found that the rationale which the Supreme Court of North Carolina used in its Leahy decision for allowing the North Carolina Board of Nursing to determine the standard of care based on its own expertise was not transferable to a case where the North Carolina State Board of Dental Examiners reviewed the conduct of an orthodontist because no member of the Board of Dental Examiners that sat in judgment of the orthodontist was as orthodontist. Watkins v. N.C. State Bd. of Dental Exam'rs, 157 N.C. App. 367, 579 S.E.2d 510, 2003 N.C. App. LEXIS 746 (2003).

Applied in Watkins v. N.C. State Bd. of Dental Exam'rs, 358 N.C. 190, 593 S.E.2d 764 (2004).

Cited in Woodlief v. North Carolina State Bd. of Dental Exmrs., 104 N.C. App. 52, 407 S.E.2d 596 (1991); Leahy v. North Carolina Bd. of Nursing, 346 N.C. 775, 488 S.E.2d 245 (1997); Farber v. N.C. Psychology Bd., 153 N.C. App. 1, 569 S.E.2d 287; N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004).

§ 150B-42. Final agency decision; official record.

(a) After compliance with the provisions of G.S. 150B-40(e), if applicable, and review of the official record, as defined in subsection (b) of this section, an agency shall make a written final decision or order in a contested case. The decision or order shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150B-41. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record.

(b) An agency shall prepare an official record of a hearing that shall include:
(1) Notices, pleadings, motions, and intermediate rulings;
(2) Questions and offers of proof, objections, and rulings thereon;
(3) Evidence presented;
(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
(5) Proposed findings and exceptions; and
(6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(c) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests. (1985, c. 746, s. 1.)

CASE NOTES

Service of Final Decision. — Plain language of G.S. 150B-36(b3) and G.S. 150B-42(a) applies to agencies, not the North Carolina Office of Administrative Hearings, and there was no requirement that the Office of Administrative Hearings serve a final decision personally or by certified mail; in any event, a day care did not deny receiving a copy of the final decision and its substantial rights were not prejudiced in any way. Lincoln v. N.C. HHS, Nutrition Branch, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

Applied in Watkins v. N.C. State Bd. of Dental Exam'rs, 358 N.C. 190, 593 S.E.2d 764 (2004).

Cited in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992); N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004).

ARTICLE 4.

Judicial Review.

§ 150B-43. Right to judicial review.

Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

Local Modification. — (As to Article 4) City of Gastonia: 1985 (Reg. Sess., 1986), c. 902, s. 3; 1991, c. 557, s. 1.

Editor's Note. — Session Laws 2000-67, ss. 24(a) and (b), establishes a reserve in the Office of State Budget and Management (now the Office of State Budget, Planning, and Management), consisting of appropriations from the General Assembly and funds received from any State agency in accordance with s. 24. When a State agency files a petition for judicial review of a final decision of the Rules Review Commission under Article 4 of Chapter 150B and the Rules Review Commission prevails in that action, that State agency is to deposit to the reserve a sum equal to the Commission's actual attorneys' fees.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Legal Periodicals. — For comment on former Article 33 of Chapter 143, see 31 N.C.L. Rev. 378, 382 (1953).

For note on determination of validity of rules and regulations before their application in specific cases, see 36 N.C.L. Rev. 473 (1958).

For note on judicial review of student disciplinary proceedings, see 43 N.C.L. Rev. 152 (1964).

For case law survey as to judicial review of decisions of administrative agencies, see 45 N.C.L. Rev. 816 (1967).

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

For article, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

For article, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

For survey of 1980 administrative law, see 59 N.C.L. Rev. 1017 (1981).

For comment discussing life insurance, divorce, and inheritance tax in light of In re Kapoor, 303 N.C. 102, 277 S.E.2d 403 (1981), see 13 N.C. Cent. L.J. 253 (1982).

For article, "Powers of Administrative Law Judges, Agencies, and Courts: An Analytical and Empirical Assessment," see 79 N.C.L. Rev. 1571 (2001).

CASE NOTES

I. General Consideration.
II. Aggrieved Person.
III. Contested Case.
IV. Final Decision.
V. Exhaustion of Administrative Remedies.
VI. Adequate Judicial Review Under Another Statute.
VII. Illustrative Cases.

I. GENERAL CONSIDERATION.

Editor's Note. *— Most of the cases below were decided under corresponding provisions of former Chapter 150A and earlier statutes, or under this Chapter prior to the 1991 amendments thereto.*

As to purpose and construction of former provisions, see In re Appeal of Harris, 273 N.C. 20, 159 S.E.2d 539 (1968).

Construction with Other Provisions. — Section 113A-123 does not set forth the scope of review but instead provides that judicial review is available pursuant to the provisions of Chapter 150B of the Administrative Procedure Act. Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

Procedures and requirements of the North Carolina Administrative Procedure Act, G.S. 150B-1 et seq., were not to be incorporated into the statutory requirements under G.S. 53-92(d) for an appeal from a final decision of the North Carolina State Banking Commission. In re Advance Am., Cash Advance Ctrs. of N.C. Inc., 189 N.C. App. 115, 657 S.E.2d 405, 2008 N.C. App. LEXIS 426 (2008).

North Carolina Administrative Procedure Act, G.S. 150B-1 through 150B-52, was inapplicable to the review of decisions by a hearing officer of the North Carolina Department of Health and Human Services regarding Medicaid emergency medical benefits because G.S. 108A-79(k) governed the review of the decisions. Meza v. Div. of Soc. Servs., — N.C. App. —, 668 S.E.2d 571, 2008 N.C. App. LEXIS 1814 (2008).

Requirements for Judicial Review Generally. — This section has been interpreted as imposing five requirements in order to have standing for judicial review: (1) the petitioner must be an aggrieved party; (2) there must be a final agency decision; (3) the decision must result from a contested case; (4) the petitioner must have exhausted all administrative remedies; and (5) there must be no other adequate procedure for judicial review. Charlotte Truck Driver School, Inc. v. North Carolina DMV, 95 N.C. App. 209, 381 S.E.2d 861 (1989); Meads v. North Carolina Dep't of Agric., 349 N.C. 656, 509 S.E.2d 165 (1998).

There are five requirements under former G.S. 150A-43: (1) plaintiff must be an aggrieved person; (2) there must be a final agency decision; (3) the decision must result from a contested case; (4) petitioner must have exhausted administrative remedies; and (5) there must be no other adequate procedure for judicial review. Dyer v. Bradshaw, 54 N.C. App. 136, 282 S.E.2d 548 (1981); State ex rel. Tenn. Dep't of Health & Env't v. Environmental Mgt. Comm'n, 78 N.C. App. 763, 338 S.E.2d 781 (1986); In re Wheeler, 85 N.C. App. 150, 354 S.E.2d 374 (1987).

Former G.S. 150A-43 requires a four-part test for standing: an aggrieved party, a final agency decision, a contested case, and exhaustion of administration remedies. Warren County v. North Carolina, 528 F. Supp. 276 (E.D.N.C. 1981).

Whether the jurisdictional prerequisites of the Administrative Procedure Act have been met is not a question of personal jurisdiction, but one of the ripeness, on a case by base basis, of the subject matter of administrative decisions for judicial review. Poret v. State Personnel Comm'n, 74 N.C. App. 536, 328 S.E.2d 880, cert. denied, 314 N.C. 117, 332 S.E.2d 491, 332 S.E.2d 492 (1985), overruled on other grounds, Batten v. N.C. Dep't of Cor., 326 N.C. 338, 389 S.E.2d 35 (1990), overruled on other grounds, Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 168 (1994).

Standing Is Question of Subject Matter Jurisdiction. — Whether one has standing to obtain judicial review of an administrative decision is a question of subject matter jurisdiction. Carter v. North Carolina State Bd. of Registration, 86 N.C. App. 308, 357 S.E.2d 705 (1987).

No statutory authority exists for the State Personnel Commission to review an administrative law judge's recommended decision in a case involving an exempt employee. Johnson v. Natural Resources & Community Dev., 98 N.C. App. 334, 391 S.E.2d 48, cert. denied, 327 N.C. 140, 394 S.E.2d 176 (1990), rev'd on other grounds, 328 N.C. 689, 394 S.E.2d 469 (1991).

Administrative Remedy is Exclusive. — When the General Assembly provides an effective administrative remedy by statute, that remedy is exclusive, and the party must pursue and exhaust it before resorting to the courts. Jackson v. North Carolina Dep't of Human Res., 131 N.C. App. 179, 505 S.E.2d 899, 1998 N.C. App. LEXIS 1306 (1998), cert. denied, 350 N.C. 594, 537 S.E.2d 213 (1999).

Requirements for Judicial Review Generally. — This section has been interpreted as imposing five requirements in order to have standing for judicial review: (1) the petitioner must be an aggrieved party; (2) there must be a final agency decision; (3) the decision must result from a contested case; (4) the petitioner must have exhausted all administrative remedies; and (5) there must be no other adequate procedure for judicial review. Charlotte Truck Driver School, Inc. v. North Carolina DMV, 95 N.C. App. 209, 381 S.E.2d 861 (1989).

Record Must Indicate Basis for Exercise of Discretion. — While it is true that the determination whether by common judgment certain conduct is disqualifying is left to the sound discretion of the board, the record must include an indication of the basis upon which the board or other agency exercised its expert discretion. Dailey v. North Carolina State Bd. of Dental Exmrs., 309 N.C. 710, 309 S.E.2d 219 (1983).

Corresponding former provisions were inappropriate to initiate an attack upon the constitutionality of a statute fixing the powers and duties of the Board of Paroles (now Parole Commission). The question of the constitutionality of a statute is not for administrative boards, but for the judicial branch. Jernigan v. State, 279 N.C. 556, 184 S.E.2d 259 (1971).

Review of Executive Interpretation of Statute Not Authorized. — Corresponding former provisions did not authorize the filing of a petition in the superior court seeking an advisory opinion on the correctness of an executive interpretation of a statute. Housing Auth. v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Upon review pursuant to former § 150A-43, the "whole record" test is applicable, and the decision of the State Board of Alcoholic Control may be reversed if substantial rights of the licensee are prejudiced by administrative findings, inferences, conclusions or decisions which are not supported by competent, material and substantial evidence in view of the entire record as submitted. Fay v. State Bd. of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 689 (1976).

The clear intent of the legislature is to make the "whole record" test the principal standard of judicial review of administrative findings in this State. North Carolina State Bar v. DuMont, 304 N.C. 627, 286 S.E.2d 89 (1982).

Scope of Review Must Be Defined. — In presenting appeals to the judicial branch from State administrative agencies, it is essential that the parties present their contentions as to the applicable scope of judicial review; likewise, the reviewing court should make clear the review standard under which it proceeds. State ex rel. Utils. Comm'n v. Bird Oil Co., 302 N.C. 14, 273 S.E.2d 232 (1981).

Administrative Procedure Act does not preclude entirely the possibility of judicial review by use of the Declaratory Judgment Act or other procedures outside the act. High Rock Lake Ass'n v. North Carolina Envtl. Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

Quasi-Judicial Hearing Contemplated. — Former provisions contemplated a quasi-judicial hearing in which the parties were permitted an opportunity to offer evidence and a decision was rendered applicable to a specific factual situation. Housing Auth. v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

An agency's denial of a petition for rule making under former G.S. 150A-16 is subject to judicial review pursuant to the provisions of former G.S. 150A-43. In re Wheeler, 85 N.C. App. 150, 354 S.E.2d 374 (1987).

Doctrine of Res Judicata. — Where an administrative determination has been reviewed by the courts, the res judicata effect, if any, attaches to the court's judgment rather than to the administrative decision. State ex rel. Utils. Comm'n v. Thornburg, 325 N.C. 463, 385 S.E.2d 451 (1989).

Mandatory Suspension of Driving Privilege. — Petitioner whose driving privilege was mandatorily suspended under G.S. 20-17(2) and G.S. 20-19(e) did not have the right to appeal under G.S. 20-25 or under this Chapter. However, the superior court could review the actions of the Commissioner by issuing a writ of certiorari. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

Once the right to drive has been mandatorily revoked and a petitioner unsuccessfully seeks to have the license reinstated by the DMV, no superior court review of the denial is mandated unless the denial was arbitrary or illegal, because reinstatement is not a legal right but is an act of grace. Alpiser v. Eagle Pontiac-GMC-Isuzu, Inc., 97 N.C. App. 610, 389 S.E.2d 293 (1990).

The superior court acquired jurisdiction to award attorney fees when a reinstated employee petitioned for review of a final agency decision. Early v. County of Durham, Dep't of Soc. Servs., — N.C. App. —, 667 S.E.2d 512, 2008 N.C. App. LEXIS 1818 (2008).

Applied in Concerned Citizens v. North Carolina Envtl. Mgt. Comm'n, 89 N.C. App. 708, 367 S.E.2d 13 (1988); Wilson v. State Residence Comm., 92 N.C. App. 355, 374 S.E.2d 415 (1988); North Buncombe Ass'n of Concerned Citizens v. Rhodes, 100 N.C. App. 24, 394 S.E.2d 462 (1990); Meyers v. Dep't of Human Resources, 105 N.C. App. 665, 415 S.E.2d 70 (1992); Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995); North Carolina Chiropractic Ass'n v. North Carolina State Bd. of Educ., 122 N.C. App. 122, 468 S.E.2d 539 (1996); Williams v. North Carolina Dep't of Env't & Natural Resources, 144 N.C. App. 479, 548 S.E.2d 793, 2001 N.C. App. LEXIS 526 (2001); Googerdy v. N.C. Agric. & Tech. State Univ., 386 F. Supp. 2d 618, 2005 U.S. Dist. LEXIS 24545 (M.D.N.C. Aug. 24, 2005); Table Rock Chapter of Trout Unlimited v. Envtl. Mgmt. Comm'n, 191 N.C. App. 362, 663 S.E.2d 333, 2008 N.C. App. LEXIS 1323 (2008).

Cited in North Carolina Dep't of Justice v. Eaker, 90 N.C. App. 30, 367 S.E.2d 392 (1988); Tay v. Flaherty, 90 N.C. App. 346, 368 S.E.2d 403 (1988); Davis v. Hiatt, 92 N.C. App. 748, 376 S.E.2d 44 (1989); Gummels v. North Carolina Dep't of Human Resources, 97 N.C. App.

245, 388 S.E.2d 223 (1990); Batten v. North Carolina Dep't of Cor., 326 N.C. 338, 389 S.E.2d 35 (1990); Tay v. Flaherty, 100 N.C. App. 51, 394 S.E.2d 217 (1990); North Carolina Dep't of Cor. v. Hodge, 99 N.C. App. 602, 394 S.E.2d 285 (1990); Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992); Johnson v. North Carolina DOT, 107 N.C. App. 63, 418 S.E.2d 700 (1992); Harding v. North Carolina Dep't of Cor., 334 N.C. 414, 432 S.E.2d 298 (1993); In re McCrary, 112 N.C. App. 161, 435 S.E.2d 359 (1993); Brooks v. BCF Piping, Inc., 109 N.C. App. 26, 426 S.E.2d 282 (1993); Professional Food Servs. Mgt., Inc. v. North Carolina Dep't of Admin., 109 N.C. App. 265, 426 S.E.2d 447 (1993); North Carolina DOT v. Davenport, 334 N.C. 428, 432 S.E.2d 303 (1993); Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995); North Carolina Dep't of Cors. v. Harding, 120 N.C. App. 451, 462 S.E.2d 671 (1995); Gainey v. North Carolina Dep't of Justice, 121 N.C. App. 253, 465 S.E.2d 36 (1996); Bryant v. Hogarth, 127 N.C. App. 79, 488 S.E.2d 269 (1997); Norman v. Cameron, 127 N.C. App. 44, 488 S.E.2d 297 (1997); Britt v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 348 N.C. 573, 501 S.E.2d 75 (1998); Peace v. Employment Sec. Comm'n, 349 N.C. 315, 507 S.E.2d 272 (1998); Prentiss v. Allstate Ins. Co., 87 F. Supp. 2d 514, 1999 U.S. Dist. LEXIS 21397 (W.D.N.C. 1999); Avant v. Sandhills Ctr. for Mental Health, Dev. Disabilities & Substance Abuse Servs., 132 N.C. App. 542, 513 S.E.2d 79 (1999); Prentiss v. Allstate Ins. Co., 144 N.C. App. 404, 548 S.E.2d 557, 2001 N.C. App. LEXIS 441 (2001); Simpson v. Macon County, 132 F. Supp. 2d 407, 2001 U.S. Dist. LEXIS 864 (2001); In re Roberts, 150 N.C. App. 86, 563 S.E.2d 37, 2002 N.C. App. LEXIS 389 (2002); Kea v. Dep't of Health & Human Servs., 153 N.C. App. 595, 570 S.E.2d 919, 2002 N.C. App. LEXIS 1246 (2002); Allen v. N.C. Dep't of Health & Human Servs., 155 N.C. App. 77, 573 S.E.2d 565, 2002 N.C. App. LEXIS 1634 (2002); Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005); Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618 S.E.2d 201, 2005 N.C. LEXIS 835 (2005).

II. AGGRIEVED PERSON.

Meaning of "Person Aggrieved". — The expression "person aggrieved" has no technical meaning. What it means depends on the circumstances involved. In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963); Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972); Orange County Sensible Hwys. & Protected Env'ts, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

"Person aggrieved" means one who is adversely affected in respect of legal rights, or is suffering from an infringement or denial of legal rights. Carter v. North Carolina State Bd. of Registration, 86 N.C. App. 308, 357 S.E.2d 705 (1987).

Personal Rights or Interests Not at Issue. — Where none of petitioner's personal rights or interests, nor any rights or interests properly attributable to him in a cognizable representative capacity, were either directly or indirectly at issue in requested rule making proceeding, he was not substantially affected by Department of Human Resources' denial of his petition for rule making. Therefore, he was not a "person aggrieved" as a result of the agency decision and had no standing to seek judicial review thereof. In re Wheeler, 85 N.C. App. 150, 354 S.E.2d 374 (1987).

Person Aggrieved in Representative Capacity. — One may be aggrieved when he is affected only in a representative capacity. In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963).

Administrative Agency as Person Aggrieved. — An administrative agency cannot be a person aggrieved by its own order, but it may be an aggrieved party to secure judicial review of a decision of an administrative reviewing agency. In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963).

County as "Person Aggrieved". — A county may be an aggrieved person when an agency issues a ruling that could affect the county's revenue. In re Brunswick County, 81 N.C. App. 391, 344 S.E.2d 584 (1986).

Appeals by Public Officials and Governmental Units in Cases Involving Taxation and Public Funds. — Where statutes permit appeals by persons aggrieved, appeals by public officials and governmental units are usually allowed in cases involving questions of law relating to taxation and public funds. In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963).

County as Party Aggrieved. — A county is a party aggrieved and is entitled to appeal from a decision of the State Board of Assessment (now the Property Tax Commission) reducing the valuation of property appraised by the county for tax purposes. In re Appeal of Harris, 273 N.C. 20, 159 S.E.2d 539 (1968).

County had standing to challenge establishment of a toxic waste site within its borders under this Chapter because of the effect on its tax base and planning jurisdiction, because of the final agency determination upon issuance of an environmental impact statement, and because the Environmental Policy Act (Art. 1 of Ch. 113A) includes the right to judicial review of an issue which involves a contested case. Warren County v. North Carolina, 528 F. Supp. 276 (E.D.N.C. 1981).

Petitioners Ordered to Forfeit Bid Bond "Aggrieved". — Petitioners were aggrieved persons when the Secretary of Administration ordered them to forfeit their $316,600.00 bid bond or be subject to liability for twice that amount. In re Metric Constructors, Inc., 31 N.C. App. 88, 228 S.E.2d 533 (1976).

Property Owners, etc., Within Proposed Corridor of Highway Were Aggrieved. — Plaintiffs were all "aggrieved" by a decision of the State Board of Transportation on the location of an interstate highway within the meaning of former G.S. 150A-43 where the individual plaintiffs were property owners within the proposed corridor of the highway, the members of plaintiff nonprofit corporation were citizens and taxpayers living in or near the proposed corridor, and plaintiff county's tax base and planning jurisdiction would be affected by the proposed highway. Orange County Sensible Hwys. & Protected Env'ts, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

"Procedural injury" implicit in agency failure to prepare an environmental impact statement as to a proposed highway project was itself a sufficient "injury in fact" to support standing as "aggrieved parties" under former G.S. 150A-43, as long as such injury was alleged by a plaintiff having a sufficient geographical nexus to the site of the challenged project that he might be expected to suffer whatever environmental consequences the project may have. Orange County Sensible Hwys. & Protected Env'ts, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Impairment of Hearing Rights in Pollution Discharge Permit Proceeding. — "Procedural injury," whereby petitioner State of Tennessee's right to be heard on certain aspects of a National Pollutant Discharge Elimination System (NPDES) permit was substantially impaired, was sufficient under former G.S. 150A-43 to qualify petitioner as an "aggrieved person" for purposes of appeal of issuance of Environmental Management Commission's consent special order with corporation. In addition, where the consent special order contained provisions substantially identical to provisions which petitioner opposed in the proposed NPDES permit, which affected the property rights of the petitioner in the Pigeon River, these allegations also established petitioner's "aggrieved person" status. State ex rel. Tenn. Dep't of Health & Env't v. Environmental Mgt. Comm'n, 78 N.C. App. 763, 338 S.E.2d 781 (1986).

Petitioner Who Had Won Case Not Aggrieved Party. — Where, although petitioner claimed that it had attempted to preserve a cross-assignment of error, the Commissioner's decision in petitioner's favor was upheld both in the trial court and by the court of appeals; the petitioner was not a party aggrieved. GMC v. Carolina Truck & Body Co., 102 N.C. App. 349, 402 S.E.2d 139 (1991).

III. CONTESTED CASE.

A "contested case" means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. State ex rel. Envtl. Mgt. Comm'n v. House of Raeford Farms, Inc., 101 N.C. App. 433, 400 S.E.2d 107 (1991), discretionary review denied, 328 N.C. 576, 403 S.E.2d 521 (1991).

A contested case hearing is distinguishable from a contested case. The phrase "contested case" extends beyond an adjudicatory hearing to include any agency proceeding, by whatever name called, wherein the legal rights, duties and privileges of a party are required by law to be determined by an agency after an opportunity for an adjudicatory hearing. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

Proceeding Sufficient to Constitute a "Contested Case." — The Superior Court had jurisdiction over a petition for review of denial of services under the Rehabilitation Act of 1973, P.L. 102-569, 42 U.S.C. § 701, et seq. as amended, where, although the petitioner's claims were not heard by an Administrative Law Judge, they were heard by an agency hearing officer, at a proceeding in which petitioner and respondent were allowed to submit and cross-examine evidence and where respondent's director reviewed and affirmed the hearing officer's decision, in accordance with its own regulations. Hedgepeth v. North Carolina Div. of Servs. for the Blind, 142 N.C. App. 338, 543 S.E.2d 169, 2001 N.C. App. LEXIS 94 (2001).

Case challenging a consent special order entered into by Environmental Management Commission and a corporation, which order was alleged to intrude upon the NPDES permit process (which process requires a hearing), was "contested" for the purposes of former G.S. 150A-43. State ex rel. Tenn. Dep't of Health & Env't v. Environmental Mgt. Comm'n, 78 N.C. App. 763, 338 S.E.2d 781 (1986).

Decision of State Board of Transportation as to location of an interstate highway constituted a "contested case" within the meaning of former G.S. 150A-43, where the North Carolina Environmental Policy Act, G.S. 113A-1 through 113A-10, was involved. Orange County Sensible Hwys. & Protected Env'ts, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Where rights of petitioner were deter-

mined by an in-person interview and by an investigation conducted by a hearing officer of the North Carolina DMV, a state agency, they constituted "an agency proceeding." Therefore, the case was "contested" for purposes of this section. Charlotte Truck Driver Training School, Inc. v. North Carolina DMV, 95 N.C. App. 209, 381 S.E.2d 861 (1989).

The result of a petitioner's ineffective attempts to file a petition for a contested case hearing was only a contested case. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

Without the jurisdictional prerequisite of a contested case hearing, a petitioner cannot utilize G.S. 131E-188(b) to appeal to the Court of Appeals. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

IV. FINAL DECISION.

In General. — Under the North Carolina Administrative Procedure Act, an aggrieved party has the right to judicial review of a final agency decision in a contested case. Okale v. N.C. Dep't of Health & Human Servs., 153 N.C. App. 475, 570 S.E.2d 741, 2002 N.C. App. LEXIS 1171 (2002).

Decision to end a preliminary inquiry is not "a final agency decision in a contested case." Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Dismissal of State Employee. — A recommendation by the State Personnel Commission is not a final decision from which a party may petition for judicial review; thus, the superior court was without jurisdiction to uphold a recommendation by the State Personnel Commission prior to review by the Local Appointing Authority, which ultimately reversed the recommendation. Howell v. Morton, 131 N.C. App. 626, 508 S.E.2d 804 (1998).

Decision by State Board of Transportation to deny plaintiffs a hearing concerning location of an interstate highway was a "final" decision within the meaning of former G.S. 150A-43, since the decision affected a right which plaintiffs had pursuant to the board's own administrative regulations. Orange County Sensible Hwys. & Protected Env'ts, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Delay Caused by Order for Rehearing Insufficient to Make Order a Final Decision. — Delay caused when the full State Personnel Commission ordered a rehearing of a dismissal case involving an employee of the Department of Transportation after declining to accept the recommendation of the hearing officer that a default be entered against the Department for its failure to appear was not an undue delay within the meaning of former G.S. 150A-23(a), nor such a delay as could allow the Court of Appeals to treat the order for rehearing as a final agency decision under former G.S. 150A-43. Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978), cert. denied, 296 N.C. 735, 254 S.E.2d 177 (1979).

Claim as to Statute's Unconstitutionality Involved No "Decision". — Plaintiffs could not obtain judicial review under former G.S. 150A-43 of their claim that G.S. 143B-350(f)(8), conferring on the State Board of Transportation the power and duty to approve all highway construction programs, unconstitutionally delegated legislative power to the board, since the claim involved no agency "decision"; however, such claim could be heard pursuant to N.C. Const., Art. IV, § 1. Orange County Sensible Hwys. & Protected Env'ts, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

Exhaustion of Administrative Remedies Required. — The Administrative Procedure Act allows judicial review of a final agency decision in a contested case when all relevant administrative remedies have been exhausted and there is no adequate judicial review provided under any other statute. In re Estate of Kapoor, 303 N.C. 102, 277 S.E.2d 403 (1981).

This section provides no authority for permitting plaintiff to bypass the requirements of G.S. 113A-121.1, because by enacting the provisions for administrative review of rules, the legislature wisely determined that the agency itself should have the first opportunity to review the propriety and applicability of its own rules, and so long as the statutory procedures provide an effective means of review of the agency action, the courts will require parties to exhaust their administrative remedies. Leeuwenburg v. Waterway Inv. Ltd. Partnership, 115 N.C. App. 541, 445 S.E.2d 614 (1994).

Where board of trustee's decision denying plaintiff's claim was subject to judicial review only under the terms of the Administrative Procedure Act and, at the time he brought the action in the District Court, plaintiff had not exhausted the administrative remedies available to him under the Act, the court of appeals did not err in concluding that the trial court was without subject matter jurisdiction and that the plaintiff's civil action must be dismissed. Vass v. Board of Trustees, 324 N.C. 402, 379 S.E.2d 26 (1989).

As a general rule a party must exhaust all applicable administrative remedies before filing in the superior court. Jackson v. Department of Admin., 127 N.C. App. 434, 490 S.E.2d 248 (1997).

Plaintiffs' challenge to insurance company's assessment of driving record points under the safe driver incentive plan (SDIP) required them to first exhaust their administrative remedies, as the approval of the SDIP was required by the commissioner of insurance and fell within the administrative procedures act. Prentiss v. Allstate Ins. Co., 144 N.C. App. 404, 548 S.E.2d 557, 2001 N.C. App. LEXIS 441 (2001).

Final agency decision regarding whether a county's personnel regulations were substantially equivalent to the North Carolina State Personnel Act, G.S. 126-1 et seq., was reviewable by a trial court only after the aggrieved person had exhausted all available administrative remedies made available by statute or agency rule. Steward v. Green, 189 N.C. App. 131, 657 S.E.2d 719, 2008 N.C. App. LEXIS 423 (2008).

As to necessity for exhaustion of administrative remedies under former provisions, see Sinodis v. State Bd. of Alcoholic Control, 258 N.C. 282, 128 S.E.2d 587 (1962); Porter v. State Bd. of Alcoholic Control, 4 N.C. App. 284, 166 S.E.2d 695 (1969).

The doctrine of exhaustion of administrative remedies is designed to avoid the interruption and cessation of proceedings before a commission by untimely and premature intervention by the courts would completely destroy the efficiency, effectiveness, and purpose of the administrative agencies. Jackson v. Department of Admin., 127 N.C. App. 434, 490 S.E.2d 248 (1997).

Judicial Review Precluded by Failure to Exhaust Administrative Remedies. — Plaintiff collection agency was not entitled to seek a declaratory judgment in the superior court as to the validity and applicability of a regulation of the Department of Insurance prohibiting collection agencies from instituting judicial proceedings on behalf of other persons, where plaintiff failed to exhaust available administrative remedies by petitioning the Department of Insurance for amendment or repeal of the regulation under former G.S. 150A-16 or seeking a declaratory ruling from the Department of Insurance as to the validity and applicability of the regulation under former G.S. 150A-17, and then by seeking judicial review of an adverse Department of Insurance decision under former G.S. 150A-43 et seq. Porter v. North Carolina Dep't of Ins., 40 N.C. App. 376, 253 S.E.2d 44, cert. denied, 297 N.C. 455, 256 S.E.2d 808 (1979).

The guardian of a child entitled to Medicaid was required to exhaust administrative remedies before seeking judicial review where the child's admission to a hospital was not approved. Jackson v. North Carolina Dep't of Human Res., 131 N.C. App. 179, 505 S.E.2d 899, 1998 N.C. App. LEXIS 1306 (1998), cert. denied, 350 N.C. 594, 537 S.E.2d 213 (1999).

Failure to Exhaust Inadequate Remedy Not Required. — Failure to exhaust an administrative remedy will not bar judicial review if that remedy has been shown to be inadequate. Orange County Sensible Hwys. & Protected Env'ts, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Exhaustion of Remedies Held Unnecessary for Preliminary Injunctive Relief in Civil Rights Case. — Where a state employee asserted civil rights violations under 42 U.S.C. § 1983 for his wrongful dismissal, the superior court retained its traditional power to grant preliminary injunctive relief without requiring him to exhaust the administrative remedies provided in Chapter 126 of the General Statutes. Williams v. Greene, 36 N.C. App. 80, 243 S.E.2d 156, cert. denied and appeal dismissed, 295 N.C. 471, 246 S.E.2d 12 (1978).

Application of Exhaustion Requirement Not Waived. — By entering into a Consent Judgment, which resolved ten cases then pending in the courts and the administrative hearing office, the plaintiff did not waive the application of the exhaustion requirement of this Chapter to penalties which would be assessed in the future. State ex rel. Envtl. Mgt. Comm'n v. House of Raeford Farms, Inc., 101 N.C. App. 433, 400 S.E.2d 107 (1991), discretionary review denied, 328 N.C. 576, 403 S.E.2d 521 (1991).

VI. ADEQUATE JUDICIAL REVIEW UNDER ANOTHER STATUTE.

"Adequate procedure for judicial review" exists only if the scope of review is equal to that under Article 4 of former Chapter 150A. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977); State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

As to reviewability of decisions under corresponding former provisions where no other adequate procedure provided, see State ex rel. N.C. Utils. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965).

Statutory provision for review "by proceedings in the nature of certiorari" is an "adequate procedure for judicial review" only if the scope of review is equal to that under this Chapter. Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963).

Section 93A-6, regulating real estate brokers and salesmen, provides adequate procedure for judicial review of an order of the Real Estate Licensing Board revoking a license, and former G.S. 150A-43 does not apply. In re Dillingham, 257 N.C. 684, 127 S.E.2d 584 (1962).

Section 136-134.1 preempts former § 150A-43 and specifically provides the opportunity to have a de novo proceeding before a trial judge which satisfies due process requirements. National Adv. Co. v. Bradshaw, 48 N.C. App. 10, 268 S.E.2d 816, cert. denied and appeal dismissed, 301 N.C. 400, 273 S.E.2d 446 (1980).

Method of Review for Augmented Tax Review Board's Decision. — Appellate jurisdiction does not lie in a North Carolina superior court for an Augmented Tax Review Board's (ATRB's) decision; as a result, when a corporation is contesting the application of the apportionment formula before the ATRB, G.S. 105-130.4(t)(6) requires aggrieved corporations to pay the tax and bring an original civil action, thus directing them to G.S. 105-241.4 [repealed], which provides that an aggrieved corporation bypass administrative review and proceed to litigate the tax liability at issue in the superior court de novo pursuant to that court's original jurisdiction. In re Cent. Tel. Co., 167 N.C. App. 14, 604 S.E.2d 680, 2004 N.C. App. LEXIS 2058 (2004), appeal dismissed, cert. denied, — N.C. —, 610 S.E.2d 203 (2005).

VII. ILLUSTRATIVE CASES.

Decisions of Property Tax Commission. — Any person aggrieved by a final decision of the Property Tax Commission, and who has exhausted all administrative remedies available to him, is entitled to judicial review under former G.S. 150A-43. Brock v. North Carolina Property Tax Comm'n, 290 N.C. 731, 228 S.E.2d 254 (1976).

Administrative decisions of the Property Tax Commission, whether with respect to the schedule of values or the appraisal of property, are always subject to judicial review after administrative procedures have been exhausted. Brock v. North Carolina Property Tax Comm'n, 290 N.C. 731, 228 S.E.2d 254 (1976).

Appeal by Commissioner (Now Secretary) of Revenue from Decision of Tax Review Board. — The Tax Review Board is an administrative agency of the State, and the Commissioner (now Secretary) of Revenue is entitled to appeal from a decision of the Board reversing in part an assessment of taxes made by the Commissioner (now Secretary). Section 105-241.3 [repealed] does not impliedly amend former G.S. 150A-43 so as to preclude the right of the Commissioner (now Secretary) to appeal, but the two statutes must be construed together and effect given the provisions of both. In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963).

State Transportation Agency's Condemnation of Property. — Owners of condemned land who challenged state transportation agency's proposed highway satisfied the five requirements for judicial review of an adverse transportation agency decision when they showed: (1) they were aggrieved; (2) there was a contested case; (3) there was a final agency decision; (4) their administrative remedies were exhausted; and (5) no other adequate procedure for judicial review could be provided by another statute. DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001).

Rule-Making Procedure Under § 143-215.13(c) Not Subject to Judicial Review. — An informal hearing conducted by the Commission to consider whether to initiate a proceeding to declare the Yadkin River Basin a capacity use area was no more than a G.S. 143-215.13(c) rule-making type procedure, and thus the plaintiffs were not entitled to judicial review under former G.S. 150A-43 et seq. High Rock Lake Ass'n v. North Carolina Envtl. Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

As to availability of judicial review of suspension of university student, see In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

As to former limitation of court review of suspensions and exclusions, see Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Refusal to Amend Semiannual Dialysis Report. — Summary judgment for the N.C. Department of Health and Human Services, Division of Facility Services [now the Division of Health Service Regulation], and its Medical Facilities Planning Section was affirmed as a dialysis firm challenging the refusal by the Planning Section to amend a Semiannual Dialysis Report was not a person aggrieved by a final decision in a contested case. Bio-Medical Applications of N.C., Inc. v. N.C. HHS, 179 N.C. App. 483, 634 S.E.2d 572, 2006 N.C. App. LEXIS 1979 (2006).

OSHA Review Board Decisions. — Judicial review of Occupational Safety and Health Act (OSHA) Review Board decisions is under this Article. Brooks v. Austin Berryhill Fabricators, Inc., 102 N.C. App. 212, 401 S.E.2d 795 (1991).

Termination of Employment of County Superintendent of Schools Reviewable. — Decision of the Wayne County Board of Education terminating the employment of the superintendent of schools and declaring the office vacant was subject to review under former provisions, since although the section providing for the removal of school superintendents contained a proviso that such superintendent would have the right to try his title to office in the courts of the State, the statute was silent as to the procedure and the scope of review contemplated. James v. Wayne County Bd. of Educ., 15 N.C. App. 531, 190 S.E.2d 224, appeal dismissed, 282 N.C. 672, 194 S.E.2d 151 (1972).

Findings of fact and conclusions of law made by the State Board of Elections may be reviewed in an action instituted in the superior court, but appellant is not entitled to a jury trial in such action. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Cancellation of Truck Driver School License. — Superior court had jurisdiction pursuant to this section to review order cancelling petitioner's truck driver school license, even though petitioner waived its right to an evidentiary hearing. Charlotte Truck Driver Training School, Inc. v. North Carolina DMV, 95 N.C. App. 209, 381 S.E.2d 861 (1989).

Suspension of Retail Beer Permit. — Judicial review of an order of the State Board of Alcoholic Control suspending a retail beer permit is governed by former G.S. 150A-43. Fay v. State Bd. of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 689 (1976).

In an action regarding the termination of state employment, judicial review of an administrative decision dismissing an employee's appeal of the decision to terminate her was governed by G.S. 150B-43. Woodburn v. N.C. State Univ., 156 N.C. App. 549, 577 S.E.2d 154, 2003 N.C. App. LEXIS 305 (2003), cert. denied, 357 N.C. 470, 584 S.E.2d 296 (2003).

Environmental Impact Statement. — Department of Administration decision that an environmental impact statement was not required did not automatically mean that a permit would be issued by Department of Environmental Health and Natural Resources. Petitioners' action to challenge the decision did not become ripe until Department of Environmental Health and Natural Resources made its decision to issue the National Pollutant Discharge Elimination System permit to applicant. Because petitioners' claim was not ripe at the time of Department of Administration decision, they did not have the right to a contested case hearing. Citizens for Clean Indus., Inc. v. Lofton, 109 N.C. App. 229, 427 S.E.2d 120 (1993), overruled on other grounds, Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 768, rehearing denied, 338 N.C. 314, 451 S.E.2d 634 (1994).

Petition Not Sufficiently Explicit. — Where petition for judicial review of county health director's decision affirming employee's termination lacked even a single exception to particular findings of fact or conclusions of law but instead, baldly asserted only that the health department's decision was "contrary to the Recommended Decision of the Administrative Law Judge and the State Personnel Commission," petition was not sufficiently explicit to permit effective judicial review of the proceedings, and department's motion to dismiss should have been allowed. Gray v. Orange County Health Dep't, 119 N.C. App. 62, 457 S.E.2d 892, cert. denied, 341 N.C. 649, 462 S.E.2d 511, rehearing dismissed, 342 N.C. 192, 463 S.E.2d 236 (1995).

§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge. The Board of Trustees of the North Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this section. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(17); 1987, c. 878, ss. 5, 27; 1991, c. 35, s. 9; 2000-190, s. 9; 2008-168, s. 5(b).)

Effect of Amendments. — Session Laws 2008-168, s. 5(b), effective July 1, 2008, added the last sentence.

Legal Periodicals. — For article, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

For article, "Administrative Justice: No Longer Just a Recommendation," see 79 N.C.L. Rev. 1639 (2001).

CASE NOTES

Editor's Note. *— The cases below were decided under corresponding provisions of former Chapter 150A, or under this Chapter prior to the 1991 amendments thereto.*

Decision Held Unreasonably Delayed. — Trial court did not err in reversing decision by North Carolina State Personnel Commission as untimely under G.S. 150B-44, and in adopting the administrative law judge's recommended order, due to the delay beyond 60 days in the entry of the Commission's order; the Commission did not seek to extend the time limit by consent or unilaterally when it reconsidered its original order and then reissued its order. Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

Trial court properly held that an administrative law judge's (ALJ's) recommended decision became the final decision of the North Carolina State Personnel Commission where the Commission was evenly divided and its Memorandum of Consideration did not recite any findings of fact or conclusions of law; as the Memorandum of Consideration did not constitute a final decision, the Commission failed to make a final decision within the time set forth in G.S. 150B-44 and in order to protect the employee from unreasonable delay resulting from the Commission's failure to issue a final decision, the ALJ's recommended decision became the final decision by operation of law. Teague v. N.C. DOT, 177 N.C. App. 215, 628 S.E.2d 395, 2006 N.C. App. LEXIS 863 (2006).

Protection from Unreasonable Delay. — Parties are protected from unreasonable delay on the part of agencies in reaching final decisions by former G.S. 150A-44 (see now this section), which allows a party adversely affected by such delay to seek a court order compelling action by the agency. In re Alamance Sav. & Loan Ass'n, 53 N.C. App. 326, 280 S.E.2d 748, cert. denied, 304 N.C. 588, 291 S.E.2d 148 (1981).

The right under former G.S. 150A-44 (see now this section) may be asserted to prevent unreasonable delay in reaching a final agency decision. Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

Decision Held Unreasonably Delayed. — State Personnel Commission's decision against a county employee issued 130 days after it had received the official record from the hearing officer was "unreasonably delayed" as defined in this section; however, the hearing officer's decision would not be reinstated. The only available remedy was a court order compelling action by the agency or hearing officer. Davis v. Vance County Dep't of Soc. Servs., 91 N.C. App. 428, 372 S.E.2d 88 (1988).

The Department of Human Resources did not make its final decision within the time limits of this section, where the Department filed an extension, but did not render its final decision until almost six months after it received the record. Holland Group, Inc. v. North Carolina Dep't of Admin., 130 N.C. App. 721, 504 S.E.2d 300 (1998).

Since the North Carolina Department of Health and Human Services, Division of Medical Assistance (HHS), did not properly extend the deadline under G.S. 150B-44 for issuing a final decision regarding an administrative law judge's recommendation that it had improperly withheld Medicaid reimbursements, the judgment of the trial court that HHS adopted the recommendation was affirmed on appeal. Albemarle Mental Health Ctr. v. N.C. Dep't of HHS, 159 N.C. App. 66, 582 S.E.2d 651, 2003 N.C. App. LEXIS 1422 (2003), aff'd, 358 N.C. 134, 591 S.E.2d 519 (2004).

Self-Executing Decisions. — When an Article 3 administrative agency failed to issue a final decision regarding the recognition of a tribe as an indigenous North Carolina Indian tribe within the time limits set forth in G.S. 150B-44, the recommended decision of an administrative law judge became the final decision in the case by operation of law. Occaneechi Band v. North Carolina Comm'n of Indian Affairs, 145 N.C. App. 649, 551 S.E.2d 535, 2001 N.C. App. LEXIS 734 (2001), cert. denied, 354 N.C. 365, 556 S.E.2d 575 (2001).

Good Cause. — It is the responsibility of an agency governed by G.S. 150B-44 to articulate "good cause" for extending the final decision deadline when there is no agreement by the parties to extend the deadline. Albemarle Mental Health Ctr. v. N.C. Dep't of HHS, 159 N.C. App. 66, 582 S.E.2d 651, 2003 N.C. App. LEXIS 1422 (2003), aff'd, 358 N.C. 134, 591 S.E.2d 519 (2004).

Applicability. — Pursuant to G.S. 150B-1(c), the North Carolina Department of Health and Human Services, Division of Medical Assistance, is an Article 3 agency and thereby subject to the mandates of G.S. 150B-44. Albemarle Mental Health Ctr. v. N.C. Dep't of HHS, 159 N.C. App. 66, 582 S.E.2d 651, 2003 N.C. App. LEXIS 1422 (2003), aff'd, 358 N.C. 134, 591 S.E.2d 519 (2004).

Waiver. — Forestry association that participated in hearings conducted by the North Carolina Environmental Management Commission (EMC) to review an administrative law judge's (ALJ's) decision waived its claim that the EMC lost its power to review the ALJ's decision, by conducting the hearings beyond the time limits prescribed by G.S. 150B-44, when it failed to make its claim to the EMC. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 162 N.C. App. 467, 591 S.E.2d 549, 2004 N.C. App. LEXIS 178 (2004).

De Novo Review Proper. — Trial court properly applied the substantial evidence test in reviewing an administrative law judge's findings of fact and conclusions of law; the trial court also properly employed a de novo review of the question of the application of G.S. 150B-44. Teague v. N.C. DOT, 177 N.C. App. 215, 628 S.E.2d 395, 2006 N.C. App. LEXIS 863 (2006).

Applied in White v. North Carolina Dep't of Cor., 117 N.C. App. 521, 451 S.E.2d 876 (1995).

Cited in County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002).

§ 150B-45. Procedure for seeking review; waiver.

(a) Procedure. — To obtain judicial review of a final decision under this Article, the person seeking review must file a petition within 30 days after the person is served with a written copy of the decision. The petition must be filed as follows:

(1) Contested tax cases. — A petition for review of a final decision in a contested tax case arising under G.S. 105-241.15 must be filed in the Superior Court of Wake County.

(2) Other final decisions. — A petition for review of any other final decision under this Article must be filed in the Superior Court of Wake County or in the superior court of the county where the person resides.

(b) Waiver. — A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 16; 2007-491, s. 43.)

Local Modification. — Durham: 1983, c. 373; 1993, c. 227, s. 3; 1993 (Reg. Sess., 1994), c. 658, s. 1.2); city of Asheville: 1999-206, s. 3; city of Gastonia: 1985 (Reg. Sess., 1986), c. 902, s. 3; 1991, c. 557, s. 1.

Editor's Note. — Session Laws 2007-491, s. 47, provides, in part: "The procedures for review of disputed tax matters enacted by this act apply to assessments of tax that are not final as of the effective date of this act and to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a petition for review was filed with the Tax Review Board under G.S. 105-241.2 [repealed] before the effective date of this act. The repeal of G.S. 105-122(c) and G.S. 105-130.4(t) and Sections 11 and 12 apply to requests for alternative apportionment formulas filed on or after the effective date of this act. A petition filed with the Tax Review Board for an apportionment formula before the effective date of this act is considered a request under G.S. 105-122(c1) or G.S. 105-130.4(t1), as appropriate."

Effect of Amendments. — Session Laws 2007-491, s. 43, effective January 1, 2008, rewrote subsection (a) and added the subsection heading in subsection (b).

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

For article, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

Editor's Note. *— Some of the cases below were decided under corresponding provisions of former Chapter 150A, or under this Chapter prior to the 1991 amendments thereto.*

Application of Section. — Where the complaints and notices of hearing were filed prior to Jan. 1, 1986, the action was commenced prior to Jan. 1, 1986, and Chapter 150B had no application in the case; thus, G.S. 150A-45 (rewritten and recodified as this section), requiring a person seeking review to file a petition in the Superior Court of Wake County, and not this section, permitting such filing in either Wake County or the county where the person resides, governed. Pinewood Manor Mobile Homes, Inc. v. North Carolina Manufactured Hous. Bd., 84 N.C. App. 564, 353 S.E.2d 231, cert. denied, 319 N.C. 674, 356 S.E.2d 780 (1987).

Procedures and requirements of the North Carolina Administrative Procedure Act, G.S. 150B-1 et seq., were not to be incorporated into the statutory requirements under G.S. 53-92(d) for an appeal from a final decision of the North Carolina State Banking Commission. In re Advance Am., Cash Advance Ctrs. of N.C. Inc., 189 N.C. App. 115, 657 S.E.2d 405, 2008 N.C. App. LEXIS 426 (2008).

Under Article 3 of Chapter 150B of the General Statutes, judicial review of a final decision under that article is to be had in the Superior Court of Wake County or the superior court of the county where the person seeking review resides. Iredell Mem. Hosp. v. North Carolina Dep't of Human Resources, 103 N.C. App. 637, 406 S.E.2d 304 (1991).

Where declaratory ruling was not served on county in accordance with statute, county did not waive its right to seek judicial review by waiting more than 30 days after it received a copy of the decision to file its petition for review. In re Brunswick County, 81 N.C. App. 391, 344 S.E.2d 584 (1986).

Former § 150A-45 (rewritten and recodified as this section) confers exclusive jurisdiction for judicial review of final agency decisions on the Superior Court of Wake County when a state rather than a local agency made the initial determination. State ex rel. Lee v. Williams, 55 N.C. App. 80, 284 S.E.2d 572 (1981).

Strict Construction of Waiver Provisions. — Statutory provisions providing for the waiver or forfeiture of the right to judicial review under certain conditions should be construed strictly; and, when so construed, the right to petition for review continues unless and until 30 days have expired from the date "a written copy" of the administrative order has been served on the party seeking review, either by personal service or by registered mail, return receipt requested. In re Appeal of Harris, 273 N.C. 20, 159 S.E.2d 539 (1968), decided prior to enactment of this Chapter.

No statutory authority exists for the State Personnel Commission to review an administrative law judge's recommended decision in a case involving an exempt employee. Johnson v. Natural Resources & Community Dev., 98 N.C. App. 334, 391 S.E.2d 48, cert. denied, 327 N.C. 140, 394 S.E.2d 176 (1990), rev'd on other grounds, 328 N.C. 689, 394 S.E.2d 469 (1991).

A petitioner seeking judicial review of a decision of the North Carolina Driver License Medical Review Board must file such petition in the Superior Court of Wake County pursuant to former G.S. 150A-45 (rewritten and recodified as this section), and may not obtain a hearing under G.S. 20-25 in the superior court of the county in which he resides. Cox v. Miller, 26 N.C. App. 749, 217 S.E.2d 198 (1975).

Denial of ABC Permit Constituting Action on "Issuance". — Where application for an ABC permit was initially denied by commission on Dec. 9, 1985, this denial was clearly a commission action on "issuance" of an ABC permit, and, pursuant to the provisions of G.S. 18B-906, the ruling on the application became a "contested case" for purposes of the Administrative Procedure Act on Dec. 9, 1985. Therefore, former G.S. 150A-45 (rewritten and recodified as this section), which required petitions for review to be filed in Wake County, was applicable, rather than this section, and the trial court properly dismissed petition for judicial review, which had been filed in Craven County. In re Melkonian, 85 N.C. App. 715, 355 S.E.2d 798, cert. denied, 320 N.C. 793, 361 S.E.2d 78 (1987).

Time for Filing Petition. — Owners of condemned land were required to file their petition within 30 days of publication of final environmental impact statement concerning proposed state highway. DOT v. Blue, 147 N.C. App. 596, 556 S.E.2d 609, 2001 N.C. App. LEXIS 1235 (2001).

The result of a petitioner's ineffective attempts to file a petition for a contested case hearing was only a contested case. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

Without the jurisdictional prerequisite of a contested case hearing, a petitioner cannot utilize G.S. 131E-188(b) to appeal to the Court of Appeals. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

Applied in Concerned Citizens v. North

Carolina Envtl. Mgt. Comm'n, 89 N.C. App. 708, 367 S.E.2d 13 (1988); Gummels v. North Carolina Dep't of Human Resources, 97 N.C. App. 245, 388 S.E.2d 223 (1990); North Buncombe Ass'n of Concerned Citizens v. Rhodes, 100 N.C. App. 24, 394 S.E.2d 462 (1990); Meyers v. Dep't of Human Resources, 105 N.C. App. 665, 415 S.E.2d 70 (1992); Citizens for Responsible Road-Ways v. North Carolina DOT, 145 N.C. App. 497, 550 S.E.2d 253, 2001 N.C. App. LEXIS 655 (2001).

Cited in North Carolina DOT v. Davenport, 102 N.C. App. 476, 402 S.E.2d 477 (1991); Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992); Bashford v. North Carolina Licensing Bd., 107 N.C. App. 462, 420 S.E.2d 466 (1992); Ocean Hill Joint Venture v. North Carolina Dep't of Environment, Health & Natural Resources, 333 N.C. 318, 426 S.E.2d 274 (1993); Davenport v. North Carolina DOT, 3 F.3d 89 (4th Cir. 1993); Ellis v. North Carolina Crime Victims Comp. Comm'n, 111 N.C. App. 157, 432 S.E.2d 160 (1993); Homoly v. North Carolina State Bd. of Dental Exmrs., 125 N.C. App. 127, 479 S.E.2d 215 (1997); County of Durham v. North Carolina Dep't of Env't & Natural Resources, 131 N.C. App. 395, 507 S.E.2d 310 (1998); In re Roberts, 150 N.C. App. 86, 563 S.E.2d 37, 2002 N.C. App. LEXIS 389 (2002); County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002); Allen v. N.C. Dep't of Health & Human Servs., 155 N.C. App. 77, 573 S.E.2d 565, 2002 N.C. App. LEXIS 1634 (2002); Vanderburg v. N.C. Dep't of Revenue, 168 N.C. App. 598, 608 S.E.2d 831, 2005 N.C. App. LEXIS 451 (2005); Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005); Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618 S.E.2d 201, 2005 N.C. LEXIS 835 (2005); In re Lustgarten, 177 N.C. App. 663, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006); Hospice at Greensboro, Inc. v. N.C. HHS Div. of Facility Servs., 185 N.C. App. 1, 647 S.E.2d 651, 2007 N.C. App. LEXIS 1714 (2007).

§ 150B-46. Contents of petition; copies served on all parties; intervention.

The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding is a party to the review proceedings unless the party withdraws by notifying the court of the withdrawal and serving the other parties with notice of the withdrawal. Other parties to the proceeding may file a response to the petition within 30 days of service. Parties, including agencies, may state exceptions to the decision or procedure and what relief is sought in the response.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 35, s. 10.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For article, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

Editor's Note. — *Some of the cases below were decided under corresponding provisions of former Chapter 150A and earlier statutes, or under this Chapter prior to the 1991 amendments thereto.*

Purpose of Statute Necessitates Liberal Construction. — The primary purpose of the statute is to confer the right of review, and the statute should be liberally construed to preserve and effectuate that right. James v. Wayne County Bd. of Educ., 15 N.C. App. 531, 190 S.E.2d 224, appeal dismissed, 282 N.C. 672, 194 S.E.2d 151 (1972).

"Explicit" means characterized by full clear expression; being without vagueness or ambiguity; leaving nothing implied. Vann v. North Carolina State Bar, 79 N.C. App. 173, 339 S.E.2d 97 (1986).

Service Requirements for a Petition for Judicial Review of an Agency Decision. — Conn. Gen. Stat. § 150B-46 deals with the service of a petition for judicial review of an agency decision, while N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 4 applies generally to service in all civil matters; since § 150B-46 is more specific and there is no legislative intent to the contrary, its terms control the service requirements for a petition for judicial review of an agency decision. Follum v. N.C. State Univ., — N.C. App. —, 679 S.E.2d 420, 2009 N.C. App. LEXIS 1173 (July 21, 2009).

Service of Petition for Judicial Review. — Service of a petition for judicial review upon the North Carolina State University's (NCSU) counsel did not comply with G.S. 150B-46 as the counsel was an employee of the North Carolina Department of Justice and a member of North Carolina's Attorney General's (AG) staff, not of NCSU; an employee's decision to effectuate service by certified mail via a private letter carrier did not render the service of the petition upon an agency's attorney of record under § 150B-46 as the employee was aware of the physical street address of NCSU's process agent, and the fact that the AG's office only provided the employee with a post office box for the process agent did not render the service of the employee's petition in compliance with § 150B-46. Follum v. N.C. State Univ., — N.C. App. —, 679 S.E.2d 420, 2009 N.C. App. LEXIS 1173 (July 21, 2009).

Applied in Gummels v. North Carolina Dep't of Human Resources, 97 N.C. App. 245, 388 S.E.2d 223 (1990).

Cited in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992); Leeuwenburg v. Waterway Inv. Ltd. Partnership, 115 N.C. App. 541, 445 S.E.2d 614 (1994); Save Our Rivers, Inc. v. Town of Highlands, 341 N.C. 635, 461 S.E.2d 333 (1995); Shackleford-Moten v. Lenoir County Dep't of Soc. Servs., 155 N.C. App. 568, 573 S.E.2d 767, 2002 N.C. App. LEXIS 1630 (2002); In re Advance Am., Cash Advance Ctrs. of N.C. Inc., 189 N.C. App. 115, 657 S.E.2d 405, 2008 N.C. App. LEXIS 426 (2008).

§ 150B-47. Records filed with clerk of superior court; contents of records; costs.

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency that made the final decision in the contested case shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. (1973, c. 1331, s. 1; 1983, c. 919, s. 3; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(18); 1987, c. 878, s. 22.)

CASE NOTES

Editor's Note. *— Some of the cases below were decided under corresponding provisions of former Chapter 150A.*

Former § 150A-47 does not apply to decisions made by town boards, including boards of adjustment. Burton v. New Hanover County Zoning Bd. of Adjustment, 49 N.C. App. 439, 271 S.E.2d 550 (1980), cert. denied, 302 N.C. 217, 276 S.E.2d 914 (1981).

Applied in Leeuwenburg v. Waterway Inv. Ltd. Partnership, 115 N.C. App. 541, 445 S.E.2d 614 (1994).

Cited in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992); Harding v. North Carolina Dep't of Cor., 334 N.C. 414, 432 S.E.2d 298 (1993); Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995); Watkins v. N.C. State Bd. of Dental Exam'rs, 358 N.C. 190, 593 S.E.2d 764 (2004); N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004).

§ 150B-48. Stay of decision.

At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

For article, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

Editor's Note. *— The cases below were decided under corresponding provisions of former Chapter 150A.*

Former § 150A-48 must be construed in pari materia with the rest of this Article, and particularly former G.S. 150A-43, which states that any person who is aggrieved by a final agency decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under Article 4 of former Chapter 150A. Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209, cert. denied, 291 N.C. 450, 230 S.E.2d 767 (1976); Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978), cert. denied, 296 N.C. 735, 254 S.E.2d 177 (1979).

Former § 150A-48 was meant to entitle the aggrieved person to a stay order only after the final agency decision and either before or after initiation of judicial review. Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976); Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978), cert. denied, 296 N.C. 735, 254 S.E.2d 177 (1979).

Stay of Decision Unavailable Prior to "Final Agency Decision". — Former G.S. 150A-48 is a vehicle for reinstatement only "before or during the review proceeding." Since, according to former G.S. 150A-43, review is available only after a "final agency decision," the stay of a decision is similarly only available after a "final agency decision." Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978), cert. denied, 296 N.C. 735, 254 S.E.2d 177 (1979).

Exhaustion of Administrative Remedies Held Unnecessary for Preliminary Injunctive Relief in Federal Civil Rights Action. — Where a state employee asserted civil rights violations under 42 U.S.C. § 1983 for his wrongful dismissal, the superior court retained its traditional power to grant preliminary injunctive relief without requiring him to exhaust the administrative remedies provided in Chapter 126. Williams v. Greene, 36 N.C. App. 80, 243 S.E.2d 156, cert. denied and appeal dismissed, 295 N.C. 471, 246 S.E.2d 12 (1978).

Applied in Unigard Mut. Ins. Co. v. Ingram, 71 N.C. App. 725, 323 S.E.2d 442 (1984).

§ 150B-49. New evidence.

An aggrieved person who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a decision in the case, the court shall remand the case to the agency that conducted the administrative hearing. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and decision. The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision. The additional evidence and any affirmation or modification of a decision of the administrative law judge or final decision shall be made part of the official record. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 17; 2000-190, s. 10.)

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

CASE NOTES

Editor's Note. — The cases below were decided prior to the 1991 amendments to this Chapter.

Whether new evidence offered by an organization should "reasonably have been presented" to the Coastal Resources Commission before, or during the course of, the organization's petition for a contested case hearing was a question which could not be determined from the record, and therefore, had to be remanded to the superior court for determination. Pamlico Tar River Found., Inc. v. Coastal Resources Comm'n, 103 N.C. App. 24, 404 S.E.2d 167 (1991).

When Superior Court Must Remand Case for Taking of New Evidence. — If the evidence is "material," "not merely cumulative," and "could not reasonably have been presented at the administrative hearing," the superior court must remand the case to the Coastal Resources Commission for the taking of new evidence offered by an organization opposing issuance of a permit. Pamlico Tar River Found., Inc. v. Coastal Resources Comm'n, 103 N.C. App. 24, 404 S.E.2d 167 (1991).

Denial of Remand Upheld. — Trial court's decision to deny petitioner's motion to remand for additional evidence relative to petitioner's alcohol assessment and subsequent treatment after hearing before the commission upheld. Ritter v. Department of Human Resources, 118 N.C. App. 564, 455 S.E.2d 901 (1995).

Applied in Save Our Rivers, Inc. v. Town of Highlands, 341 N.C. 635, 461 S.E.2d 333 (1995).

Cited in Harding v. North Carolina Dep't of Cor., 334 N.C. 414, 432 S.E.2d 298 (1993).

§ 150B-50. Review by superior court without jury.

The review by a superior court of agency decisions under this Chapter shall be conducted by the court without a jury. (1973, c. 1331, s. 1; 1983, c. 919, s. 2; 1985, c. 746, s. 1; 1987, c. 878, s. 18.)

Legal Periodicals. — For article, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

For survey of 1980 property law, see 59 N.C.L. Rev. 1209 (1981).

CASE NOTES

Editor's Note. — The cases below were decided under corresponding provisions of former Chapter 150A.

Judge Not Subject to Rule 52(a) Requirements. — When the judge of the superior court sits as an appellate court to review the decision of an administrative agency pursuant to former G.S. 150B-50 he is not required to make findings of fact and enter a judgment thereon in the same sense as is a trial judge pursuant to G.S. 1A-1, Rule 52(a). In re Arcadia Dairy Farms, Inc., 43 N.C. App. 459, 259 S.E.2d 368 (1979), appeal dismissed, 299 N.C. 545, 265 S.E.2d 403 (1980).

Appellate Review of Local Government Actions. — Although this section of the Act provides review only for agency decisions and local units of government are not within the definition of agencies in G.S. 150B-2(1), the principles embodied in the Act "are highly pertinent" to appellate review of local government actions. Vulcan Materials Co. v. Guilford County Bd. of County Comm'rs, 115 N.C. App. 319, 444 S.E.2d 639, cert. denied, 337 N.C. 807, 449 S.E.2d 758 (1994).

Review of Order of Real Estate Licensing Board. — Under G.S. 93A-6, review of an order of the Real Estate Licensing Board suspending or revoking a license is de novo in the superior court in all cases, and former article corresponding to Article 4 of former Chapter 150A did not apply, regardless of whether or not the Board has made a record of its proceedings. In re Dillingham, 257 N.C. 684, 127 S.E.2d 584 (1962).

Standard on Review of City's Special Zoning Request Decisions. — Although the North Carolina Administrative Procedure Act provides judicial review only for agency decisions and exempts cities and other local municipalities, a similar standard of review is appropriate to review city council special zoning request decisions. Jennewein v. City Council, 62 N.C. App. 89, 302 S.E.2d 7, cert. denied, 309 N.C. 461, 307 S.E.2d 365 (1983).

Cited in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992); McHugh v. North Carolina Dep't of Envtl., Health & Natural Resources, 126 N.C. App. 469, 485 S.E.2d 861 (1997); Peace v. Employment Sec. Comm'n, 349 N.C. 315, 507 S.E.2d 272 (1998); In re Lustgarten, 177 N.C. App. 663, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006).

§ 150B-51. Scope and standard of review.

(a) In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision and the State Personnel Commission made an advisory decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations. First, the court shall determine whether the applicable appointing authority heard new evidence after receiving the recommended decision. If the court determines that the applicable appointing authority heard new evidence, the court shall reverse the decision or remand the case to the applicable appointing authority to enter a decision in accordance with the evidence in the official record. Second, if the applicable appointing authority did not adopt the recommended decision, the court shall determine whether the applicable appointing authority's decision states the specific reasons why the applicable appointing authority did not adopt the recommended decision. If the court determines that the applicable appointing authority did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the applicable appointing authority to enter the specific reasons.

(a1) In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the administrative law judge's decision, the court shall determine whether the agency heard new evidence after receiving the decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. The court shall also determine whether the agency specifically rejected findings of fact contained in the administrative law judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b) of this section.

(b) Except as provided in subsection (c) of this section, in reviewing a final decision, the court may affirm the decision of the agency or remand the case to the agency or to the administrative law judge for further proceedings. It may also reverse or modify the agency's decision, or adopt the administrative law judge's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the administrative law judge's decision, the court shall review the official record, de novo, and shall make findings of fact and conclusions of law. In reviewing the case, the court shall not give deference to any prior decision made in the case and shall not be bound by the findings of fact or the conclusions of law contained in the agency's final decision. The court shall determine whether the petitioner is entitled to the relief sought in the petition, based upon its review of the official record. The court reviewing a final decision under this subsection may adopt the administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2), or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the explanations; and may take any other action allowed by law.

(d) In reviewing a final agency decision allowing judgment on the pleadings or summary judgment, or in reviewing an agency decision that does not adopt an administrative law judge's decision allowing judgment on the pleadings or summary judgment pursuant to G.S. 150B-36(d), the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If the order of the court does not fully adjudicate the case, the court shall remand the case to the administrative law judge for such further proceedings as are just. (1973, c. 1331, s. 1; 1983, c. 919, s. 4; 1985, c. 746, s. 1; 1987, c. 878, s. 19; 2000-140, s. 94.1; 2000-190, s. 11.)

Local Modification. — City of Durham: 1993 (Reg. Sess., 1994) c. 658, s. 1.2.

Legal Periodicals. — For comment, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

For article, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For article, "What Were We Thinking?: Legislative Intent and the 2000 Amendments to the North Carolina APA," see 79 N.C.L. Rev. 1657 (2001).

CASE NOTES

I. General Consideration.
II. Exceeding Statutory Authority or Jurisdiction.
III. Unlawful Procedure.
IV. "Whole Record" Test.
V. Arbitrary or Capricious Findings, Decisions, etc.

I. GENERAL CONSIDERATION.

Editor's Note. *— Most of the cases below were decided under corresponding provisions of former Chapter 150A and earlier statutes, or under this Chapter prior to the 1991 amendments thereto.*

The 2003 version of G.S. 150B-34(c), which excluded the Certificate of Need Act, G.S. 131E-175 et seq., from the requirements of G.S. 150B-36(b), (b1), (b2), (b3), and (d) and G.S. 150B-51, left the scope and standard of review applied under the 1999 version of G.S. 150B-51 undisturbed. Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

The precise scope of review by the Court of Appeals is contained in this section. Dockery v. North Carolina Dep't of Human Resources, 120 N.C. App. 827, 463 S.E.2d 580 (1995).

Reasons for Not Adopting Decision. — If the State Board of Elections determines that it will not adopt the recommended decision of a county board, it should include in its order specific reasons for such decision. In re Ramseur, 120 N.C. App. 521, 463 S.E.2d 254 (1995).

Unacceptable Personal Conduct by Employee. — Summary judgment for a state agency employer in an employee's petition for review of his demotion was proper where the conduct admitted by the employee constituted "unacceptable personal conduct," and the State Personnel Commission determined that its regulations and work rules did not contain any qualification or exception for the explanations asserted by the employee. Hilliard v. N.C. Dep't of Corr., 173 N.C. App. 594, 620 S.E.2d 14, 2005 N.C. App. LEXIS 2121 (2005).

Chapter Not Applicable to Decisions of Municipalities and Town Boards. — The current general administrative agencies review statutes are expressly not applicable to the decisions of town boards. Former Chapter 150A provides judicial review only for agency decisions, from which the decisions of local municipalities are expressly exempt. Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, 300 N.C. 562, 270 S.E.2d 106 (1980).

But Principles of Former § 150A-51 Are Pertinent. — While former G.S. 150A-51 is not directly applicable to reviews of town board zoning decisions, the principles it embodies are highly pertinent. Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, 300 N.C. 562, 270 S.E.2d 106 (1980).

Review of Discretionary Agency Decisions. — Former Chapter 150A does not preclude judicial review of agency decisions which are discretionary. High Rock Lake Ass'n v. North Carolina Envtl. Mgt. Comm'n, 51 N.C. App. 275, 276 S.E.2d 472 (1981).

Superior Court Review of Agency Decision. — In its role as an appellate court, the superior court reviews the agency's decision, but is not allowed to replace the agency's judgment with its own when there are two reasonably conflicting views, even though the court could have reached a different result upon de novo review. Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 103 N.C. App. 527, 406 S.E.2d 613 (1991).

Trial court properly applied the substantial evidence test in reviewing an administrative law judge's findings of fact and conclusions of law; the trial court also properly employed a de novo review of the question of the application of G.S. 150B-44. Teague v. N.C. DOT, 177 N.C. App. 215, 628 S.E.2d 395, 2006 N.C. App. LEXIS 863 (2006).

Trial court's finding that it was permitted to give appropriate weight to an agency's demonstrated expertise and consistency in applying various statutes was proper because, under G.S. 150B-51(c), the agency's consistently applied interpretation of the law should have been accorded the same deference it was entitled to under prior law. Rainey v. N.C. Dep't of Pub. Instruction, 361 N.C. 679, 652 S.E.2d 251, 2007 N.C. LEXIS 1096 (2007).

While a superior court, as part of its de novo review under G.S. 150B-51(c) of a state board of education decision to deny petitioner a salary increase under G.S. 115C-296.2(b), was entitled to defer to the board's expertise, petitioner was entitled to the salary increase on the merits. Rainey v. N.C. Dep't of Pub. Instruction, — N.C. App. —, 667 S.E.2d 237, 2008 N.C. App. LEXIS 1761 (2008).

Consistent with G.S. 150B-51(c) of the North Carolina Administrative Procedure Act, G.S. 150B-1 through 150B-52, a trial court is permitted to make its own findings of fact, even though neither party objected to the findings of the agency. Meza v. Div. of Soc. Servs., — N.C. App. —, 668 S.E.2d 571, 2008 N.C. App. LEXIS 1814 (2008).

Scope of Appellate Review. — In an action arising from allegations of age discrimination, while the superior court properly applied both a de novo review and the whole-record test to the respective issues on appeal under G.S. 150B-51(b) when it reviewed the final decision of the State Personnel Commission (SPC), it erred when it improperly substituted its judgment for that of the SPC under the whole-record test. Thus, remand was ordered for the superior court to affirm the SPC's final agency decision. Trotter v. N.C. HHS, 189 N.C. App. 655, 659 S.E.2d 749, 2008 N.C. App. LEXIS 712 (2008).

Review of Agency Decisions. — Under G.S. 150B-36(b), a final agency decision in a contested case hearing must be based on the official record prepared pursuant to G.S. 150B-37l; the agency is not permitted to hear new evidence, and if it does so, the trial court on review is required to reverse or remand the agency decision. Everhart & Assocs. v. Department of Env't, Health & Natural Resources, 127 N.C. App. 693, 493 S.E.2d 66 (1997), cert. denied, 347 N.C. 575, 502 S.E.2d 590 (1998).

Pursuant to G.S. 150B-51(b), in reviewing a final agency decision, a court may affirm the decision of the agency or remand a case for further proceedings. It may also reverse or modify the agency's decision if substantial rights of the petitioner may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are: (1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious, or an abuse of discretion. Sack v. N.C. State Univ., 155 N.C. App. 484, 574 S.E.2d 120, 2002 N.C. App. LEXIS 1610 (2002).

Where a petitioner contends an agency's decision was based on an error of law, de novo review by the trial court is proper; in turn, an appellate court examines a trial court's order regarding an agency decision for errors of law. Powell v. N.C. Crim. Justice Educ. & Training Stds. Comm'n, 165 N.C. App. 848, 600 S.E.2d 56, 2004 N.C. App. LEXIS 1525 (2004).

Nature of Error Dictates Manner of Review. — The nature of the error asserted by the party seeking review dictates the appropriate manner of review, so that if the appellant contends the agency's decision was affected by a legal error, de novo review is required, whereas if he contends the decision was not supported by the evidence or was arbitrary or capricious the whole record test is used. Dillingham v. North Carolina Dep't of Human Resources, 132 N.C. App. 704, 513 S.E.2d 823 (1999).

Administrative agency decisions may be reversed as arbitrary or capricious if they are patently in bad faith, or whimsical in the sense that they indicate a lack of fair and careful consideration or fail to indicate any course of reasoning and the exercise of judgment. Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 103 N.C. App. 527, 406 S.E.2d 613 (1991).

Constitutional Review Not Contemplated Absent Assertion of Constitutional Violations. — Former section 58-9.6(b)(1) (now G.S. 58-2-90(b)(1)) and subdivision (1) of former G.S. 150A-51 do not contemplate constitutional review where appellants, rate bureau and member companies, made no assertion that their rights were prejudiced because any of the findings or conclusions of the Commissioner of Insurance were in violation of any constitutional provisions. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

The superior court misperceived the proper scope of its review where the record nowhere demonstrated petitioners raised any constitutional issues in a manner requiring the superior court to pass on the constitutional validity of any assessment under G.S. 113A-64. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572 (1988), rev'd on other grounds, 324 N.C. 373, 379 S.E.2d 30 (1989).

Appellate Review of Improper Constitutional Consideration. — Although the trial court improperly considered a constitutional issue, where that court vacated the Department of Natural Resources and Community Development's (now the Department of Environment and Natural Resources) assessment based on an interpretation of N.C. Const., Art. IV, § 3, which the department properly challenged on appeal, the Court of Appeals would address that constitutional ground in the exercise of its supervisory jurisdiction. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572 (1988), rev'd on other grounds, 324 N.C. 373, 379 S.E.2d 30 (1989).

Official Acts Presumed to Be Made Lawfully and in Good Faith. — The members of the State Board of Assessment (now the Property Tax Commission) are public officers, and the Board's official acts are presumed to be made in good faith and in accordance with law; the burden is upon the party asserting otherwise to overcome such presumptions by competent evidence to the contrary. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

There is a rebuttable presumption that an administrative agency has properly performed its official duties, and while arbitrary and capricious agency action is itself prohibited by federal and state due process, any assertion of arbitrary agency action does not necessarily require the agency's action be reviewed for compliance with every other requirement under the state and federal Constitutions. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572 (1988), rev'd on other grounds, 324 N.C. 373, 379 S.E.2d 30 (1989).

In an action regarding the termination of state employment, G.S. 150B-51(b) authorized the trial court to reverse or modify an administrative agency's decision dismissing the employee's appeal if her substantial rights may have been prejudiced, because the agency's decision was (1) in violation of constitutional provisions, (2) in excess of the statutory authority or jurisdiction of the agency, (3) made upon unlawful procedure, (4) affected by other error of law, (5) unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-21 in view of the entire record as submitted, or (6) arbitrary or capricious. Woodburn v. N.C. State Univ., 156 N.C. App. 549, 577 S.E.2d 154, 2003 N.C. App. LEXIS 305 (2003), cert. denied, 357 N.C. 470, 584 S.E.2d 296 (2003).

Authority of Judge on Review. — The authority of the judge when reviewing the actions of administrative agencies is limited to affirming, modifying, reversing or remanding the decision of the agency. Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

Under former Chapter 150A, a reviewing court's power to affirm the decision of the agency and to remand for further proceedings is not circumscribed. Harrell v. Wilson County Schools, 58 N.C. App. 260, 293 S.E.2d 687 (1982), cert. denied, 460 U.S. 1012, 103 S. Ct. 1251, 75 L. Ed. 2d 481 (1983).

It is unnecessary for a trial judge who reviews administrative action under former G.S. 150A-51 to explain the reasons for his decision to affirm such action. Area Mental Health v. Speed, 69 N.C. App. 247, 317 S.E.2d 22, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

Standards for Judicial Review. — The standards for judicial review set forth in this section, the whole record test, govern appeals from decisions of city or county boards of education. Warren v. New Hanover County Bd. of

Educ., 104 N.C. App. 522, 410 S.E.2d 232 (1991).

Final sentence of G.S. 150B-34(c) exempts certificate of need proceedings from the newly amended portions of G.S. 150B-51 and requires an appellate court to review those decisions under the previous version of G.S. 150B-51. Total Renal Care of N.C., LLC v. N.C. HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005).

Because a reinstated employee's petition for judicial review of the final decision by the North Carolina State Personnel Commission alleged errors of law, the appropriate standard of review for the superior court under G.S. 150B-51(b) was de novo. Early v. County of Durham, Dep't of Soc. Servs., — N.C. App. —, 667 S.E.2d 512, 2008 N.C. App. LEXIS 1818 (2008).

Standards for Judicial Review Must Be Clearly Applied. — A case involving the denial of Rehabilitation Act benefits under P.L. 102-569, 42 U.S.C. § 701, et seq. as amended, was remanded to the trial court so it could: (1) advance its own characterization of the issues presented by petitioner; and (2) clearly delineate the standards of review, detailing the standards used to resolve each distinct issue raised. Hedgepeth v. North Carolina Div. of Servs. for the Blind, 142 N.C. App. 338, 543 S.E.2d 169, 2001 N.C. App. LEXIS 94 (2001).

Trial Court Applied Correct Standard of Review. — Trial court's judgment reversing a decision of the state personnel commission was affirmed where the trial court applied the correct standard of review in determining that a state employee had not been demoted for just cause. Lewis v. N.C. Dep't of Corr., 153 N.C. App. 449, 570 S.E.2d 231, 2002 N.C. App. LEXIS 1168 (2002), aff'd, 357 N.C. 246, 580 S.E.2d 694 (2003).

When a licensee sought administrative review under G.S. 150B-51(b) of an agency's decision to fine him for violations of underground storage tank regulations, he properly bore the burden of proving he was entitled to relief, as he initiated the proceeding. Overcash v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 635 S.E.2d 442, 2006 N.C. App. LEXIS 2168 (2006).

Statement of Mandatory Standard of Review Not Required. — Although an agency contended that a trial court's failure to state the standard of review which the trial court applied to its review of an agency decision precluded meaningful appellate review, the agency decision rejected an administrative law judge's decision and thus, under G.S. 150B-51(c), de novo review was mandatory and the trial court was not required to state the standard. Cape Med. Transp., Inc. v. N.C. HHS, 162 N.C. App. 14, 590 S.E.2d 8, 2004 N.C. App. LEXIS 17 (2004).

Review of Statutory Interpretation. — As incorrect statutory interpretation by an agency constitutes an error of law under subdivision (b)(4), when the issue on appeal is whether the state agency erred in interpreting a statutory term, an appellate court may substitute its own judgment for that of the agency and employ de novo review. Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

This Section Distinguished from Review Pursuant to § 150B-52. — When an appellate court reviews the decision of a lower court (as opposed to when it reviews an administrative agency's decision on direct appeal), the scope of review to be applied under G.S. 150B-52 is the same as it is for other civil cases. Henderson v. North Carolina Dep't of Human Resources, 91 N.C. App. 527, 372 S.E.2d 887 (1988).

Unlawful Delegation of Power to Make Final Decision. — Where the Commissioner of Insurance delegated to his appointed hearing officer the power to make the final agency decision, the Commissioner made an unlawful delegation of his powers. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983).

Application in Insurance Ratemaking Cases. — While former G.S. 150A-51 is the controlling judicial review statute in insurance ratemaking cases, to the extent that former G.S. 58-9.6(b) (now G.S. 58-2-90(b)) adds to the judicial review function, and in light of the virtually identical thrust of the two statutes, the Supreme Court would apply the review standards of both former G.S. 58-9.6 (now G.S. 58-2-90) and former G.S. 150A-51, where such standards could be construed as being consistent with each other. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

Since the scope of review provided in Article 4 of former Chapter 150A is substantially broader than that provided by former G.S. 58-9.3 (now G.S. 58-2-75), the scope of judicial review applicable to a denial by the Commissioner of Insurance of a plan by a domestic insurance company to reorganize under a holding company structure was that provided for in Article 4. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

Along with Former §§ 58-9 Through 58-27 (Now §§ 58-2-40 Through 58-2-200) Insofar as Compatible. — While former Chapter 150A controls judicial review of insurance ratemaking procedures, the review provisions of former G.S. 58-9 through 58-27 (now G.S. 58-2-40 through 58-2-200) should also apply insofar as those provisions are compatible with the act. State ex rel. Comm'r of Ins. v.

North Carolina Rate Bureau, 300 N.C. 460, 269 S.E.2d 538 (1980).

Application of Review Standards in This Section and § 58-2-75. — Although G.S. 58-2-75 and this section are comparable, this section is the controlling judicial review statute; however, to the extent that G.S. 58-2-75 added to and was consistent with the judicial review function of this section, the court would apply the review standards articulated in both statutes. North Carolina Reinsurance Facility v. Long, 98 N.C. App. 41, 390 S.E.2d 176 (1990).

When De Novo Review Permissible. — When the issue on appeal is whether a state agency erred in interpreting a statutory term, an appellate court may freely substitute its judgment for that of the agency and employ de novo review. Brooks v. Rebarco, Inc., 91 N.C. App. 459, 372 S.E.2d 342 (1988).

Although the interpretation of a statute by an agency created to administer that statute is traditionally accorded some deference by appellate courts, those interpretations are not binding. Bashford v. North Carolina Licensing Bd., 107 N.C. App. 462, 420 S.E.2d 466 (1992).

When a petitioner alleges that an agency violated his constitutional rights, the Supreme Court will undertake de novo review. Meads v. North Carolina Dep't of Agric., 349 N.C. 656, 509 S.E.2d 165 (1998).

Because appellees alleged in their petition for judicial review that appellants erroneously construed State and federal law regarding the relation between Medicare and Medicaid, the court would review the matter de novo and was free to substitute its judgment for that of the administrative agency. Duke Univ. Medical Ctr. v. Bruton, 134 N.C. App. 39, 516 S.E.2d 633 (1999).

Superior Court properly exercised de novo review in examining the substantive issues raised by an appeal of the superior court's reversal of a final agency decision. County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002), cert. dismissed, 357 N.C. 62, 579 S.E.2d 387 (2003).

Only in contested cases commenced on or after 1 January 2001, where the agency fails to adopt the ALJ's initial decision, does G.S. 150B-51(c) require a reviewing court to engage in independent fact-finding; otherwise, where the findings of fact of an administrative agency are supported by substantial competent evidence in view of the entire record, they are binding on a reviewing court, and the reviewing court lacks authority on de novo review to make alternative findings at variance with the agency's decision. N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004).

Judicial review of a North Carolina Psychology Board decision to place a psychological associate's license on probation, under G.S. 90-270.4(g), was de novo as the case concerned the Psychology Board's authority under G.S. 90-270.4(g); further, the psychological assistant, who maintained both a licensed psychological associate's practice and a licensed professional counselor's practice, could continue his licensed professional counselor's practice without interference from the Psychology Board pursuant to G.S. 90-332.1(c) as long as he remained a qualified licensed professional counselor and did not promote that practice by holding himself out as a licensed psychological associate. Trayford v. N.C. Psychology Bd., 174 N.C. App. 118, 619 S.E.2d 862, 2005 N.C. App. LEXIS 2286 (2005), aff'd, 360 N.C. 396, 627 S.E.2d 462 (2006).

De Novo Review Permits New Findings of Fact. — Under G.S. 150B-51(c), a trial court is permitted to make its own findings of fact, even though neither party objects to the administrative findings. Cape Med. Transp., Inc. v. N.C. HHS, 162 N.C. App. 14, 590 S.E.2d 8, 2004 N.C. App. LEXIS 17 (2004).

This section, as recodified in 1985, and prior to its amendment in 1987, did not require the reviewing court to set out its reasons for reversal or modification, unlike under former G.S. 150A-51, which required the reviewing court to set out written reasons only when reversing or modifying an agency decision. Shepherd v. Consolidated Judicial Retirement Sys., 89 N.C. App. 560, 366 S.E.2d 604 (1988).

Appellate Court Review Not Limited to Superior Court's Findings and Conclusions. — Appellate court's review is limited to assignments of error to the superior court's order, but is not required to accord any particular deference to the superior court's findings and conclusions concerning the Commission's actions. Watson v. North Carolina Real Estate Comm'n, 87 N.C. App. 637, 362 S.E.2d 294 (1987), cert. denied, 321 N.C. 746, 365 S.E.2d 296 (1988).

Court of Appeals merely determines whether an administrative decision has a rational basis in the evidence. North Carolina Dep't of Cor. v. Hodge, 99 N.C. App. 602, 394 S.E.2d 285 (1990).

Reasons for Not Adopting Recommendations. — Subsection (a) did not entitle petitioner to a review of whether the specific reasons the State Personnel Commission did not adopt the recommended decision were correct; only that they be stated. Oates v. North Carolina Dep't of Cor., 114 N.C. App. 597, 442 S.E.2d 542 (1994).

Review by Court of Appeals. — Court of Appeal's review of trial court's consideration of final agency decision is to determine whether trial court failed to properly apply review standard articulated in this section. Review is further limited to exceptions and assignments of error set forth to order of superior court. Walker v. North Carolina Dep't of Human Resources, 100 N.C. App. 498, 397 S.E.2d 350 (1990), cert. denied, 328 N.C. 98, 402 S.E.2d 430 (1991).

Generally, review by Court of Appeals is limited by properly presented assignments of error and exceptions. North Carolina Dep't of Cor. v. Hodge, 99 N.C. App. 602, 394 S.E.2d 285 (1990).

The scope of review applied by an appellate court when reviewing a decision of a lower court is the same as in other civil cases. Thus, the appellate court's review is limited to determining whether the superior court committed any errors of law. Crowell Constructors, Inc. v. North Carolina Dep't of Env't, Health & Natural Resources, 107 N.C. App. 716, 421 S.E.2d 612 (1992), cert. denied, 333 N.C. 343, 426 S.E.2d 704 (1993).

The standard of review for an appellate court upon an appeal from an order of the superior court affirming or reversing an administrative agency decision is the same standard of review as that employed by the superior court. Dorsey v. UNC-Wilmington, 122 N.C. App. 58, 468 S.E.2d 557 (1996).

Appellate court remanded the trial court's judgment that the Director of the North Carolina Division of Water Quality acted lawfully when he excluded certain wood chip mills from coverage under a storm water general permit because the record did not show that the trial court applied the proper standard of review. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 162 N.C. App. 467, 591 S.E.2d 549, 2004 N.C. App. LEXIS 178 (2004).

Standards of Review Contrasted. — Proper standard to be applied on appeal depends on the issues presented. If it is alleged that the agency's decision was based on an error of law, then de novo review is required. Review of whether an agency decision is supported by evidence, or is arbitrary or capricious, requires the court to employ the whole record test. Walker v. North Carolina Dep't of Human Resources, 100 N.C. App. 498, 397 S.E.2d 350 (1990), cert. denied, 328 N.C. 98, 402 S.E.2d 430 (1991).

Inadequate Notice. — Agency decision dismissing a state employee was reversed where the reviewing court found that notice given to the employee did not provide her with adequate notice of the reasons for her dismissal. Owen v. UNC-G Physical Plant, 121 N.C. App. 682, 468 S.E.2d 813 (1996), discretionary review improvidently allowed, 344 N.C. 73, 477 S.E.2d 33 (1996).

Procedural safeguards within G.S. 126-35(a) serve as a prophylactic protection against summary dismissal of state employees based on inadequate notice. Owen v. UNC-G Physical Plant, 121 N.C. App. 682, 468 S.E.2d 813 (1996), discretionary review improvidently allowed, 344 N.C. 73, 477 S.E.2d 33 (1996).

The statute does not require a point-by-point refutation of the Administrative Law Judge's findings and conclusions. Webb v. North Carolina Dep't of Env't, Health & Natural Resources, Coastal Resources Comm'n, 102 N.C. App. 767, 404 S.E.2d 29 (1991).

Where the commission's findings discussed the flawed premises of the recommended decision of the Administrative Law Judge, those findings were adequate, quite specific indeed, and went to the heart of the case. Webb v. North Carolina Dep't of Env't, Health & Natural Resources, Coastal Resources Comm'n, 102 N.C. App. 767, 404 S.E.2d 29 (1991).

Remand Required for Insufficiency of Findings Under Former § 150A-36. — Where, on review of an order of a state commission permitting petitioner savings and loan association to open a branch office, the trial court determined that the commission's findings were insufficient in that they lacked the specificity required by former G.S. 150A-36, the trial court should never have reached the question of whether reversal under subdivision (5) of former G.S. 150A-51 was appropriate, as remand for further findings was essential upon concluding that the findings of record presented an inadequate basis for review. Under no applicable theory of law would it be appropriate for the trial court to reverse the commission and substitute its judgment for the commission's. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979).

Findings of Fact Binding Where Respondent Failed to Object. — Respondent did not object to adopted findings of fact at superior court level. Findings of fact were binding, therefore, at that appellate level, and binding for purposes of review by the Court of Appeals. Walker v. North Carolina Dep't of Human Resources, 100 N.C. App. 498, 397 S.E.2d 350 (1990), cert. denied, 328 N.C. 98, 402 S.E.2d 430 (1991).

Review of Decisions of Boards of Education. — The appropriate standard of judicial review for reviewing administrative decisions of boards of education is set forth in former G.S. 150A-51. Faulkner v. New Bern-Craven County Bd. of Educ., 65 N.C. App. 483, 309 S.E.2d 548 (1983), rev'd on other grounds, 311 N.C. 42, 316 S.E.2d 281 (1984).

When a school superintendent recommended to a school board that a probationary teacher's contract, which had expired, not be renewed, and the board adopted that recommendation, a court could reverse or modify that decision only if the teacher's substantial rights might have been prejudiced because the board's findings, inferences, conclusions, or decisions were: (1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence admissible under G.S. 150B-29(a), G.S. 150B-30, or G.S. 150B-31 in view of the entire record as submitted; or (6) arbitrary, capricious, or an abuse of discretion because judicial review of that decision was governed by G.S. 150B-51. Moore v. Charlotte-Mecklenburg Bd. of Educ., 185 N.C. App. 566, 649 S.E.2d 410, 2007 N.C. App. LEXIS 1936 (2007).

Applicable standard of judicial review for an appeal of a school board decision is set forth in former G.S. 150A-51. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

The standards for judicial review set forth in former G.S. 150A-51 are applicable to appeals from school boards to the courts, since no other statute provides guidance for judicial review of school board decisions and in the interest of uniformity in reviewing administrative board decisions. Faulkner v. New Bern-Craven County Bd. of Educ., 311 N.C. 42, 316 S.E.2d 281 (1984).

While G.S. 150B-2(1) expressly excepts local boards of education from the coverage of the Administrative Procedure Act, nonetheless the standards for judicial review set forth in this section apply to appeals from school boards. Evers v. Pender County Bd. of Educ., 104 N.C. App. 1, 407 S.E.2d 879 (1991), aff'd, 331 N.C. 380, 416 S.E.2d 3 (1992).

Appeal to Superior Court. — A teacher who is denied a promotion under the career ladder program may appeal to the superior court after exhausting his administrative remedies by appealing to the local board of education. Warren v. New Hanover County Bd. of Educ., 104 N.C. App. 522, 410 S.E.2d 232 (1991).

As to review of teacher dismissal proceedings under former § 150A-51 and former § 115-142, see Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977).

Review of a decision by Commission of Motor Vehicles is governed by former G.S. 150A-51. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Basis for Review of Personnel Commission Decision. — While respondent's and petitioner's motions for summary judgment in superior court on review of State Personnel Commission's decision were procedurally incorrect, the trial court's order allowing respondent's motion for summary judgment was tantamount to affirming the full Commission's ruling, and sufficiently set forth a reviewable basis for affirming such ruling. Parks v. Department of Human Resources, 79 N.C. App. 125, 338 S.E.2d 826, cert. denied, 316 N.C. 553, 344 S.E.2d 8, 345 S.E.2d 383 (1986).

Review of Discrimination Cases. — In a discrimination case, the appellate court reviews the ALJ's opinion, as adopted without alteration by the State Personnel Commission, the local appointing authority, and trial court, for errors of law, violations of constitutional provisions, and whether the decision was arbitrary and capricious or an abuse of discretion; all other errors are deemed abandoned. Enoch v. Alamance County Dep't of Soc. Servs., 164 N.C. App. 233, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Because the Office of Administrative Hearings had jurisdiction to hear an African-American employee's contested case of racial discrimination, the employee met his prima facie burden of discrimination, the trial court applied the appropriate standard of review, and the employee presented sufficient evidence of unequal treatment of an African-American employee compared to a Caucasian employee, and established that the Hatch Act was a pretext for discrimination, a finding of discrimination by an administrative law judge was upheld. Corbett v. N.C. DMV, 190 N.C. App. 113, 660 S.E.2d 233, 2008 N.C. App. LEXIS 897 (2008).

Review of Award of Industrial Commission. — In passing upon an appeal from an award of the Industrial Commission, the reviewing court is limited in its inquiry to two questions of law, namely: (1) Whether or not there was any competent evidence before the Commission to support its findings of fact; and (2) Whether or not the findings of fact of the Commission justified its legal conclusions and decision. Waggoner v. North Carolina Bd. of Alcoholic Control, 7 N.C. App. 692, 173 S.E.2d 548 (1970).

Cancellation of Truck Driver School License. — Superior court had jurisdiction pursuant to this section to review order cancelling petitioner's truck driver school license, even though petitioner waived its right to an evidentiary hearing. Charlotte Truck Driver Training School, Inc. v. North Carolina DMV, 95 N.C. App. 209, 381 S.E.2d 861 (1989).

Rescission of Coastal Area Management Act Development Permit. — Trial court's rescission of Coastal Area Management Act Development permit was affirmed where there were a variety of ecological concerns, potential environmental damage, and interference with public access to and use of the affected waters, and the whole record showed that the only basis for issuing the permit was that it would make the public waters adjacent to the permittee's condominium project more convenient for the permittee's use. Ballance v. North Carolina Coastal Resources Comm'n, 108 N.C. App. 288, 423 S.E.2d 815 (1992), petition for reconsideration dismissed, 333 N.C. 789, 431 S.E.2d 21 (1993).

Determining Unnecessary Hardship from Coastal Area Management Act. — To determine whether a parcel of property suffers from unnecessary hardship due to strict application of the Coastal Area Management Act, the Coastal Resources Commission must make findings of fact and conclusions of law as to the impact of the Act on the landowner's ability to make reasonable use of his property. Williams v. North Carolina Dep't of Env't & Natural Resources, 144 N.C. App. 479, 548 S.E.2d 793, 2001 N.C. App. LEXIS 526 (2001).

Superior court is without power to order the North Carolina Board of Alcoholic Control to issue a permit to petitioners, but can order the Board to exercise its discretion in accordance with law. Waggoner v. North Carolina Bd. of Alcoholic Control, 7 N.C. App. 692, 173 S.E.2d 548 (1970).

Evidence held incompetent to sustain a finding of the State Board of Alcoholic Control that a licensee sold beer to a minor or failed to give his licensed premises proper supervision. Thomas v. State Bd. of Alcoholic Control, 258 N.C. 513, 128 S.E.2d 884 (1963).

Safety training violation by contractor was considered "serious" where the evidence showed that (1) the lack of proper training created the possibility of an accident, and (2) if an accident did occur, there was a substantial probability of death or serious physical harm. Associated Mechanical Contractors v. Payne, 342 N.C. 825, 467 S.E.2d 398 (1996).

Statement of Reasons for Reversing Decision Held Adequate. — Statement of superior court judge in reversing Hearing Aid Dealers and Fitters Board's conclusions that the facts found by the agency failed "to support its conclusion of law that the petitioner was grossly incompetent within the purview of G.S. 93D-13(a)(2)" constituted a succinct and adequate statement of its reasons for reversing the agency's decision. Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

Evidence Supported Conclusion State Funds Had Been Misused. — Where petitioner had charged a number of personal calls to the State Telephone Network credit card he had been issued, there was substantial evidence before the commission to support its conclusion that petitioner had willfully and repeatedly misused state funds. White v. North Carolina Dep't of Envtl., Health, & Natural Resources, 117 N.C. App. 545, 451 S.E.2d 376 (1995).

Error of Law. — An error of law, as that term is used in subdivision (b)(4), exists if a conclusion of law entered by the administrative agency is not supported by the findings of fact entered by the agency or if the conclusion of law does not support the decision of the agency. Brooks v. Ansco & Assocs., 114 N.C. App. 711, 443 S.E.2d 89 (1994).

Termination After Refusing Improper Drug Testing Held Error. — Public employees met their burden of showing their employer did not have reasonable cause to ask them to submit to drug testing, and they could not be terminated for refusing to submit to testing, because they could not be required to waive a constitutionally protected right, and their termination was affected by error of law, under G.S. 150B-51(b)(4). Best v. Dep't of Health & Human Servs., 149 N.C. App. 882, 563 S.E.2d 573, 2002 N.C. App. LEXIS 396 (2002), aff'd sub nom. Best v. HHS, 356 N.C. 430, 571 S.E.2d 586 (2002).

The standard of review to be applied by the reviewing court depends on the issues presented on appeal. Homoly v. North Carolina State Bd. of Dental Exmrs., 125 N.C. App. 127, 479 S.E.2d 215 (1997).

Offers of Proof Properly Considered. — Commission properly considered offers of proof included in the record since offers of proof are part of the official record under G.S. 150B-37(a)(2) and not "new evidence" violative of subsection (a) of this section. Everhart & Assocs. v. Department of Env't, Health & Natural Resources, 127 N.C. App. 693, 493 S.E.2d 66 (1997), cert. denied, 347 N.C. 575, 502 S.E.2d 590 (1998).

A trial court and the Court of Appeals improperly engaged in independent fact-finding on de novo review by reversing the State Personnel Commission's decision to adopt an ALJ's findings of fact that the North Carolina Department of Environment and Natural Resources lacked just cause to demote a park ranger and to order that the ranger be reinstated; the courts had no authority to determine that such just cause did in fact exist. N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004).

Remand Not Required Following Lower Court's Application of Improper Standard of Review. — Erroneous application of the de novo standard of review by both a trial court and the Court of Appeals, where those reviewing courts engaged in improper independent fact-finding, did not require a remand since the Supreme Court of North Carolina could reasonably determine from the record how the de novo standard should have been applied and whether the party challenging the agency's decision was entitled to a reversal or modification of that decision under the applicable provisions of G.S. 150B-51(b). N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004).

Substantial evidence in the record supported an administrative law judge's find-

ings and its dismissal of a day care's petition for a contested case hearing where the day care filed nothing in nearly six months following the filing of the petition, despite receiving several orders from the administrative law judge to file and serve prehearing statements and other responses to motions; there was no requirement that the final decision be served personally or by certified mail, and in any event, the day care did not deny receiving a copy of the final decision and its substantial rights were not prejudiced in any way. Lincoln v. N.C. HHS, Nutrition Branch, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

Remand Not Required After Standard of Review Not Stated. — Where an appellate court was able to review whether or not a decision by the board of education regarding a long-term suspension should have been upheld, it was not reversible error where the trial court failed to specify the standard of review utilized. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Remand Required Following Lower Court's Application of Improper Standard of Review. — Under G.S. 150B-51(c), where an agency did not adopt an administrative law judge's decision, the reviewing court was required to review the official record, de novo, and make findings of fact and conclusions of law; a case was remanded where, in an officer disciplinary case where the state personnel commission rejected the decision of an administrative law judge who had ruled that the officer be reinstated, the trial court applied whole record test and did not make findings of fact or conclusion of law. Royal v. Dep't of Crime Control & Pub. Safety, 175 N.C. App. 242, 622 S.E.2d 723, 2005 N.C. App. LEXIS 2751 (2005).

Applied in Johnson v. Division of Social Servs., 89 N.C. App. 481, 366 S.E.2d 538 (1988); Meyers v. Department of Human Resources, 92 N.C. App. 193, 374 S.E.2d 280 (1988); Wilson v. State Residence Comm., 92 N.C. App. 355, 374 S.E.2d 415 (1988); Uicker v. North Carolina State Bd. of Dental Exmrs., 93 N.C. 295, 378 S.E.2d 45 (1989); Cameron v. North Carolina State Bd. of Dental Exmrs., 95 N.C. App. 332, 382 S.E.2d 864 (1989); Boston v. North Carolina Private Protective Servs. Bd., 96 N.C. App. 204, 385 S.E.2d 148 (1989); Cowan v. North Carolina Private Protective Servs. Bd., 98 N.C. App. 498, 391 S.E.2d 217 (1990); Gadson v. North Carolina Mem. Hosp., 99 N.C. App. 169, 392 S.E.2d 618 (1990); Huntington Manor v. North Carolina Dep't of Human Resources, 99 N.C. App. 52, 393 S.E.2d 104 (1990); Evans v. North Carolina Dep't of Crime Control & Pub. Safety, 101 N.C. App. 108, 398 S.E.2d 880 (1990); McKoy v. Department of Human Resources, 101 N.C. App. 356, 399 S.E.2d 382 (1991); Jarrett v. North Carolina Dep't of Cultural Resources, 101 N.C. App. 475, 400 S.E.2d 66 (1991); Brooks v. Austin Berryhill Fabricators, Inc., 102 N.C. App. 212, 401 S.E.2d 795 (1991); Cramer Mt. Country Club & Properties, Inc. v. North Carolina Dep't of Natural Resources & Community Dev., Div. of Land Resources, 102 N.C. App. 236, 401 S.E.2d 851 (1991); GMC v. Carolina Truck & Body Co., 102 N.C. App. 349, 402 S.E.2d 139 (1991); North Carolina DOT v. Davenport, 102 N.C. App. 476, 402 S.E.2d 477 (1991); Ford v. North Carolina Dep't of Env't, Health, & Natural Resources, 107 N.C. App. 192, 419 S.E.2d 204 (1992); Teague v. Western Carolina Univ., 108 N.C. App. 689, 424 S.E.2d 684 (1993); In re E.I. DuPont de Nemours & Co., 109 N.C. App. 435, 428 S.E.2d 195 (1993); Ellis v. North Carolina Crime Victims Comp. Comm'n, 111 N.C. App. 157, 432 S.E.2d 160 (1993); Chesapeake Microfilm, Inc. v. North Carolina Dep't of Env't, Health & Natural Resources, 111 N.C. App. 737, 434 S.E.2d 218 (1993); King v. North Carolina Envtl. Mgt. Comm'n, 112 N.C. App. 813, 436 S.E.2d 865 (1993); Fain v. State Residence Comm., 117 N.C. App. 541, 451 S.E.2d 663 (1995); Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995); In re Ramseur, 120 N.C. App. 521, 463 S.E.2d 254 (1995); Walker v. Board of Trustees, 348 N.C. 63, 499 S.E.2d 429 (1998); Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772, 1999 N.C. App. LEXIS 899 (1999); Burke Health Investors, L.L.C. v. North Carolina Dep't of Human Resources, 135 N.C. App. 568, 522 S.E.2d 96, 1999 N.C. App. LEXIS 1180 (1999); Johnston Health Care Ctr., L.L.C. v. North Carolina Dep't of Human Res., 136 N.C. App. 307, 524 S.E.2d 352, 2000 N.C. App. LEXIS 20 (2000); Christenbury Surgery Ctr. v. North Carolina Health & Human Servs., 138 N.C. App. 309, 531 S.E.2d 219, 2000 N.C. App. LEXIS 611 (2000); Living Centers-Southeast, Inc. v. North Carolina Health & Human Servs., 138 N.C. App. 572, 532 S.E.2d 192, 2000 N.C. App. LEXIS 782 (2000); Kea v. Dep't of Health & Human Servs., 153 N.C. App. 595, 570 S.E.2d 919, 2002 N.C. App. LEXIS 1246 (2002); Pittman v. N.C. Dep't of Health & Human Servs., 155 N.C. App. 268, 573 S.E.2d 628, 2002 N.C. App. LEXIS 1579 (2002); Shackleford-Moten v. Lenoir County Dep't of Soc. Servs., 155 N.C. App. 568, 573 S.E.2d 767, 2002 N.C. App. LEXIS 1630 (2002); Campbell v. N.C. DOT - DMV, 155 N.C. App. 652, 575 S.E.2d 54, 2003 N.C. App. LEXIS 24 (2003); Watkins v. N.C. State Bd. of Dental Exam'rs, 358 N.C. 190, 593 S.E.2d 764 (2004); Comm'r of Labor v. Weekley Homes, L.P., 169 N.C. App. 17, 609 S.E.2d 407 (2005); Davis v. Macon County Bd. of Educ., 178 N.C. App. 646, 632 S.E.2d 590, 2006 N.C. App. LEXIS 1644 (2006); Kelly v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 664 S.E.2d 625, 2008 N.C. App. LEXIS 1544 (2008);

Granger v. Univ. of N.C. at Chapel Hill, — N.C. App. —, 678 S.E.2d 715, 2009 N.C. App. LEXIS 1064 (July 7, 2009).

Cited in Beaufort County Schs. v. Roach, 114 N.C. App. 330, 443 S.E.2d 339; Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383; In re Cobb, 102 N.C. App. 466, 402 S.E.2d 475; Elliot ex rel. Casstevens v. Department of Human Resources, 115 N.C. App. 613, 446 S.E.2d 809; Charter Pines Hosp. v. North Carolina Dep't of Human Resources, 83 N.C. App. 161, 349 S.E.2d 639 (1986); Harris v. Flaherty, 90 N.C. App. 110, 367 S.E.2d 364 (1988); In re Medical Ctr., 91 N.C. App. 107, 370 S.E.2d 597 (1988); In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 324 N.C. 373, 379 S.E.2d 30 (1989); Brooks v. Dover Elevator Co., 94 N.C. App. 139, 379 S.E.2d 707 (1989); Taborn v. Hammonds, 324 N.C. 546, 380 S.E.2d 513 (1989); In re Coastal Resources Comm'n, 96 N.C. App. 502, 386 S.E.2d 92 (1989); North Buncombe Ass'n of Concerned Citizens v. Rhodes, 100 N.C. App. 24, 394 S.E.2d 462 (1990); White v. North Carolina State Bd. of Exmrs. of Practicing Psychologists, 97 N.C. App. 144, 388 S.E.2d 148 (1990); Gummels v. North Carolina Dep't of Human Resources, 97 N.C. App. 245, 388 S.E.2d 223 (1990); Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990); Tay v. Flaherty, 100 N.C. App. 51, 394 S.E.2d 217 (1990); Cafiero v. North Carolina Bd. of Nursing, 102 N.C. App. 610, 403 S.E.2d 582 (1991); Conservation Council v. Haste, 102 N.C. App. 411, 402 S.E.2d 447 (1991); Pamlico Tar River Found., Inc. v. Coastal Resources Comm'n, 103 N.C. App. 24, 404 S.E.2d 167 (1991); Correll v. Division of Social Servs., 103 N.C. App. 562, 406 S.E.2d 633 (1991); Woodlief v. North Carolina State Bd. of Dental Exmrs., 104 N.C. App. 52, 407 S.E.2d 596 (1991); Harding v. North Carolina Dep't of Cor., 106 N.C. App. 350, 416 S.E.2d 587 (1992); Best v. North Carolina State Bd. of Dental Exmrs., 108 N.C. App. 158, 423 S.E.2d 330 (1992); Urback v. East Carolina Univ., 105 N.C. App. 605, 414 S.E.2d 100 (1992); Vass v. Board of Trustees, 108 N.C. App. 251, 423 S.E.2d 796 (1992); Professional Food Servs. Mgt., Inc. v. North Carolina Dep't of Admin., 109 N.C. App. 265, 426 S.E.2d 447 (1993); In re McCrary, 112 N.C. App. 161, 435 S.E.2d 359 (1993); In re Freeman, 109 N.C. App. 100, 426 S.E.2d 100 (1993); Brooks v. BCF Piping, Inc., 109 N.C. App. 26, 426 S.E.2d 282 (1993); In re Huang, 110 N.C. App. 683, 431 S.E.2d 541 (1993); McCollough v. North Carolina State Bd. of Dental Exmrs., 111 N.C. App. 186, 431 S.E.2d 816 (1993); Davis v. North Carolina Dep't of Human Resources, 110 N.C. App. 730, 432 S.E.2d 132 (1993); Harding v. North Carolina Dep't of Cor., 334 N.C. 414, 432 S.E.2d 298 (1993); Cauthen v. North Carolina Dep't of Human Resources, 112 N.C. App. 238, 435 S.E.2d 81 (1993); Davenport v. North Carolina DOT, 3 F.3d 89 (4th Cir. 1993); Amanini v. N.C. Dep't of Human Resources, 114 N.C. App. 668, 443 S.E.2d 114 (1994); White v. North Carolina Dep't of Cor., 117 N.C. App. 521, 451 S.E.2d 876 (1995); Air-A-Plane Corp. v. North Carolina Dep't of Env't, 118 N.C. App. 118, 454 S.E.2d 297 (1995); Laurel Wood of Henderson, Inc. v. North Carolina Dep't of Human Resources, 117 N.C. App. 601, 452 S.E.2d 334 (1995); Ritter v. Department of Human Resources, 118 N.C. App. 564, 455 S.E.2d 901 (1995); Rusher v. Tomlinson, 119 N.C. App. 458, 459 S.E.2d 285 (1995); North Carolina Dep't of Cors. v. Myers, 120 N.C. App. 437, 462 S.E.2d 824 (1995); Gainey v. North Carolina Dep't of Justice, 121 N.C. App. 253, 465 S.E.2d 36 (1996); Presbyterian-Orthopaedic Hosp. v. North Carolina Dep't of Human Resources, 122 N.C. App. 529, 470 S.E.2d 831 (1996); Cates v. North Carolina Dep't of Justice, 121 N.C. App. 243, 465 S.E.2d 64 (1996); Cape Fear Mem. Hosp. v. North Carolina Dep't of Human Resources, 121 N.C. App. 492, 466 S.E.2d 299 (1996); Fuqua v. Rockingham County Bd. of Social Servs., 125 N.C. App. 66, 479 S.E.2d 273 (1996); Andrews v. Crump, 984 F. Supp. 393 (W.D.N.C. 1996); Beneficial N.C., Inc. v. State ex rel. N.C. State Banking Comm'n, 126 N.C. App. 117, 484 S.E.2d 808 (1997); Yates Constr. Co. v. Commissioner of Labor, 126 N.C. App. 147, 484 S.E.2d 430 (1997); Bellsouth Telecommunications, Inc. v. North Carolina Dep't of Revenue, 126 N.C. App. 409, 485 S.E.2d 333 (1997); McHugh v. North Carolina Dep't of Envtl., Health & Natural Resources, 126 N.C. App. 469, 485 S.E.2d 861 (1997); Elliott v. North Carolina Psychology Bd., 126 N.C. App. 453, 485 S.E.2d 882 (1997); McHugh v. North Carolina Dep't of Envtl., Health & Natural Resources, 126 N.C. App. 469, 485 S.E.2d 861 (1997); Norman v. Cameron, 127 N.C. App. 44, 488 S.E.2d 297 (1997); Dew v. State ex rel. N.C. DMV, 127 N.C. App. 309, 488 S.E.2d 836 (1997); Elliott v. North Carolina Psychology Bd., 348 N.C. 230, 498 S.E.2d 616 (1998); Britt v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 348 N.C. 573, 501 S.E.2d 75 (1998); Hubbard v. State Constr. Office, 130 N.C. App. 254, 502 S.E.2d 652, 1998 N.C. App. LEXIS 930 (1998); Darryl Burke Chevrolet, Inc. v. Aikens, 131 N.C. App. 31, 505 S.E.2d 581 (1998); D.G. Matthews & Son v. State ex rel. McDevitt, 131 N.C. App. 520, 508 S.E.2d 331 (1998); North Carolina State Bar v. Barrett, 132 N.C. App. 110, 511 S.E.2d 15 (1999); Avant v. Sandhills Ctr. for Mental Health, Dev. Disabilities & Substance Abuse Servs., 132 N.C. App. 542, 513 S.E.2d 79 (1999); Dialysis Care of N.C., LLC v. Department of Health & Human Servs., 137 N.C. App. 638, 529 S.E.2d 257, 2000 N.C. App. LEXIS 491 (2000); In re Ramseur, 139 N.C. App. 442, 533

S.E.2d 295, 2000 N.C. App. LEXIS 896 (2000); Williams v. North Carolina Dep't of Env't & Natural Resources, 144 N.C. App. 479, 548 S.E.2d 793, 2001 N.C. App. LEXIS 526 (2001); Wallace v. Board of Trustees, 145 N.C. App. 264, 550 S.E.2d 552, 2001 N.C. App. LEXIS 650 (2001); Smith v. Richmond County Bd. of Educ., 150 N.C. App. 291, 563 S.E.2d 258, 2002 N.C. App. LEXIS 488 (2002); Leeks v. Cumberland County Mental Health Developmental Disability & Substance Abuse Facility, 154 N.C. App. 71, 571 S.E.2d 684, 2002 N.C. App. LEXIS 1415 (2002); Deadwood, Inc. v. N.C. Dep't of Revenue, 356 N.C. 407, 572 S.E.2d 103, 2002 N.C. LEXIS 1114 (2002); Watkins v. N.C. State Bd. of Dental Exam'rs, 157 N.C. App. 367, 579 S.E.2d 510, 2003 N.C. App. LEXIS 746 (2003); Kings Mt. Bd. of Educ. v. N.C. State Bd. of Educ., 159 N.C. App. 568, 583 S.E.2d 629, 2003 N.C. App. LEXIS 1509 (2003); Luna v. Div. of Soc. Servs., 162 N.C. App. 1, 589 S.E.2d 917, 2004 N.C. App. LEXIS 51 (2004); Anson County Citizens Against Chem. Toxins in Underground Storage v. N.C. Dep't of Env't & Natural Res., 167 N.C. App. 341, 606 S.E.2d 350, 2004 N.C. App. LEXIS 2171 (2004); York Oil Co. v. N.C. Dep't of Env't, 164 N.C. App. 550, 596 S.E.2d 270, 2004 N.C. App. LEXIS 966 (2004); In re Lustgarten, 177 N.C. App. 663, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006); Good Hope Health Sys., L.L.C. v. N.C. HHS, 189 N.C. App. 534, 659 S.E.2d 456, 2008 N.C. App. LEXIS 700 (2008).

II. EXCEEDING STATUTORY AUTHORITY OR JURISDICTION.

Prohibitions in Former § 150A-51(2) and (3) Distinguished. — The prohibition against agency action "in excess of statutory authority" in former G.S. 58-9.6(b)(2) (now G.S. 58-2-90(b)(2)) and subdivision (2) of former G.S. 150A-51 refers to the general authority of an administrative agency properly to discharge its statutorily assigned responsibilities, while the prohibition against agency action "made upon unlawful procedure" in former G.S. 58-9.6(b)(3) (now G.S. 58-2-90(b)(3)) and subdivision (3) of former G.S. 150A-51 refers to the procedures employed by the agency in discharging its statutorily authorized acts. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

Order Not In Excess of Statutory Powers. — An order of the Commissioner of Insurance that data submitted in a ratemaking case be audited was not in excess of his statutory powers as contemplated by former G.S. 58-9.6(b)(2) (now G.S. 58-2-90(b)(2)) or subdivision (2) of former G.S. 150A-51. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

Appellate court found that the superior court, which initially reviewed a decision of the Board of Pharmacy reprimanding a permitee pharmacy chain for negligent acts of its licensed pharmacists, had not erred in finding no arbitrary or capricious action by the Board in choosing a sanction; case law already made it clear that the chain could be vicariously responsible for the pharmacists' actions, and so any sanction listed as applicable to a pharmacist could also be applied against the chain. CVS Pharm., Inc. v. N.C. Bd. of Pharm., 162 N.C. App. 495, 591 S.E.2d 567 (2004).

The trial court properly applied the whole record test, where it found that the North Carolina Department of Environment and Natural Resources and the Environmental Management Commission did not exceed their discretion and authority under G.S. 143-211(c), 143-215.107(a)(1), (3), and 143-215.114A(a)(1) in finding that the contractor had open burning piles within 1,000 feet from a dwelling. MW Clearing & Grading, Inc. v. N.C. Dep't of Env't & Natural Res., 171 N.C. App. 170, 614 S.E.2d 568, 2005 N.C. App. LEXIS 1210 (2005), cert. denied, 360 N.C. 65, 623 S.E.2d 585 (2005), rev'd in part, 360 N.C. 392, 628 S.E.2d 379 (2006) (as to finding violations rather than one).

Assessment Based upon Penalty Factors Reasonably Related to Act's Enforcement. — Department's assessment was not based upon the secretary's "absolute" discretion, but instead upon numerous penalty factors reasonably related to the act's administration and enforcement, which resulted in a fair and reasoned penalty assessment. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572 (1988), rev'd on other grounds, 324 N.C. 373, 379 S.E.2d 30 (1989).

Exceeding Authority Did Not Prejudice Competitor. — While the Department of Health and Human Services technically exceeded its authority and jurisdiction and committed errors of law by awarding a certificate of need to establish a new dialysis center on the basis of an application that was never shown to be conforming to all applicable criteria, its actions did not prejudice the applicant's competitor because the alleged mistakes and omissions, made under a settlement agreement, were corrected by final agency decision. Bio-Medical Applications of N.C., Inc. v. North Carolina Dep't of Human Resources, 136 N.C. App. 103, 523 S.E.2d 677, 1999 N.C. App. LEXIS 1372 (1999).

III. UNLAWFUL PROCEDURE.

Attempt to Establish Rule Violated Former § 150A-51(3). — Attempt by Commissioner of Insurance to establish a rule requiring audited data in an insurance ratemaking hearing was "made upon unlawful procedure" as contemplated by former G.S. 58-9.6(b) (3) (now G.S. 58-2-90(b)(3)) and subdivision (3) of former G.S. 150A-51, where the Commissioner sought to establish the rule on an ad hoc adjudication basis rather than following normal North Carolina Administrative Procedure Act rulemaking requirements, since the process of rulemaking would have presented no danger that its use would frustrate the effective accomplishment of the agency's functions. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

Verification Procedure Unsupported by Federal Regulations Violated Subdivision (b)(3). — Federal regulations govern verification of information concerning a food stamp recipient by a State agency. And thus where the verification procedure used by a county was unsupported by the federal regulations, it was in violation of subdivision (b)(3) of this section. Tay v. Flaherty, 90 N.C. App. 346, 368 S.E.2d 403, cert. denied, 323 N.C. 370, 373 S.E.2d 556 (1988).

When a school board does not follow proper procedures in reviewing a case manager's report and recommendation concerning the termination of a career employee, it is bound by the case manager's findings of fact, pursuant to G.S. 150B-51(b)(3). Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

Unlawful Suspension Procedure. — School board's policy which allowed a student facing long-term suspension to have an adult who was not a parent with him at a hearing on that suspension, but prevented the adult from being an attorney, or from questioning witnesses, making a statement, or otherwise representing the student, violated the student's substantial due process rights regarding his protected property interest in obtaining an education, and reversal of such suspension was required under G.S. 150B-51(b). In re Roberts, 150 N.C. App. 86, 563 S.E.2d 37, 2002 N.C. App. LEXIS 389 (2002), cert. granted, 356 N.C. 163, 569 S.E.2d 282 (2002), cert. denied, — U.S. —, 124 S. Ct. 103, 157 L. Ed. 2d 38 (2003).

Ex Parte Communication. — Ex parte communication by a director for an administrative agency to counsel for a hospital following a contested case hearing in the preparation of a final agency decision violated G.S. 150B-35 and constituted an error of law under G.S. 150B-51(b) as an oncology treatment center's substantial right to notice and a genuine opportunity to be heard was prejudiced by the process through which the agency issued its final decision. Mission Hosps., Inc. v. N.C. HHS, 189 N.C. App. 263, 658 S.E.2d 277, 2008 N.C. App. LEXIS 548 (2008).

IV. "WHOLE RECORD" TEST.

Whole Record Test Retained. — Although the 1985 amendment of former G.S. 150A-51 deleted the phrase "in view of the entire record as submitted," the amendment maintained the whole record test for judicial review under the Administrative Procedure Act. In re K-mart Corp., 319 N.C. 378, 354 S.E.2d 468 (1987), decided prior to 1987 amendment which reinserted the phrase "in view of the entire record as submitted"; Bashford v. North Carolina Licensing Bd., 107 N.C. App. 462, 420 S.E.2d 466 (1992).

Function of "Whole Record" Test. — The "whole record" test is not a tool of judicial intrusion; instead, it merely gives a reviewing court the capability to determine whether an administrative decision has a rational basis in the evidence. North Carolina Dep't of Cor. v. Gibson, 58 N.C. App. 241, 293 S.E.2d 664 (1982), rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983).

"Whole Record" Test. — In reviewing an agency's decision, the superior court applies the "whole record" test, which requires the examination of all competent evidence to determine if the administrative agency's decision is supported by substantial evidence. Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 103 N.C. App. 527, 406 S.E.2d 613 (1991).

The whole record test is applied when determining whether a decision is arbitrary and capricious. Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 103 N.C. App. 527, 406 S.E.2d 613 (1991).

The applicable scope of review is the "whole record" test. When the test is applied, the reviewing court is required to take into account all of the evidence, including that which supports the findings and contradictory evidence. Crowell Constructors, Inc. v. North Carolina Dep't of Env't, Health & Natural Resources, 107 N.C. App. 716, 421 S.E.2d 612 (1992), cert. denied, 333 N.C. 343, 426 S.E.2d 704 (1993).

Under G.S. 150B-51(b)(5), upon judicial appeal from an agency, the trial court may reverse or modify an agency's decision if it is unsupported by substantial evidence in view of the entire record as submitted; the "whole record" test requires the reviewing court to examine all competent evidence to determine whether the agency decision is supported by substantial evidence, and the administrative findings of fact, if supported by substantial evidence in view of the entire record, are conclusive upon a reviewing court. Farber v. N.C. Psychology Bd., 153 N.C. App. 1, 569 S.E.2d 287, cert. denied, 356 N.C. 612, 574 S.E.2d 679 (2002).

When an assigned error contended that an agency violated G.S. 150B-51(b)(1), (2), (3), or (4), a trial court engaged in de novo review, under which the trial court considered the matter anew and freely substituted its own judgment for the agency's, but with respect to G.S. 150B-51(b)(5) or (6), the reviewing court applied the "whole record test," under which it could not substitute its judgment for the agency's as between two conflicting views, even though it could reasonably have reached a different result had it reviewed the matter de novo; rather, the court had to examine all the record evidence to determine whether there was substantial evidence to justify the agency's decision, and substantial evidence was relevant evidence a reasonable mind might accept as adequate to support a conclusion. Overcash v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 635 S.E.2d 442, 2006 N.C. App. LEXIS 2168 (2006).

"Whole Record" Test Inappropriate. — The trial court erred in applying the "Whole Record" test where the appellant/ex-police officer alleged that the appellee/civil service board incorrectly applied the law in terminating his employment. The trial court was required to review that decision "de novo." Jordan v. Charlotte Civil Serv. Bd., 137 N.C. App. 575, 528 S.E.2d 927, 2000 N.C. App. LEXIS 416 (2000).

"Substantial Evidence" Defined. — Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It is more than a scintilla or a permissible inference. Lackey v. North Carolina Dep't of Human Resources, 306 N.C. 231, 293 S.E.2d 171 (1982).

Substantial evidence is that which a reasonable mind would regard as adequately supporting a particular conclusion. Walker v. North Carolina Dep't of Human Resources, 100 N.C. App. 498, 397 S.E.2d 350 (1990), cert. denied, 328 N.C. 98, 402 S.E.2d 430 (1991).

Standard of judicial review set forth in former § 150A-51(5) is known as the "whole record" test and must be distinguished from both de novo review and the "any competent evidence" standard of review. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977); North Carolina A & T Univ. v. Kimber, 49 N.C. App. 46, 270 S.E.2d 492 (1980); Overton v. Goldsboro City Bd. of Educ., 51 N.C. App. 303, 276 S.E.2d 458, aff'd, 304 N.C. 312, 283 S.E.2d 495 (1981); Dailey v. North Carolina State Bd. of Dental Exmrs., 60 N.C. App. 441, 299 S.E.2d 473, rev'd on other grounds, 309 N.C. 710, 309 S.E.2d 219 (1983); Burrow v. Randolph County Bd. of Educ., 61 N.C. App. 619, 301 S.E.2d 704 (1983); Faulkner v. New Bern-Craven County Bd. of Educ., 65 N.C. App. 483, 309 S.E.2d 548 (1983), rev'd on other grounds, 311 N.C. 42, 316 S.E.2d 281 (1984); Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892 (1984).

As distinguished from the "any competent evidence" test and a de novo review, the "whole record" test "gives a reviewing court the capability to determine whether an administrative decision has a rational basis in the evidence." Bennett v. Hertford County Bd. of Educ., 69 N.C. App. 615, 317 S.E.2d 912, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

In reviewing an administrative decision to determine whether the decision is supported by substantial evidence, the appellate court must apply the "whole record" test. Leiphart v. North Carolina School of Arts, 80 N.C. App. 339, 342 S.E.2d 914, cert. denied, 318 N.C. 507, 349 S.E.2d 862 (1986), decided under former § 150A-51.

In determining whether reversal or modification of an administrative decision is appropriate under former G.S. 150A-51(5), the test applied to the evidence must be the "whole record" test. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979).

Court Must Consider All Evidence. — The applicable scope of review of the decision of an administrative agency is the "whole record" test. In applying the whole record test, the court must consider all the evidence, including that which supports the findings and contradictory evidence. Mount Olive Home Health Care Agency, Inc. v. N.C. Dep't of Human Resources, 78 N.C. App. 224, 336 S.E.2d 625 (1985).

The "whole record" test requires the court to take into account all the evidence, both that which supports the decision of the Commission and that which in fairness detracts from it. Leiphart v. North Carolina School of Arts, 80 N.C. App. 339, 342 S.E.2d 914, cert. denied, 318 N.C. 507, 349 S.E.2d 862 (1986).

Court of Appeals review of an administrative agency's decision is governed by the Administrative Procedure Act, and court may reverse or modify the agency's decision only if it violates one of five statutory grounds. Court will determine if the agency's findings, inferences, conclusions, or decisions are affected by error of law or unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted. North Carolina Dep't of Cor. v. Hodge, 99 N.C. App. 602, 394 S.E.2d 285 (1990).

And Must Examine the "Whole Record" to Determine If Substantial Evidence Supports Agency's Decision. — The reviewing court is required to examine all of the competent evidence, pleadings, etc., which comprise the "whole record" to determine if there is substantial evidence in the record to support the administrative tribunal's findings and conclusions. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C.

App. 493, 259 S.E.2d 373 (1979); Henderson v. North Carolina Dep't of Human Resources, 91 N.C. App. 527, 372 S.E.2d 887 (1988).

To determine whether an agency's findings are supported by substantial evidence, the reviewing court applies the "whole record" test. Employment Sec. Comm'n v. Peace, 122 N.C. App. 313, 470 S.E.2d 63 (1996), review granted, 345 N.C. 640, 483 S.E.2d 706 (1997).

Including Contradictory and Conflicting Evidence. — The "whole record" rule set forth in former G.S. 150A-51(5) requires the court, in determining the substantiality of evidence supporting the board's decision, to take into account whatever in the record fairly detracts from the weight of the board's evidence. Under the whole evidence rule, the court may not consider the evidence which in and of itself justifies the board's result, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977); Chesnutt v. Peters, 300 N.C. 359, 266 S.E.2d 623 (1980); McCormick v. Peters, 48 N.C. App. 365, 269 S.E.2d 168 (1980); North Carolina A & T Univ. v. Kimber, 49 N.C. App. 46, 270 S.E.2d 492 (1980); In re Land & Mineral Co., 49 N.C. App. 608, 272 S.E.2d 878 (1980), cert. denied, 302 N.C. 397, 279 S.E.2d 351 (1981); Overton v. Goldsboro City Bd. of Educ., 51 N.C. App. 303, 276 S.E.2d 458, aff'd, 304 N.C. 312, 283 S.E.2d 495 (1981); North Carolina Dep't of Cor. v. Gibson, 58 N.C. App. 241, 293 S.E.2d 664 (1982); Faulkner v. New Bern-Craven County Bd. of Educ., 65 N.C. App. 483, 309 S.E.2d 548 (1983), rev'd on other grounds, 311 N.C. 42, 316 S.E.2d 281 (1984); Crump v. Board of Educ., 79 N.C. App. 372, 339 S.E.2d 483, cert. denied, 317 N.C. 333, 346 S.E.2d 137 (1986).

Consideration of the sufficiency of the evidence to support a decision under the "whole record" test does not allow the Supreme Court to replace the agency's judgment where there are two reasonably conflicting views. However, the Supreme Court is required to take into account the evidence supporting the agency's decision as well as the evidence that detracts from the weight of that evidence and its decision. In re Broad & Gales Creek Community Ass'n, 300 N.C. 267, 266 S.E.2d 645 (1980).

The "whole record" test properly takes into account the specialized expertise of the staff of an administrative agency, and thus does not allow the reviewing court to substitute its own judgment for that of the agency. It does require, however, that the court take into account evidence in the record which fairly detracts from the weight of the evidence the agency relied upon to make its decision. High Rock Lake Ass'n v. North Carolina Envtl. Mgt. Comm'n, 51 N.C. App. 275, 276 S.E.2d 472 (1981).

And Testimony of All Witnesses. — Under the whole record test, judge reviewing an administrative decision must consider the complete testimony of all the witnesses. In re Environmental Mgt. Comm'n, 53 N.C. App. 135, 280 S.E.2d 520 (1981).

The reviewing court must take into account contradictory evidence or evidence from which conflicting inferences could be drawn and determine whether the administrative decision had a rational basis in the evidence. Henderson v. North Carolina Dep't of Human Resources, 91 N.C. App. 527, 372 S.E.2d 887 (1988).

Trial court's failure to remand a final agency decision to the department where the department failed to provide a rationale for rejecting the administrative law judge's recommendation was reversible error since the trial court could not have made a reasonable determination as to whether the department's conclusions were supported by substantial evidence. D.B. v. Blue Ridge Ctr., 173 N.C. App. 401, 619 S.E.2d 418, 2005 N.C. App. LEXIS 2020 (2005).

Judgment Held to Meet Requirements of Section. — Where the judgment recited that the court had reviewed the record and matters on file and had considered the oral arguments and relevant statutory provisions, and based on these considerations, the judge concluded that declaratory ruling was not erroneous as a matter of law and was due to be affirmed, the judgment met all the requirements of this section and was clearly sufficient as a matter of law. Shepherd v. Consolidated Judicial Retirement Sys., 89 N.C. App. 560, 366 S.E.2d 604 (1988).

The trial court applied the "whole record test," the correct standard of review, to determine the sufficiency of the evidence, thus, no further findings were necessary where the court determined that the Real Estate Commission properly refused to license an applicant on the basis that he did not possess the requisite integrity because he had been convicted of soliciting a crime against nature. Hodgkins v. North Carolina Real Estate Comm'n, 130 N.C. App. 626, 504 S.E.2d 789 (1998).

Trial court properly applied the whole record test as the standard of review to a decision by the North Carolina Environmental Management Commission to approve a dam and reservoir project, and the the trial court properly concluded that there was substantial competent evidence to support the Commission's determination that the North Carolina Department of Environment and Natural Resources provided reasonable assurance that the State of North Carolina's water quality standards would not be violated by the proposed project. Deep River Citizens' Coalition v. N.C. Dep't of Env't & Natural Res., 165 N.C. App. 206, 598 S.E.2d 565, 2004 N.C. App. LEXIS 1155 (2004).

Although the trial court did not specify the standard of review it applied, detail its findings of fact, or delineate its conclusions of law, appellate review of the whole record and transcripts showed no grounds existed to warrant reversal of the State Personnel Commission's final decision to reinstate a trainee with the Department of Revenue who was terminated during a probationary period because of discrimination based upon his religious practices. Vanderburg v. N.C. Dep't of Revenue, 168 N.C. App. 598, 608 S.E.2d 831, 2005 N.C. App. LEXIS 451 (2005).

Certified public accounting firm failed to show that the North Carolina State Board of Certified Public Accountant Examiners erred by denying the accounting firm's proposed name change as the Board had authority under G.S. 93-12 to regulate name changes, and the Board's decision that the proposed name change had a capacity or tendency to deceive, in violation of N.C. Admin. Code. Tit. 21, r. 8N.0307, was supported by substantial evidence under the whole record test. McGladrey & Pullen, LLP v. N.C. State Bd. of CPA Exam'rs, 171 N.C. App. 610, 615 S.E.2d 339, 2005 N.C. App. LEXIS 1274 (2005), cert. denied, notice of appeal dismissed, 360 N.C. 65, 621 S.E.2d 627 (2005), aff'd, 360 N.C. 399, 627 S.E.2d 461 (2006).

Substantial evidence on the whole record supported the Environmental Management Commission's finding that a contractor had nine open burning piles that were not 1,000 feet from a dwelling; the contractor presented no evidence showing that the open burning piles were located on the same property as the nearby residence. MW Clearing & Grading, Inc. v. N.C. Dep't of Env't & Natural Res., 171 N.C. App. 170, 614 S.E.2d 568, 2005 N.C. App. LEXIS 1210 (2005), cert. denied, 360 N.C. 65, 623 S.E.2d 585 (2005), rev'd in part, 360 N.C. 392, 628 S.E.2d 379 (2006) (as to finding violations rather than one).

Substantial evidence existed to support findings by administrative law judge and trial court that employee who was not promoted by a state agency met her burden to show that the agency intentionally discriminated against her, where the employee presented evidence from which the finder of fact could conclude she was more qualified than the successful applicant based on her education, seniority, overall record with the agency, outstanding grades on performance reports, and higher scores on the interviewing and screening tests. Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

Insufficiency of an agency's findings does not relieve trial court of responsibility for considering all competent evidence in the whole record to determine whether substantial evidence is present to support the commission's conclusions. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979).

Conflicting Evidence. — When evidence is conflicting, the standard for judicial review of administrative decisions is that of the "whole record" test. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980); Lackey v. North Carolina Dep't of Human Resources, 306 N.C. 231, 293 S.E.2d 171 (1982).

The "whole record" test does not allow the reviewing court to replace the board's judgment as between two reasonable conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. Wilkie v. North Carolina Wildlife Resources Comm'n, 118 N.C. App. 475, 455 S.E.2d 871 (1995).

The whole record test is not a tool of judicial intrusion; instead it merely gives a reviewing court the capability to determine whether an administrative decision has a rational basis in the evidence. Thus, the task before the trial court is to consider all the evidence, both that which supports the decision of the board and that which detracts from it. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

The "whole record" test is not a tool of judicial intrusion and the court is not permitted to replace the agency's judgment with its own even though the court might rationally justify reaching a different conclusion. Floyd v. North Carolina Dep't of Commerce, 99 N.C. App. 125, 392 S.E.2d 660 (1990).

The "whole record" standard of review is not intended to encourage "judicial duplication" of administrative decision-making. Watson v. North Carolina Real Estate Comm'n, 87 N.C. App. 637, 362 S.E.2d 294 (1987), cert. denied, 321 N.C. 746, 365 S.E.2d 296 (1988).

Mathematically Inconsistent Testimony. — Commissioner's derived figure for underwriting profit would not be based on "substantial evidence" if it relied on mathematically inconsistent testimony. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 96 N.C. App. 220, 385 S.E.2d 510 (1989).

Court May Not Replace Agency's Judgment with Its Own. — The "whole record" test set forth in subdivision (5) of former G.S. 150A-51 does not allow the reviewing court to replace the board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977); Chesnutt v. Peters, 300 N.C. 359, 266 S.E.2d 623 (1980);

North Carolina A & T Univ. v. Kimber, 49 N.C. App. 46, 270 S.E.2d 492 (1980); Overton v. Goldsboro City Bd. of Educ., 51 N.C. App. 303, 276 S.E.2d 458, aff'd, 304 N.C. 312, 283 S.E.2d 495 (1981); Faulkner v. New Bern-Craven County Bd. of Educ., 65 N.C. App. 483, 309 S.E.2d 548 (1983), rev'd on other grounds, 311 N.C. 42, 316 S.E.2d 281 (1984); Crump v. Board of Educ., 79 N.C. App. 372, 339 S.E.2d 483, cert. denied, 317 N.C. 333, 346 S.E.2d 137 (1986).

The "whole record" test is distinguishable from both de novo review and the "any competent evidence" standard of review. Under the "whole record" test, the reviewing court cannot replace the board's judgment between two reasonably conflicting views, even though the court could have reached a different conclusion had the matter been before it de novo. Boehm v. North Carolina Bd. of Podiatry Exmrs., 41 N.C. 567, 255 S.E.2d 328, cert. denied, 298 N.C. 294, 259 S.E.2d 298 (1979); North Carolina Dep't of Cor. v. Gibson, 58 N.C. App. 241, 293 S.E.2d 664 (1982), rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983).

The whole record test does not allow the reviewing court to replace the board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been heard before it de novo. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979); Dailey v. North Carolina State Bd. of Dental Exmrs., 60 N.C. App. 441, 299 S.E.2d 473, rev'd on other grounds, 309 N.C. 710, 309 S.E.2d 219 (1983); Meads v. North Carolina Dep't of Agric., 349 N.C. 656, 509 S.E.2d 165 (1998).

No court may weigh evidence presented to the State board and substitute its evaluation of the evidence for that of the board. In re Appeal of Amp, Inc., 287 N.C. 547, 215 S.E.2d 752 (1975); North Carolina Dep't of Cor. v. Gibson, 58 N.C. App. 241, 293 S.E.2d 664 (1982), rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983).

The mere existence of conflicting evidence does not permit the reviewing court to weigh the evidence and substitute its determination for that of the administrative agency. The credibility of the witnesses and the resolution of conflicts in their testimony is a matter for the agency, not a reviewing court. Dailey v. North Carolina State Bd. of Dental Exmrs., 60 N.C. App. 441, 299 S.E.2d 473, rev'd on other grounds, 309 N.C. 710, 309 S.E.2d 219 (1983).

The whole record test does not allow the reviewing court to replace the board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. On the other hand, the whole record rule requires the court, in determining the substantiality of evidence supporting the board's decision, to take into account whatever in the record fairly detracts from the weight of the board's evidence. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

The "whole record" test does not permit the reviewing court to substitute its judgment for the agency's as between two reasonably conflicting views; however, it does require the court to take into account both the evidence justifying the agency's decision and the contradictory evidence from which a different result could be reached. Floyd v. North Carolina Dep't of Commerce, 99 N.C. App. 125, 392 S.E.2d 660 (1990).

In applying the whole record test, reasonable but conflicting views emerge from the evidence, the Court of Appeals cannot replace the agency's judgment with its own. It must, however, take into account whatever in the record fairly detracts from the weight of the evidence which supports the decision. Ultimately it must determine whether the decision has a rational basis in the evidence. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985); In re Kozy, 91 N.C. App. 342, 371 S.E.2d 778 (1988), cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

The reviewing court may reverse or modify an agency's decision if the substantial rights of the petitioner may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are unsupported by substantial evidence in view of the entire record as submitted; this standard, the "whole record" test, does not allow the reviewing court to replace the agency's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. Mendenhall v. North Carolina Dep't of Human Resources, 119 N.C. App. 644, 459 S.E.2d 820 (1995).

The whole record test does not permit a reviewing court to replace the Disciplinary Hearing Commission's judgment as between two reasonably conflicting views, even though the court may have justifiably reached a different decision. North Carolina State Bar v. Maggiolo, 124 N.C. App. 22, 475 S.E.2d 727 (1996).

Although the trial court impermissibly replaced the administrative law judge's judgment of the credibility of two witnesses with its own, this error was not prejudicial, as this finding had no bearing on the ultimate issue in the case. N.C. Dep't of Crime Control & Pub. Safety v. Greene, 172 N.C. App. 530, 616 S.E.2d 594, 2005 N.C. App. LEXIS 1805 (2005).

Weight and Sufficiency of Evidence. — It is for the administrative agency to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

Agency's Findings of Fact Supported by Competent Evidence Are Conclusive. — The law of this State regarding the respective roles of the administrative agency and the reviewing court concerning conflicting evidence is premised on the notion that the credibility of the witnesses and the resolution of conflicts in their testimony is for the agency, not a reviewing court, and the findings of the agency supported by competent evidence, are conclusive upon judicial review of the agency's order. Dailey v. North Carolina State Bd. of Dental Exmrs., 60 N.C. App. 441, 299 S.E.2d 473, rev'd on other grounds, 309 N.C. 710, 309 S.E.2d 219 (1983).

When the judge of the superior court sits as an appellate court to review the decision of an administrative agency pursuant to this section, the findings of fact made by the administrative agency, if supported by competent, material and substantial evidence when viewed on the record as a whole, are conclusive upon the reviewing court. North Carolina Dep't of Cor. v. Gibson, 58 N.C. App. 241, 293 S.E.2d 664 (1982), rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983).

The administrative findings of fact made by the State Board of Opticians, if supported by competent, material and substantial evidence in view of the entire record, are conclusive upon a reviewing court, and not within the scope of its reviewing powers. In re Berman, 245 N.C. 612, 96 S.E.2d 836 (1957); In re Hawkins, 17 N.C. App. 378, 194 S.E.2d 540, cert. denied and appeal dismissed, 283 N.C. 393, 196 S.E.2d 275, cert. denied, 414 U.S. 1001, 94 S. Ct. 355, 38 L. Ed. 2d 237 (1973); Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

When the North Carolina Department of Health and Human Resources, Division of Facility Services, Certificate of Need Section, denied a health system's request for a certificate of need (CON) to build a hospital and granted a CON to the system's competitor, competent evidence supported the agency's finding that, even though the system had previously been granted a CON for a different project, the system was not going to complete that project, and a requirement that the agency "consider" the previously granted CON did not require the agency to find that the system would successfully develop the previously approved project and factor a hypothetical completed hospital into the agency's determinations regarding the population to be served and the possibility of duplicative services. Good Hope Health Sys., LLC v. N.C. HHS, 188 N.C. App. 68, 658 S.E.2d 665, 2008 N.C. App. LEXIS 79 (2008).

And Court May Not Make Findings at Variance Therewith. — Upon a review of an order of the Property Tax Commission, the superior court is without authority to make findings at variance with the findings of the board when the findings of the board are supported by competent, material and substantial evidence. In re Appeal of Amp, Inc., 287 N.C. 547, 215 S.E.2d 752 (1975). See also, In re Property of Pine Raleigh Corp., 258 N.C. 398, 128 S.E.2d 855 (1963); In re Appeal of Reeves Broadcasting Corp., 273 N.C. 571, 160 S.E.2d 728 (1968).

Where the superior court, at the instance of appellant, found additional facts which the Tax Review Board had, although requested, refused to make, the court, in making these findings, weighed the evidence and substituted its evaluation of the evidence for that of the Board, and in so doing it exceeded its right of review. Clark Equip Co. v. Johnson, 261 N.C. 269, 134 S.E.2d 327 (1964).

The court cannot substitute its judgment for that of the State Board of Opticians in making findings of fact. In re Berman, 245 N.C. 612, 96 S.E.2d 836 (1957).

When Court May Make Findings at Variance with Agency's. — Where the reviewing court determines that the findings of the agency are not supported by substantial evidence, the court may make findings of variance with those of the agency. Scroggs v. North Carolina Criminal Justice Educ. & Training Stds. Comm'n, 101 N.C. App. 699, 400 S.E.2d 742 (1991).

Finding of Fact in Accordance with Uncontradicted Evidence. — When an administrative body finds a fact in accordance with uncontradicted evidence, little remains for the reviewing court to do, other than to find no error in the administrative body's election to accord the necessary weight and credibility to the testimony. North Carolina Dep't of Cor. v. Gibson, 58 N.C. App. 241, 293 S.E.2d 664 (1982), rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983).

Agency's Judgment Must Be Affirmed If Supported by Competent Evidence. — The reviewing court, while obligated to consider evidence of record that detracts from the administrative ruling, is not free to weigh all of the evidence and reach its own conclusions on the merits. If, after all the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand. Substantial evidence in this context has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Dailey v. North Carolina State Bd. of Dental Exmrs., 60 N.C. App. 441, 299 S.E.2d 473, rev'd on other grounds, 309 N.C. 710, 309 S.E.2d 219 (1983).

The "whole record" test requires the board's judgment to be affirmed if upon consideration of the whole record as submitted, the facts found by the board are supported by competent, material and substantial evidence, taking into account any contradictory evidence, or evidence from which conflicting inferences could be drawn. Boehm v. North Carolina Bd. of Podiatry Exmrs., 41 N.C. App. 567, 255 S.E.2d 328, cert. denied, 298 N.C. 294, 259 S.E.2d 298 (1979).

The reviewing court, while obligated to consider evidence of record that detracts from the administrative ruling, is not free to weigh all of the evidence and reach its own conclusions of the merits. If, after the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979).

Agency findings of fact are conclusive if, upon review of the whole record, they are supported by competent, material, and substantial evidence. Humana Hosp. Corp. v. North Carolina Dep't of Human Resources, 81 N.C. App. 628, 345 S.E.2d 235 (1986).

Trial court erred in applying the whole record test when it reversed a decision of the North Carolina Mining Commission, approving the North Carolina Department of Environment and Natural Resources' (DENR) revocation of petitioner's permit under the Mining Act of 1971, G.S. 74-46 et seq., because, contrary to the trial court's conclusion, the DENR presented substantial evidence that petitioner's mining operations had a significant adverse impact on the Appalachian Trail where a witness testified to the impact, the DENR presented three analyses submitted by their consultants reporting in detail the negative impacts, and petitioner submitted no evidence to the contrary. Clark Stone Co. v. N.C. Dep't of Env't & Natural Res., 164 N.C. App. 24, 594 S.E.2d 832, 2004 N.C. App. LEXIS 726 (2004), appeal dismissed, 358 N.C. 731, 603 S.E.2d 878 (2004).

North Carolina State Banking Commission's decision denying the applications for licensure for two mortgage loan officers was upheld on appeal and the lower court did not err by relying upon a previously entered default judgment against the two since the applicants' prior mortgage company had been awarded that default judgment for engaging in a pattern of business operations regarding false and misleading representations, and they were not exempt from the qualifications of G.S. 53-243.05 [see now 53-244.010 et seq.]pursuant to a grandfather provision, because that grandfather provision only exempted already licensed persons from taking the three-year training requirement. State ex rel. Banking Comm'n Against Weiss v. N.C. Comm'r of Banks, 174 N.C. App. 78, 620 S.E.2d 540, 2005 N.C. App. LEXIS 2282 (2005).

Because evidence before the State Personnel Commission (SPC) showed that, based on her interview and writing sample scores, an employee ranked lowest out of all of the applicants for a position, and two of the panel members testified that based on these rankings, they considered the chosen candidate to be the best applicant for that position, the trial court did not err when it failed to limit its application of the whole-record test in determining whether the decision of the SPC was supported by substantial competent evidence. N.C. Dep't of Crime Control & Pub. Safety v. Greene, 172 N.C. App. 530, 616 S.E.2d 594, 2005 N.C. App. LEXIS 1805 (2005).

But May Be Reversed If Not So Supported. — Upon review, the decision of the Board of Alcoholic Control may be reversed if substantial rights of the licensee are prejudiced by administrative findings, inferences, conclusions or decisions which are not supported by competent, material, and substantial evidence in view of the entire record as submitted. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

An agency decision may be reversed or modified if it is unsupported by substantial evidence, in view of the entire record as submitted. This standard of review is known as the "whole record" test. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Trial court properly reversed order of state board of elections ordering a new election based on the fact that it did not agree with the propriety of the county board's reliance on the affidavits of ineligible voters to show the effect of those votes on the outcome of the election, as the established law of the state holds that such testimony is proper. In re Harper, 118 N.C. App. 698, 456 S.E.2d 878 (1995).

Findings of Fact by Judge Not Required. — When the judge of the superior court sits as an appellate court to review the decision of an administrative agency pursuant to former G.S. 150A-51, the judge is not required to make findings of fact. Faulkner v. North Carolina State Hearing Aid Dealers and Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

Findings Based on Unsworn Statement Not Authorized. — Absent stipulations or waiver, a zoning board of adjustment may not base critical findings of fact as to the existence or nonexistence of a nonconforming use on unsworn statements. Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963).

Applicability of "Whole Record" Test to Insurance Ratemaking Proceedings. — The "whole record" test is applicable to judicial review of administrative decisions in North Carolina, and both former G.S. 58-9.6(b)(5) (now G.S. 58-2-90(b)(5)) and former G.S. 150A-51(5) put forth that test as a proper standard of judicial review of insurance ratemaking proceedings. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

The superior court did not exceed the bounds of appropriate judicial review by engaging in independent fact finding when it reversed the Commissioner of Motor Vehicle's decision upon a review of the whole record, upon finding that the findings of fact and conclusions of law set out by the Commissioner were unsupported by substantial evidence. Star Auto. Co. v. Saab-Scania of Am., Inc., 84 N.C. App. 531, 353 S.E.2d 260 (1987).

Record Devoid of Substantial Evidence. — Department of Human Resources erred in terminating spousal support where the record is clear that nursing home resident wanted his "money" but the record was devoid of any substantial evidence that he intended to apply all of his income, exceeding his personal needs allowance, to his nursing care, rather than towards the support of his wife. English v. Britt, 121 N.C. App. 320, 465 S.E.2d 48 (1996).

Substantial evidence supported school board's decision to suspend a student for disruptive behavior, hazing, and disorderly conduct where the student pulled a classmate's pants down in front of other people, exposing her buttocks; the principal testified that having the student present while others talked about the incident could have created a disruption to the learning environment. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Review of disciplinary hearing decisions of the Disciplinary Hearing Commission is governed by the "whole record" test. North Carolina State Bar v. Maggiolo, 124 N.C. App. 22, 475 S.E.2d 727 (1996).

Improper Application. — Although a trial court properly reviewed, under G.S. 150B-51(b)(5), a final agency decision of a contested case petition filed pursuant to G.S. 150B-23, the trial court incorrectly applied the standard of review by making its own findings of fact on unappealed issues. Town of Wallace v. N.C. Dep't of Env't & Natural Res., Div. of Water Quality, 160 N.C. App. 49, 584 S.E.2d 809, 2003 N.C. App. LEXIS 1673 (2003).

Substantial Evidence Supported Administrative Law Judge's Recommended Decision. — Substantial evidence supported an administrative law judge's (ALJ) ruling that the North Carolina Department of Transportation (DOT) had just cause to dismiss an employee for unacceptable personal conduct where he knowingly violated the DOT's Statement of Understanding and Internet Policy as: (1) the employee's denial of knowledge of the Statement of Understanding was not credible, (2) the employee's claim that he was unaware that he had to obtain his supervisor's approval before installing software on his work computer was not believed by the ALJ, (3) the employee admitted not having permission to install software on his computer, and (4) the unauthorized installation of software was inconsistent with the DOT's objective to ensure that its files and computer network system were properly protected. Teague v. N.C. DOT, 177 N.C. App. 215, 628 S.E.2d 395, 2006 N.C. App. LEXIS 863 (2006).

V. ARBITRARY OR CAPRICIOUS FINDINGS, DECISIONS, ETC.

Infection of an agency decision by consideration of arbitrary and capricious matter is clearly violative of subdivision (6) of former G.S. 150A-51. North Carolina A & T Univ. v. Kimber, 49 N.C. App. 46, 270 S.E.2d 492 (1980).

Where an employee has engaged in off-duty criminal conduct, the agency need not show actual harm to its interests to demonstrate just cause for an employee's dismissal; however, it is well established that administrative agencies may not engage in arbitrary and capricious conduct. Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

Rational Nexus Required. — In cases in which an employee has been dismissed based upon an act of off-duty criminal conduct, the agency must demonstrate that the dismissal is supported by the existence of a rational nexus between the type of criminal conduct committed and the potential adverse impact on the employee's future ability to perform for the agency. Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

Factors to Consider in Determining If a Nexus Exists. — In determining whether a rational nexus exists between the type of off-duty criminal activity conducted by the employee and the employee's future ability to do his job, the Commission may consider the following factors: (1) how the conduct may have adversely affected clients or colleagues; (2) the relationship between the work performed by the employee and the type of criminal conduct committed; (3) the likelihood of recurrence of the questioned conduct and how the conduct may affect work performance, work quality, and the agency's goodwill and interests; (4) the proximity or remoteness in time of the conduct to the commencement of the disciplinary proceedings; (5) extenuating or aggravating circumstances; (6) the blameworthiness or praiseworthiness of the motives resulting in the conduct; and (7) the presence or absence of any relevant factors in mitigation. Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

"Whole Record" Standard of Review Applied. — The "whole record" test is applied when the court considers whether an agency decision is arbitrary and capricious. Brooks v. Rebarco, Inc., 91 N.C. App. 459, 372 S.E.2d 342 (1988).

Action Held Arbitrary and Capricious. — Where the Commissioner of Insurance did nothing more, in adopting a complicated and novel formula for determining underwriting profit, than listen to one employee of an insurance department in a sister state which was refining the policy adopted and which was given only limited approval by the Supreme Court of Massachusetts, his approach was a clear example of an arbitrary and capricious action by an administrative agency as contemplated by the North Carolina Legislature in establishing that criterion for judicial review in former G.S. 58-9.6(b)(6) (now G.S. 58-2-90(b)(6)) and subdivision (6) of former G.S. 150A-51. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

Action of the Commissioner of Insurance ordering audited data in a ratemaking case was arbitrary and capricious, as contemplated by former G.S. 58-9.6(b)(6) (now G.S. 58-2-90(b)(6)) and subdivision (6) of former G.S. 150A-51, where (1) The order was vague and uncertain in that it did not establish the extent to which examination of "original source documents" was required; (2) It did not make clear whether auditing must be performed by certified public accountants, other accountants, or actuaries; (3) It did not specify the degree of precision and reliability required of "statistical sampling"; (4) It generally did not provide adequate guidelines for compliance with the general conclusion that data in a ratemaking hearing be audited; (5) It included no determination by the Commissioner as to the possibility of performance of his new rule nor whether implementation of the rule would be economically feasible; (6) It included no determination whether statutory time limits could be complied with in face of the new rule; and (7) It included no determination whether the "original source data" contemplated by the new rule was even available for the past years involved in this filing or whether such data, if available, was located in North Carolina or outside the State in the case of the several hundred companies writing insurance in this State. State ex rel. Comm'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, rehearing denied, 301 N.C. 107, 273 S.E.2d 300 (1980).

Where the North Carolina Department of Health and Human Services had never before revoked licenses of ambulance providers for understaffing their ambulances, had no guidelines for such license revocation, and failed to explain adequately its rejection of an administrative law judge's decision to stay revocation, the Department's revocation of a provider's license for understaffing was arbitrary and capricious. Cape Med. Transp., Inc. v. N.C. HHS, 162 N.C. App. 14, 590 S.E.2d 8, 2004 N.C. App. LEXIS 17 (2004).

School Board's Termination of Teacher Was Not an Abuse of Discretion. — Where school board took into consideration the attribution rate, the qualifications, certification, evaluations and experience of teachers, and respondent had the lowest level of certification and the least amount of experience, the school board's determination to terminate respondent was not arbitrary, capricious or an abuse of discretion. Taborn v. Hammonds, 91 N.C. App. 302, 371 S.E.2d 736 (1988), rev'd on other grounds, 324 N.C. 546, 380 S.E.2d 513 (1989).

State Personnel Commission abused its discretion and lacked careful and impartial decisionmaking when it passed over personnel office employee and filled a vacant position with an applicant who did not meet state qualifications for the position and who had filed her application and had been effectively offered the job a month before it was posted. Joyce v. Winston-Salem State Univ., 91 N.C. App. 153, 370 S.E.2d 866, cert. denied, 323 N.C. 476, 373 S.E.2d 862 (1988).

Assessment of Penalty Held Not Arbitrary or Capricious. — Where the penalty assessed by the Department of Natural Resources and Community Development (now the Department of Environment and Natural Resources) was within the statutory limits provided in G.S. 113A-64, and the record evidenced the secretary's reasoned weighing of the penalty factors announced in 15 N.C. Adm. Code 4C.006, which were reasonably related to the act's administration and enforcement, the department's assessment of the monetary penalty in this case was not arbitrary and capricious. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572 (1988), rev'd on other grounds, 324 N.C. 373, 379 S.E.2d 30 (1989).

Dismissal Held Not Arbitrary or Capricious. — Department of Human Resource's dismissal of employee's appeal on grounds it was filed one day after the deadline was neither arbitrary or capricious where employee was informed of the time limits for perfecting appeal, offered assistance for complying with appeal procedures since legal representation was not allowed at that time of the proceeding, and employee's apparent justification for filing late was difficulty in retaining an attorney. Lewis v. North Carolina Dep't of Human Resources, 92 N.C. App. 737, 375 S.E.2d 712 (1989).

School Suspension Held Not Arbitrary or Capricious. — Even though a student failed to preserve an equal protection challenge to a suspension by failing to assign error or present authority, the argument was meritless at any rate under arbitrary and capricious review because there was a gender-neutral reason for a longer suspension; prior incidents of "shanking" at a high school did not result in the exposure of buttocks or genitalia. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Issuance of Injunction Requiring Insurance Commissioner to Act Upheld. — The trial court did not exceed its power and authority by issuing its mandatory injunction requiring the Commissioner of Insurance to approve a domestic insurance corporation's plan to reorganize under a holding company structure where the Commissioner acted arbitrarily and capriciously when he disapproved the plan. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

Showing Necessary to Obtain Relief from Valuations of Property for Taxation. — In order to obtain relief from valuations upon their property by the State Board of Assessment (now the Property Tax Commission), appellant electric membership corporations must show that the methods used in determining true value were illegal and arbitrary, and that appellants were substantially injured by a resulting excessive valuation of their property. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972); In re Land & Mineral Co., 49 N.C. App. 608, 272 S.E.2d 878 (1980), cert. denied, 302 N.C. 397, 279 S.E.2d 351 (1981).

It is only when the actions of the State Board of Assessment (now the Property Tax Commission) are found to be arbitrary and capricious that courts will interfere with tax assessments because of asserted violations of the due process clause. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

Dismissal Not Required. — Trial court properly conducted a de novo review under G.S. 150B-51(c) of a decision of the North Carolina State Personnel Commission, as the commission did not adopt an ALJ decision; although the trial court concluded that a captain in an enforcement section of a department of motor vehicles violated a general order in obtaining funding for a captains' meeting, it properly found that there was not cause for dismissal as: (1) the captain held a good faith belief that the captain's actions were within the accepted practice of section employees; (2) a reasonable person in the captain's position would have expected to be warned before being dismissed for such actions; and (3) the captain violated the order, but did not willfully violate the order. Ramsey v. N.C. DMV, 184 N.C. App. 713, 647 S.E.2d 125, 2007 N.C. App. LEXIS 1594 (2007).

Evidence Held Sufficient. — There was substantial evidence in the record to support State Code Officials Qualification Board's findings and conclusions as to the revocation of petitioner's certificates based on Board's findings of several different violations of the N.C. Uniform Residential Building Code; many of the violations were plainly visible and should have been discovered by an inspection performed with ordinary care and prudence and many of the remaining violations, although less obvious or more technical, could have been discovered by an inspection performed with ordinary care and prudence. Bunch v. North Carolina Code Officials Qualifications Bd., 119 N.C. App. 293, 458 S.E.2d 248 (1995), aff'd in part and rev'd in part, 343 N.C. 97, 468 S.E.2d 55 (1996).

Based on employee's qualifications found by both an administrative law judge and the trial court, substantial evidence existed showing that the employee was objectively better qualified for the position to which another worker was promoted. Therefore, the administrative law judge and the trial court properly found as fact and concluded as a matter of law that the employee was more qualified for the position than the other worker to support her claim of race and gender discrimination. Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

§ 150B-52. Appeal; stay of court's decision.

A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. The scope of review to be applied by the appellate court under this section is the same as it is for other civil cases. In cases reviewed under G.S. 150B-51(c), the court's findings of fact shall be upheld if supported by substantial evidence. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 20; 2000-140, s. 94; 2000-190, s. 12.)

CASE NOTES

Editor's Note. *— Most of the cases below were decided under corresponding provisions of former Chapter 150A and earlier statutes, or under this Chapter prior to the 1991 amendments thereto.*

Scope of Appellate Review. — The scope of review to be applied by the appellate court under this section is the same as it is for other civil cases. That is, it must be determined whether the trial court committed any errors of law. American Nat'l Ins. Co. v. Ingram, 63 N.C. App. 38, 303 S.E.2d 649, cert. denied, 309 N.C. 819, 310 S.E.2d 348 (1983); Tay v. Flaherty, 90 N.C. App. 346, 368 S.E.2d 403, cert. denied, 323 N.C. 370, 373 S.E.2d 556 (1988).

Under this section, the appellate court examines the trial court's order for error of law, determining whether the trial court exercised the appropriate scope of review and, if appropriate, deciding whether the court did so properly. Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

When an appellate court reviews the decision of a lower court, (as opposed to when it reviews an administrative agency's decision on direct appeal), the scope of review to be applied by the appellate court under this section is the same as it is for other civil cases. Henderson v. North Carolina Dep't of Human Resources, 91 N.C. App. 527, 372 S.E.2d 887 (1988).

The Court of Appeal's review of the superior court's determination under this section, is limited to whether the superior court made any errors in law in light of the record as a whole. Scroggs v. North Carolina Criminal Justice Educ. & Training Stds. Comm'n, 101 N.C. App. 699, 400 S.E.2d 742 (1991).

Pursuant to this section, court review of a trial court's consideration of a final agency decision is to determine whether the trial court committed any errors of law which would be based upon its failure to properly apply the review standard set forth in G.S. 150B-51. Sherrod v. North Carolina Dep't of Human Resources, 105 N.C. App. 526, 414 S.E.2d 50 (1992).

Appellate court found that the superior court, which initially reviewed a decision of the Board of Pharmacy reprimanding a permitee pharmacy chain for negligent acts of its licensed pharmacists, had not erred in finding no arbitrary or capricious action by the Board in choosing a sanction; case law already made it clear that the chain could be vicariously responsible for the pharmacists' actions, and so any sanction listed as applicable to a pharmacist could also be applied against the chain. CVS Pharm., Inc. v. N.C. Bd. of Pharm., 162 N.C. App. 495, 591 S.E.2d 567 (2004).

Appellate court found that the trial court's conclusion of law that the teaching coordinator was not eligible for the substantial salary increase that accompanied the teaching coordinator's attainment of national certification could not be supported by a reading of the relevant statute, G.S. 115C-296.2(b)(2); that statute's language was broad enough to include the teaching coordinator as eligible for the salary increase and the teaching coordinator met all of the statute's requirements for the increase. Rainey v. N.C. Dep't of Pub. Instruction, 181 N.C. App. 666, 640 S.E.2d 790, 2007 N.C. App. LEXIS 396 (2007), rev'd, remanded, 361 N.C. 679, 652 S.E.2d 251 (2007), Rainey v. N.C. Dep't of Pub. Instruction, 181 N.C. App. 666, 640 S.E.2d 790, 2007 N.C. App. LEXIS 396 (2007).

In an action arising from allegations of age discrimination, while the superior court properly applied both a de novo review and the whole-record test to the respective issues on appeal under G.S. 150B-51(b) when it reviewed the final decision of the State Personnel Commission (SPC), it erred when it improperly substituted its judgment for that of the SPC under the whole-record test. Thus, remand was ordered for the superior court to affirm the SPC's final agency decision. Trotter v. N.C. HHS, 189 N.C. App. 655, 659 S.E.2d 749, 2008 N.C. App. LEXIS 712 (2008).

Appellate Review of Improper Constitutional Consideration. — Although the trial court improperly considered a constitutional issue, where that court vacated the Department of Natural Resources and Community Development's assessment based on an interpretation of N.C. Const., Art. IV, § 3, which the department properly challenged on appeal, the Court of Appeals would address that constitutional ground in the exercise of its supervisory jurisdiction. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572, supersedeas allowed on reconsideration, 323 N.C. 625, 374 S.E.2d 873 (1988).

Examination for Error — A Twofold Task. — The appellate court should examine the trial court's order for error of law, which has been described as a twofold task: (1) determining whether the trial court exercised the appropriate scope of review and, if appropriate, (2) deciding whether the court did so properly.

Amanini v. N.C. Dep't of Human Resources, 114 N.C. App. 668, 443 S.E.2d 114 (1994).

Legal proceeding must be prosecuted by a legal person, whether it be a natural person who is sui juris or a group of individuals or other entity having the capacity to sue and be sued, such as a corporation, partnership, unincorporated association, or governmental body or agency. Even a class action must be prosecuted or defended by one or more named members of the class. A legal proceeding prosecuted by an aggregation of anonymous individuals, known only to their counsel, is a phenomenon unknown to the law of this jurisdiction. In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

Rule that appeal to appellate division may be prosecuted only at the instance of a party or parties aggrieved by the judgment of the court or tribunal from which the appeal is taken applies with as much force to proceedings governed by former Article 33 of Chapter 143 as to ordinary civil cases. In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

No statutory authority exists for the State Personnel Commission to review an administrative law judge's recommended decision in a case involving an exempt employee. Johnson v. Natural Resources & Community Dev., 98 N.C. App. 334, 391 S.E.2d 48 (1990).

Failure to Cross-Appeal as Waiver. — Where trial court erroneously failed to render conclusions concerning all statutory grounds for review raised by the petition for review, petitioners' failure to cross-appeal any such error to the appellate court waived its consideration on appeal. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572, supersedeas allowed on reconsideration, 323 N.C. 625, 374 S.E.2d 873 (1988).

Appeal Must Follow Theory of Trial. — Where petitioner relied upon jurisdiction under former G.S. 143-314 before the trial court, on appeal he could not argue that the trial court had original subject matter jurisdiction pursuant to G.S. 7A-240 based upon a constitutional right to hearing and judicial review, since an appeal must follow the theory of the trial. Grissom v. North Carolina Dep't of Revenue, 34 N.C. App. 381, 238 S.E.2d 311 (1977), cert. denied, 294 N.C. 183, 241 S.E.2d 517 (1978).

Substantial Evidence Found. — Where the trial court made new findings of fact upon de novo review of an administrative decision, the findings were supported by substantial evidence since they were consistent with the testimony of witnesses at a hearing before the administrative law judge. Cape Med. Transp., Inc. v. N.C. HHS, 162 N.C. App. 14, 590 S.E.2d 8, 2004 N.C. App. LEXIS 17 (2004).

Substantial evidence in the record supported an administrative law judge's findings and its dismissal of a day care's petition for a contested case hearing where the day care filed nothing in nearly six months following the filing of the petition, despite receiving several orders from the administrative law judge to file and serve prehearing statements and other responses to motions. Lincoln v. N.C. HHS, Nutrition Branch, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

Remand for Further Findings. — Denial of Medicaid benefits to an undocumented immigrant was reversed and remanded for further findings as the findings were inadequate to support the conclusions of law that the Medicaid benefits for rehabilitative services and chemotherapy, following surgery for medullary non-Hodgkin's lymphoma and spinal cord malignancy, were not to cover the costs of an emergency medical condition. Luna v. Div. of Soc. Servs., 162 N.C. App. 1, 589 S.E.2d 917, 2004 N.C. App. LEXIS 51 (2004).

Demotion Upheld. — Summary judgment for a state agency employer in an employee's petition for review of his demotion was proper where the conduct admitted by the employee constituted "unacceptable personal conduct," and the State Personnel Commission determined that its regulations and work rules did not contain any qualification or exception for the explanations asserted by the employee. Hilliard v. N.C. Dep't of Corr., 173 N.C. App. 594, 620 S.E.2d 14, 2005 N.C. App. LEXIS 2121 (2005).

Applied in In re Coastal Resources Comm'n, 96 N.C. App. 468, 386 S.E.2d 92 (1989); Professional Food Servs. Mgt., Inc. v. North Carolina Dep't of Admin., 109 N.C. App. 265, 426 S.E.2d 447 (1993); In re E.I. DuPont de Nemours & Co., 109 N.C. App. 435, 428 S.E.2d 195 (1993); North Carolina Dep't of Cor. v. McNeely, 135 N.C. App. 587, 521 S.E.2d 730, 1999 N.C. App. LEXIS 1175 (1999); Chatmon v. N.C. HHS, 175 N.C. App. 85, 622 S.E.2d 684, 2005 N.C. App. LEXIS 2711 (2005); White v. Tippett, 187 N.C. App. 285, 652 S.E.2d 728, 2007 N.C. App. LEXIS 2359 (2007); Kelly v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 664 S.E.2d 625, 2008 N.C. App. LEXIS 1544 (2008); Early v. County of Durham, Dep't of Soc. Servs., — N.C. App. —, 667 S.E.2d 512, 2008 N.C. App. LEXIS 1818 (2008); Granger v. Univ. of N.C. at Chapel Hill, — N.C. App. —, 678 S.E.2d 715, 2009 N.C. App. LEXIS 1064 (July 7, 2009).

Cited in Brooks v. Dover Elevator Co., 94 N.C. App. 139, 379 S.E.2d 707 (1989); Floyd v. North Carolina Dep't of Commerce, 99 N.C. App. 125, 392 S.E.2d 660 (1990); Cafiero v. North Carolina Bd. of Nursing, 102 N.C. App. 610, 403 S.E.2d 582 (1991); Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 103 N.C. App. 527, 406 S.E.2d 613

(1991); Best v. North Carolina State Bd. of Dental Exmrs., 108 N.C. App. 158, 423 S.E.2d 330 (1992); In re Huang, 110 N.C. App. 683, 431 S.E.2d 541 (1993); In re McCrary, 112 N.C. App. 161, 435 S.E.2d 359 (1993); Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995); Willoughby v. Board of Trustees, 121 N.C. App. 444, 466 S.E.2d 285 (1996); Bellsouth Telecommunications, Inc. v. North Carolina Dep't of Revenue, 126 N.C. App. 409, 485 S.E.2d 333 (1997); N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004); In re Lustgarten, 177 N.C. App. 663, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006); Bobbitt v. N.C. State Univ., — N.C. App. —, 635 S.E.2d 463, 2006 N.C. App. LEXIS 2164 (2006); Ramsey v. N.C. DMV, 184 N.C. App. 713, 647 S.E.2d 125, 2007 N.C. App. LEXIS 1594 (2007); Meza v. Div. of Soc. Servs., — N.C. App. —, 668 S.E.2d 571, 2008 N.C. App. LEXIS 1814 (2008).

§§ 150B-53 through 150B-57: Reserved for future codification purposes.

ARTICLE 5.

Publication of Administrative Rules.

§§ 150B-58 through 150B-64: Repealed by Session Laws 1991, c. 418, s. 5, effective October 1, 1991.

Editor's Note. — Section 150B-63.1 was repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1022, s. 1(20).

Chapter 151.

Constables.

§§ 151-1 through 151-8: Repealed by Session Laws 1969, c. 1190, s. 57.

(2003); Best v. North Carolina State Bd. of Dental Exmrs., 108 N.C. App. 158, [illegible] S.E.2d 330 (1992); In re Huang, 110 N.C. App. 683, 431 S.E.2d 541 (1993); In re [illegible], 112 N.C. App. 161, 435 S.E.2d 359 (1993); [illegible] v. [illegible] [illegible] [illegible] Comm'n, 117 N.C. App. 530, 452 S.E.2d 327 (1994); Whittington v. Board of Trustees, 119 N.C. App. 446, 458 S.E.2d 746 (1995); BellSouth Telecommunications, Inc. v. North Carolina Dep't of Revenue, 126 N.C. App. 409, [illegible] S.E.2d 333 (1997); N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 809 (2004); In re [illegible], 177 N.C. App. 664, [illegible] S.E.2d [illegible], 2006 N.C. App. LEXIS 1260 (2006); [illegible] [illegible] 2006 N.C. App. LEXIS 2164 (2006); Rainey v. N.C. DMV, 184 N.C. App. 715, 647 S.E.2d [illegible], 2007 N.C. App. LEXIS 1594 (2007); [illegible] v. [illegible] Env. Servs., — N.C. App. —, [illegible] S.E.2d 271, 2008 N.C. App. LEXIS 1912 (2008).

§§ 150B-53 through 150B-57: Reserved for future codification purposes.

ARTICLE 5.

Publication of Administrative Rules.

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Editor's Note. — Section 150B-63.1 was repealed by Session Laws [illegible] (Reg. Sess., [illegible]), c. [illegible], s. [illegible].

Chapter 152.

Coroners.

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§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

In each county a coroner shall be elected by the qualified voters thereof in the same manner and at the same time as the election of members of the General Assembly, and shall hold office for a term of four years, or until his successor is elected and qualified.

A vacancy in the office of coroner shall be filled by the county commissioners, and the person so appointed shall, upon qualification, hold office until his successor is elected and qualified. If the coroner were elected as the nominee of a political party, then the county commissioners shall consult with the county executive committee of that political party before filling the vacancy, and shall appoint the person recommended by that committee if the party makes a recommendation within 30 days of the occurrence of the vacancy; this sentence shall apply only to the counties of Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Cherokee, Clay, Cleveland, Davidson, Davie, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey.

When the coroner shall be out of the county, or shall for any reason be unable to hold the necessary inquest as provided by law, or there is a vacancy existing in the office of coroner which has not been filled by the county commissioners and it is made to appear to the clerk of the superior court by satisfactory evidence that a deceased person whose body has been found within the county probably came to his death by the criminal act or default of some person, it is the duty of the clerk to appoint some suitable person to act as coroner in such special case. (Const., art. 4, s. 24; 1903, c. 661; Rev., ss. 1047, 1049; C.S., ss. 1014, 1018; Ex. Sess. 1924, c. 65; 1935, c. 376; 1981, c. 504, s. 8; c. 763, s. 5; c. 830.)

Local Modification. — Alamance (office of coroner abolished): 1975, c. 577; Alleghany (office of coroner abolished): 1979, c. 29; Anson (office of coroner abolished): 1975, c. 270; (as to Chapter 152) Ashe (office of coroner abolished): 1998-90, s. 3; Bertie (office of coroner abolished): 1979, c. 794; Buncombe (assistant coroner): 1963, c. 358; Burke (assistant coroner): 1963, c. 952; Catawba: 1973, c. 354 (Chapter 152 inapplicable); Cherokee (office of coroner abolished): 1997, c. 49, s. 2; Chowan (office of coroner abolished): 1979, 2nd Sess., c. 1163; Clay (office of coroner abolished): 1993, c. 75, s. 1; Cleveland: 1967, c. 431; Craven (office of coroner abolished): 1973, c. 1049; Cumberland (office of coroner abolished): 1979, c. 794; Davidson (office of coroner abolished): 1973, c. 1049; Davie (office of coroner abolished): 1973, c. 1146; Duplin (office of coroner abolished): 1979, c. 231; Forsyth (assistant coroner): 1955, c. 95, s. 1; Franklin (office of coroner abolished): 1975, c. 333; Gaston (assistant coroner): 1973, c. 1371; 1975, c. 201; (as to Chapter 152;office of coroner abolished) 1998-90, ss. 1,3; Greene (office of coroner abolished): 1985, c. 165; Halifax (office of coroner abolished): 1993, c. 36;

Harnett (office of coroner abolished): 1981 (Reg. Sess., 1982), c. 1144; Hertford (office of coroner abolished): 1979, c. 281; Iredell: 1965, c. 159; Jackson (office of coroner abolished): 1981 (Reg. Sess., 1982), c. 1132; Johnston (office of coroner abolished): 2004-18; (as to Chapter 152) Martin (effective upon the expiration of the term of the current coroner): 1998-145; McDowell (effective upon the expiration of the term of the current coroner): 1989, c. 192, s. 1; Moore (office of coroner abolished effective July 1, 1984): 1983, c. 36; 1985, c. 236; New Hanover (office of coroner abolished, effective December 1, 1986): 1983, c. 36; 1985, c. 236; Northampton, Orange, Pender and Perquimans (office of coroner abolished): 1973, c. 1146; Pitt: 1963, c. 330; Randolph: 1965, c. 754, s. 1; Richmond (office of coroner abolished): 1981, c. 829; Robeson (office of coroner abolished): 1997, c. 51; (as to Chapter 152) Rockingham (office of coroner abolished): 1998-90, s. 3; 1998-145; Rowan (office of coroner abolished): 1985, c. 40; Sampson (office of coroner abolished): 1981 (Reg. Sess., 1982), c. 1190; Scotland (office of coroner abolished): 1993, c. 272, s. 1 (effective upon the expiration of the current term of office); Stokes (office of coroner abolished): 1977, c. 348; Surry (assistant coroner): 1953, c. 291; (office of coroner): 1973, c. 37; Tyrrell (office of coroner reestablished): 1977, 2nd Sess., c. 1172; Wake: 1957, c. 638; Wilkes (office of coroner abolished; effective upon the expiration of the term of the current coroner): 2004-51; Yancey (effective upon the expiration of the term of the current coroner): 1989, c. 192, s. 4. Granville (As to Chapter 152; office of coroner abolished): 2002-17, ss. 1, 2. Chapter 152 of the General Statutes is not applicable to Granville County.

Editor's Note. — An amendment to this section in Session Laws 1981, c. 504, s. 8, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1 through 3 of the act. The constitutional amendments were submitted to the people at an election held June 29, 1982, and were defeated. Therefore, the amendment never went into effect.

Legal Periodicals. — For article discussing the provisions of this Chapter and suggesting the abolition of the coroner system, see 26 N.C.L. Rev. 96 (1948).

§ 152-2. Oaths to be taken.

Every coroner, before entering upon the duties of his office, shall take and subscribe to the oaths prescribed for public officers, and an oath of office. (Code, s. 661; Rev., s. 1048; C.S., s. 1015; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

Cross References. — As to oaths required of public officers, see N.C. Const., Art. VI, § 7, and G.S. 11-1 et seq. As to form of oath, see G.S. 11-11. As to penalty for failure to take oath, see G.S. 128-5. As to oath of county officers generally, see G.S. 153A-26.

§ 152-3. Coroner's bond.

Every coroner shall execute an undertaking conditioned upon the faithful discharge of the duties of his office with good and sufficient surety in the penal sum of two thousand dollars ($2,000), payable to the State of North Carolina, and approved by the board of county commissioners. (1791, c. 342, ss. 1, 2, P. R.; 1820, c. 1047, ss. 1, 2, P. R.; R. C., c. 25, s. 2; Code, s. 661; 1899, c. 54, s. 52; Rev., s. 299; C.S., s. 1016; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1; Yancey: 1945, c. 271.

Cross References. — As to official bonds generally, see G.S. 58-72-1 et seq.

CASE NOTES

Validity of Acts of Coroner De Facto. — Where an individual has been appointed coroner of a county, even though it may appear that he has not renewed his official bond as required by law, yet his acts as a coroner de facto are valid, at least as regards third persons. Mabry v. Turrentine, 30 N.C. 201 (1847).

§ 152-4. Coroners' bonds registered; certified copies evidence.

All official bonds of coroners shall be duly approved, certified, registered, and filed as sheriffs' bonds are required to be; and certified copies of the same duly certified by the register of deeds, with official seal attached, shall be received and read in evidence in the like cases and in like manner as such copies of sheriffs' bonds are now allowed to be read in evidence. (1860-1, c. 18; Code, s. 662; Rev., s. 300; C.S., s. 1017; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

Cross References. — As to official bonds, see G.S. 58-72-10 through 58-72-70.

§ 152-5. Fees of coroners.

Fees of coroners shall be the same as are or may be allowed sheriffs in similar cases:

For holding an inquest over a dead body, five dollars ($5.00); if necessarily engaged more than one day, for each additional day, five dollars ($5.00).

For burying a pauper over whom an inquest has been held, all necessary and actual expenses, to be approved by the board of county commissioners, and paid by the county. (Code, s. 3743; 1903, c. 781; Rev., s. 2775; C.S., s. 3905; 1967, c. 1154, s. 6.)

Local Modification. — Alamance: 1959, c. 1105, s. 2; Buncombe: 1949, c. 910; Burke: 1963, c. 952; Cabarrus: 1947, c. 410; 1953, c. 567; Caldwell: Pub. Loc. 1939, c. 191; Camden: 1947, c. 200; Cleveland: Pub. Loc. 1921, c. 75; Columbus: 1959, c. 467, s. 3; Cumberland: 1941, c. 73; 1953, c. 90; Davidson: Pub. Loc. 1923, c. 402; Forsyth: 1955, c. 95, s. 2, amended by 1959, c. 942, s. 1; Graham: 1961, c. 572; Halifax: 1953, c. 362; 1973, c. 924; Harnett: 1955, c. 752; 1959, c. 999; Johnston: Pub. Loc. 1927, c. 113; Pub. Loc. 1933, c. 365; Lenoir: 1941, c. 84; McDowell: 1963, c. 1199; Mitchell: 1953, c. 416; New Hanover: 1955, c. 1110; 1959, c. 1049; Northampton: 1953, c. 420, s. 4; Onslow: 1951, c. 516; Orange: 1953, c. 281, s. 3; Pasquotank: Pub. Loc. 1939, c. 102; 1943, c. 630; Pender: 1947, c. 52; Polk: 1959, c. 982; Randolph: 1965, c. 754, s. 1; Richmond: 1951, c. 267; 1959, c. 372; Rockingham: 1951, c. 430; Rowan: 1967, c. 676; Sampson: 1947, c. 747; Transylvania: 1957, c. 757; Union: Pub. Loc. 1921, c. 75; 1961, c. 305, s. 2; 1963, c. 440; Wake: Pub. Loc. 1923, c. 573; 1931, c. 137; Washington: 1963, c. 574; Watauga: 1959, c. 951.

§ 152-6. Powers, penalties, and liabilities of special coroner.

The special coroner appointed under the provisions of G.S. 152-1 shall be invested with all the powers and duties conferred upon the several coroners in respect to holding inquests over deceased bodies, and shall be subject to the penalties and liabilities imposed on the said coroners. (1903, c. 661, s. 2; Rev., s. 1050; C.S., s. 1019; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

§ 152-7. Duties of coroners with respect to inquests and preliminary hearings.

The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

(1) Whenever it appears that the deceased probably came to his death by the criminal act or default of some person, he shall go to the place

where the body of such deceased person is and make a careful investigation and inquiry as to when and by what means such deceased person came to his death and the name of the deceased, if to be found out, together with all the material circumstances attending his death, and shall make a complete record of such personal investigation: Provided, however, that the coroner shall not proceed to summon a jury as is hereinafter provided if he shall be satisfied from his personal investigation that the death of the said deceased was from natural causes, or that no person is blamable in any respect in connection with such death, and shall so find and make such finding in writing as a part of his report, giving the reason for such finding; unless an affidavit be filed with the coroner indicating blame in connection with the death of the deceased. A written report of said investigation shall be filed by the coroner with the medical examiner and the district attorney of the superior court.

(2) To empanel a jury of six persons, under oath, to make further inquiry as to the circumstances of death and to call witnesses as necessary to determine the circumstances. The coroner shall order that the names of at least 15 persons be drawn from the jury box in accordance with the procedure in G.S. 9-5. The coroner shall examine the jurors appearing in obedience to the summons, and may excuse jurors for whom service would be an extreme hardship, who would be unable to remain impartial in determining the issues, or are otherwise disqualified to serve as jurors. If the remaining jurors are less than six in number, the coroner shall cause sufficient additional names to be drawn from the jury box and have them summoned, so as to obtain the immediate attendance of at least six qualified jurors. The first six qualified jurors constitute the inquest jury.

(3) If it appears that the deceased was slain, or came to his death in such manner as to indicate any person or persons guilty of the crime in connection with the said death, then the said inquiry shall ascertain who was guilty, either as principal or accessory, or otherwise, if known; and the cause and manner of his death.

(4) Whenever in such investigations, whether preliminary or before his jury, it shall appear to the coroner or to the jury that any person or persons are culpable in the matter of such death, he shall forthwith issue his warrant for such persons and cause the same to be brought before him and the inquiry shall proceed as in the case of preliminary hearings in the district court, and in case it appears to the said coroner and the jury that such persons are probably guilty of any crime in connection with the death of the deceased, then the said coroner shall commit such persons to jail, if it appears that such persons are probably guilty of a capital crime, and in case it appears that such persons are not probably guilty of a capital crime, but are probably guilty of a lesser crime, then such coroner is to have the power and authority to fix bail for such person or persons. All such persons as are found probably guilty in such hearing shall be delivered to the keeper of the common jail for such county by the sheriff or such other officer as may perform his duties at such hearings and committed to jail unless such persons have been allowed and given the bail fixed by such coroner.

(5) As many persons as are found to be material witnesses in the matters involved in such inquiry and hearings, and are not culpable themselves shall be bound in recognizance with sufficient surety to appear at the next superior court to give evidence, and such as may default in giving such recognizance may be by such coroner committed to jail as is provided for State witnesses in other cases.

(6) Immediately upon information of the death of a person within his county, under such circumstances as call for an investigation as provided in G.S. 130A-383, the coroner shall notify the district attorney of the superior court and the medical examiner.

(7) If an inquest or preliminary hearing be ordered, to arrange for the examination of any and all witnesses including those who may be offered by the county medical examiner.

(8) To permit counsel for the family of the deceased, the solicitor of his district, or anyone designated by him, and counsel for any accused person to be present and participate in such hearing and examine and cross-examine witnesses and, whenever a warrant shall have been issued for any accused person, such accused person shall be entitled to counsel and to a full and complete hearing.

(9) To hold his inquiry where the body of the deceased shall be or at any other place in the county, and the body of the deceased need not be present at such hearing. The hearing may be adjourned to other times and places.

(10) To reduce to writing all of the testimony of all witnesses, and to have each witness to sign his testimony in the presence of the coroner, who shall attest the same, and, upon direction of the district attorney of the district, all of the testimony heard by the coroner and his jury shall be taken stenographically, and expense of such taking, when approved by the coroner and the district attorney of the district, shall be paid by the county. When the testimony is taken by a stenographer, the witness shall be caused to sign the same after it has been written out, and the coroner shall attest such signature. The attestation of all the signatures of witnesses who shall testify before the coroner shall include attaching his seal, and such statements, when so signed and attested, shall be received as competent evidence in all courts either for the purpose of contradiction or corroboration of witnesses who make the same, under the same rules as other evidence to contradict or corroborate may be now admitted. The coroner shall file a copy of all written testimony given at the hearing with the county medical examiner and with the district attorney of the superior court. (Code, s. 657; 1899, c. 478; 1905, c. 628; Rev., s. 1051; 1909, c. 707, s. 1; C.S., s. 1020; Ex. Sess. 1924, c. 65; 1955, c. 972, s. 2; 1957, c. 503, ss. 1, 2; 1967, c. 1154, s. 6; 1973, c. 47, s. 2; c. 108, s. 92; c. 558; 2007-484, s. 11(d).)

Local Modification. — Nash: 1951, c. 502; Randolph: 1965, c. 754, s. 1.

Cross References. — As to certain omissions of duty punishable as for contempt, see G.S. 5A-11. As to duty to report death involving motor vehicle, see G.S. 20-166.1.

CASE NOTES

This section is simply a statement of the historical function of a coroner. The coroner is by this section commanded to make an investigation whenever it appears that deceased probably came to his death by criminal act. He is not required to summon a jury unless he is satisfied from his personal investigation that death was the result of criminal conduct. Gillikin v. United States Fid. & Guar. Co., 254 N.C. 247, 118 S.E.2d 606 (1961).

A coroner has no authority to perform an autopsy in cases where there is no suspicion of foul play. Gurganious v. Simpson, 213 N.C. 613, 197 S.E. 163 (1938).

Administration of Oaths. — Though the coroner is judge of the coroner's court and the power and authority to administer oaths to the witnesses rests in him, the administration of oaths is a ministerial act and may be performed by anyone by the direction and in the presence of the court. State v. Knight, 84 N.C. 789 (1881).

Swearing and Charging of Jury. — The inquest is the coroner's court, and it is an indispensable requisite that the jury which is summoned be sworn and charged by the coroner in the presence of the body of the deceased. State v. Knight, 84 N.C. 789 (1881).

Cited in State v. Colson, 274 N.C. 295, 163 S.E.2d 376 (1968).

OPINIONS OF ATTORNEY GENERAL

Coroner Has No Authority to Order Autopsy. — See opinion of Attorney General to Mr. Edgar E. Smith, 41 N.C.A.G. 212 (1971).

§ 152-8. Acts as sheriff in certain cases; special coroner.

If at any time there is no person properly qualified to act as sheriff in any county, the coroner of such county is hereby required to execute all process and in all other things to act as sheriff, until some person is appointed sheriff in said county; and he shall be under the same rules and regulations, and subject to the same forfeitures, fines, and penalties as sheriffs are by law for neglect or disobedience of the same duties. If at any time the sheriff of any county is interested in or a party to any proceeding in any court, and there is no coroner in such county, or if the coroner is interested in any such proceeding, then the clerk of the court from which such process issues shall appoint some suitable person to act as special coroner to execute such process, and such special coroner shall be under the same rules, regulations, and penalties as hereinabove provided for. (Code, s. 658; 1891, c. 173; Rev., s. 1052; C.S., s. 1021; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

CASE NOTES

The words "any proceedings in any court," contained in the provision for deputizing special officers where the sheriff and coroner are interested, have been given a literal interpretation, and the provision is held applicable to courts of justices of the peace as well as to the higher courts. Baker v. Brem, 127 N.C. 322, 37 S.E. 454 (1900).

Service of Summons by Coroner When Sheriff Is Party. — In an action in which the sheriff is a party it is proper that the summons be addressed to and served by the coroner. State v. Baird, 118 N.C. 854, 24 S.E. 668 (1896).

As to service by the coroner's deputy in an action in which the sheriff is a party, see Yeargin v. Siler, 83 N.C. 348 (1880).

§ 152-9. Compensation of jurors at inquest.

All persons who may be summoned to act as jurors in any inquest held by a coroner over dead bodies, and who, in obedience thereto, appear and act as such jurors, shall be entitled to the same compensation in per diem and mileage as is allowed by law to jurors acting in the superior courts. The coroners of the respective counties are authorized and empowered to take proof of the number of days of service of each juror so acting, and also of the number of miles traveled by such juror in going to and returning from such place of inquest, and shall file with the board of commissioners of the county a correct account of the same, which shall be, by such commissioners, audited and paid in the manner provided for the pay of jurors acting in the superior courts. (Code, ss. 659, 660; Rev., s. 1053; C.S., s. 1022; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

Cross References. — As to fees of coroners' jurors in superior court, see now G.S. 7A-312.

§ 152-10. Hearing by coroner in lieu of other preliminary hearing; habeas corpus.

All hearings by a coroner and his jury, as provided herein, when the accused has been arrested and has participated in such hearing, shall be in lieu of any other preliminary hearing, and such cases shall be immediately sent to the clerk of the superior court of such county and docketed by him in the same manner as warrants from magistrates. Any accused person who shall be so committed by a coroner shall have the right, upon habeas corpus, to have a judge of the superior or district court review the action of the coroner in fixing bail or declining the same. (Ex. Sess. 1924, c. 65; 1973, c. 108, s. 93.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

§ 152-11. Service of process issued by coroner.

All process, both subpoenas and warrants for the arrest of any person or persons, and orders for the summoning of a jury, in case it may appear necessary for such coroner to issue such order, shall be served by the sheriff or other lawful officer of the county in which such dead body is found, and in case it is necessary to subpoena witnesses or to arrest persons in a county other than such county in which the body of the deceased is found, then such coroner may issue his process to any other county in the State, with his official seal attached, and such process shall be served by the sheriff or other lawful officer of the county to which it is directed, but such process shall not be served outside of the county in which such dead body is found unless attested by the official seal of such coroner. (Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

§ 152-10. Hearing by coroner in lieu of other preliminary hearing; habeas corpus.

All hearings by a coroner and his jury, as provided herein, when the accused has been arrested and has participated in such hearing, shall be in lieu of any other preliminary hearing, and such cases shall be immediately sent to the clerk of the superior court of such county and docketed by him in the same manner as warrants from magistrates. Any accused person who shall be so committed by a coroner shall have the right, upon habeas corpus, to have a judge of the superior or district court review the action of the coroner in fixing bail or discharge the prisoner. (Ex. Sess. 1924, c. 65; 1973, c. 108, s. 73.)

Local Modification. — Randolph, 1963, c. 786, s. 1.

§ 152-11. Service of process issued by coroner.

All process, both subpoenas and warrants for the arrest of any person or persons, and orders for the summoning of a jury, in case it may appear necessary for such coroner to issue such order, shall be served by the sheriff or other lawful officer of the county in which such dead body is found, and in case it is necessary to subpoena witnesses or to arrest persons in a county other than such county in which the body of the deceased is found, then such coroner may issue his process to any other county in the State, with his official seal attached, and such process shall be served by the sheriff or other lawful officer of the county to which it is directed, but such process shall not be served outside of the county in which such dead body is found unless attested by the official seal of such coroner. (Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph, 1963, c. 786, s. 1.

Chapter 152A.

County Medical Examiner.

§§ 152A-1 through 152A-12: Repealed by Session Laws 1967, c. 1154, s. 8.

Cross References. — As to public health, see now Chapter 130A.

Chapter 153.

Counties and County Commissioners.

§§ 153-1 through 153-382: Repealed by Session Laws 1973, c. 822.

Editor's Note. — This Chapter was repealed by Session Laws 1973, c. 822, which enacted new Chapter 153A, Counties. The following sections were transferred by the 1973 act to other Chapters: G.S. 153-177 to 153-198 was transferred to former G.S. 162-31 and G.S. 162-32 to 162-49 by Session Laws 1973, c. 822, s. 3; G.S. 153-295 to 153-324 were transferred to G.S. 162A-64 to 162A-80 by Session Laws 1973, c. 822, s. 4.

Session Laws 1973, c. 822, ss. 9 through 12, provided:

"Sec. 9. No provision of this act is intended, nor may any be construed, to affect in any way a right or interest, public or private:

"(a) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to a provision of law repealed by this act; or

"(b) Derived from or which might be sustained or preserved in reliance upon, action (including the adoption of orders, resolutions, or ordinances) taken before the effective date of this act pursuant to or within the scope of a provision of law repealed by this act.

"Sec. 10. No law repealed, expressly or by implication, before the effective date of this act and no law granting authority that has been exhausted before the effective date of this act is revived by:

"(a) The repeal in this act of any act repealing such a law; or

"(b) Any provision of this act that disclaims an intention to repeal or affect enumerated, designated, or described laws.

"Sec. 11. No provision of this act is intended, nor may any be construed, to impair the obligation of any bond, note, or coupon outstanding on the effective date of this act.

"Sec. 12. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act is abated or otherwise affected by the adoption of this act."

Chapter 153A.

Counties.

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153A-27. Vacancies on the board of commissioners.
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153A-313. Advisory committee.
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Sec.
153A-350. "Building" defined.
153A-350.1. Tribal lands.
153A-351. Inspection department; certification of electrical inspectors.
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153A-392. Contents of resolution.
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[Reserved.]

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Article 22.

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153A-452. Restriction of certain forestry activities prohibited.
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Article 24.

Unified Government.

153A-471. Unified government.
153A-472. Definitions.
153A-472.1. Property tax levy.
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ARTICLE 1.

Definitions and Statutory Construction.

§ 153A-1. Definitions.

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section have the meaning indicated when used in this Chapter.

(1) "City" means a city as defined by G.S. 160A-1(2), except that it does not include a city that, without regard to its date of incorporation, would be disqualified from receiving gasoline tax allocations by G.S. 136-41.2(a).

(2) "Clerk" means the clerk to the board of commissioners.

(3) "County" means any one of the counties listed in G.S. 153A-10.

(4) "General law" means an act of the General Assembly that applies to all units of local government, to all counties, to all counties within a class defined by population or other criteria, to all cities, or to all cities within a class defined by population or other criteria, including a law that meets the foregoing standards but contains a clause or section exempting from its effect one or more counties, cities, or counties and cities.

(5) "Local act" means an act of the General Assembly that applies to one or more specific counties, cities, or counties and cities by name. "Local act" is interchangeable with the terms "special act," "special law," "public-local act," and "private act," is used throughout this Chapter in preference to those terms, and means a local act as defined in this subdivision without regard to the terminology employed in local acts or other portions of the General Statutes.

(6) "Publish," "publication," and other forms of the verb "to publish" mean insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county. (1973, c. 822, s. 1.)

Local Modification. — New Hanover: 1983, c. 365.

Editor's Note. — Session Laws 1973, c. 822, repealed Chapter 153, Counties, and enacted in its place a new Chapter 153A. Certain other 1973 acts originally codified in Chapter 153 are included in Chapter 153A as directed in Session Laws 1973, c. 822, s. 2. Where appropriate, the historical citations to sections in the repealed Chapter have been added to corresponding sections in new Chapter 153A.

Session Laws 1973, c. 822, ss. 9 through 12, provided:

"Sec. 9. No provision of this act is intended, nor may any be construed, to affect in any way a right or interest, public or private:

"(a) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to a provision of law repealed by this act; or

"(b) Derived from or which might be sustained or preserved in reliance upon, action (including the adoption of orders, resolutions, or ordinances) taken before the effective date of this act pursuant to or within the scope of a provision of law repealed by this act.

"Sec. 10. No law repealed, expressly or by implication, before the effective date of this act and no law granting authority that has been exhausted before the effective date of this act is revived by:

"(a) The repeal in this act of any act repealing such a law; or

"(b) Any provision of this act that disclaims an intention to repeal or affect enumerated, designated, or described laws.

"Sec. 11. No provision of this act is intended, nor may any be construed, to impair the obligation of any bond, note, or coupon outstanding on the effective date of this act.

"Sec. 12. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act is abated or otherwise affected by the adoption of this act."

Legal Periodicals. — For article, "Do North Carolina Governments Need Home Rule," see 84 N.C. L. Rev. 1983 (2006).

CASE NOTES

Applied in Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

Cited in Ratcliff v. County of Buncombe, 759 F.2d 1183 (4th Cir. 1985); Boyd v. Robeson County, — N.C. App. —, 615 S.E.2d 296, 2005 N.C. App. LEXIS 520 (2005).

§ 153A-2. Effect on prior laws and actions taken pursuant to prior laws.

The provisions of this Chapter, insofar as they are the same in substance as laws in effect as of December 31, 1973, are intended to continue those laws in effect and not to be new enactments. The enactment of this Chapter does not require the readoption of any county or city ordinance adopted pursuant to laws that were in effect as of December 31, 1973, and that are restated or revised in this Chapter. The provisions of this Chapter do not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued as of January 1, 1974. (1973, c. 822, s. 1.)

§ 153A-3. Effect of Chapter on local acts.

(a) Except as provided in this section, nothing in this Chapter repeals or amends a local act in effect as of January 1, 1974, or any portion of such an act, unless this Chapter or a subsequent enactment of the General Assembly clearly shows a legislative intent to repeal or supersede that local act.

(b) If this Chapter and a local act each provide a procedure that contains every action necessary for the performance or execution of a power, right, duty, function, privilege, or immunity, the two procedures may be used in the alternative, and a county may follow either one.

(c) If this Chapter and a local act each provide a procedure for the performance or execution of a power, right, duty, function, privilege, or immunity, but the local act procedure does not contain every action necessary for the performance or execution, the two procedures may be used in the alternative, and a county may follow either one; but the local act procedure shall be supplemented as necessary by this Chapter's procedure. If a local act procedure is being supplemented in such a manner, and there is a conflict or inconsistency between the local act procedure and this Chapter's procedure, the local act procedure shall be followed.

(d) If a power, right, duty, function, privilege, or immunity is conferred on counties by this Chapter, and a local act enacted earlier than this Chapter omits or expressly denies or limits the same power, right, duty, function, privilege, or immunity, this Chapter supersedes the local act. (1973, c. 822, s. 1.)

CASE NOTES

Section 153A-345 did not change Forsyth County zoning ordinance enacted pursuant to Session Laws 1947, c. 677 in April, 1967. Cardwell v. Forsyth County Zoning Bd. of Adjustment, 88 N.C. App. 244, 362 S.E.2d 843 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 858 (1988).

Cited in Cardwell v. Smith, 92 N.C. App. 505, 374 S.E.2d 625 (1988); Bethune v. County of Harnett, 349 N.C. 343, 507 S.E.2d 40 (1998).

§ 153A-4. Broad construction.

It is the policy of the General Assembly that the counties of this State should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of local acts shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power. (1973, c. 822, s. 1.)

CASE NOTES

Legislative Intent. — This legislative mandate requires broad construction of those statutes granting power and restrictive readings of those purporting to limit the power. Stillings v. City of Winston-Salem, 63 N.C. App. 618, 306 S.E.2d 489 (1983), rev'd on other grounds, 311 N.C. 689, 319 S.E.2d 233 (1984).

County Zoning Ordinance Enacted Arbitrarily and Capriciously. — County zoning ordinance was enacted arbitrarily and capriciously under G.S. 153A-340(a) and G.S. 153A-341; no mention of the county's comprehensive plan was made in the minutes of the meeting at which the county adopted the ordinance, and some of the permitted uses in the area were not consistent with a rural community character. Town of Green Level v. Alamance County, 184 N.C. App. 665, 646 S.E.2d 851, 2007 N.C. App. LEXIS 1622 (2007).

County Exceeded Statutory Authority With Regard to Zoning Regulations for Manufactured Homes. — County exceeded the power the general assembly conferred upon it with regard to zoning regulations for manufactured homes because an ordinance, as amended, did not employ appearance and dimensional criteria as intended in G.S. 153A-341.1 and G.S. 160A-383.1 when the intent of the ordinance was to increase the tax base by the elimination of housing that rapidly depreciated in value, and that wealth based criterion was neither an appearance nor dimensional criteria; G.S. 160A-383.1, as made applicable to counties by G.S. 153A-341.1, limits a county's power to enact zoning regulations for manufactured homes, and a county may not use its broad police powers as a guise to enact zoning regulations for manufactured homes inconsistent with G.S. 160A-383.1. Five C'S, Inc. v. County of Pasquotank, — N.C. App. —, 672 S.E.2d 737, 2009 N.C. App. LEXIS 152 (2009).

Amendment to county zoning ordinance constituted a valid legislative prerogative to change the sanitary landfill use from a "special use permit" category to a "use by right under prescribed conditions" category and that section of the county zoning ordinance, which allowed county zoning administrator to approve the county's permit application for the siting of a landfill, was constitutional and lawful on its face. County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993).

County was authorized to amend its zoning ordinance to prevent the expansion of a nonconforming use mobile home park by precluding the expansion of its sewage treatment capacity. Huntington Props., LLC v. Currituck County, 153 N.C. App. 218, 569 S.E.2d 695, 2002 N.C. App. LEXIS 1132 (2002).

Applicable Only Where Ambiguity Exists. — Only if there is an ambiguity in a statute found in N.C. Gen. Stat. ch. 153A should G.S. 153A-4 be part of the courts' interpretative process. Durham Land Owners Ass'n v. County of Durham, 177 N.C. App. 629, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

Cited in Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989); Maready v. City of Winston-

Salem, 342 N.C. 708, 467 S.E.2d 615 (1996); Three Guys Real Estate v. Harnett County, 345 N.C. 468, 480 S.E.2d 681 (1997); Williams v. Blue Cross Blue Shield, 357 N.C. 170, 581 S.E.2d 415, 2003 N.C. LEXIS 595 (2003).

§ 153A-5. Statutory references deemed amended to conform to Chapter.

If a reference is made in another portion of the General Statutes, in a local act, or in a city or county ordinance, resolution, or order to a portion of Chapter 153, and the reference is to Chapter 153 as it existed immediately before February 1, 1974, the reference is deemed amended to refer to that portion of this Chapter that most nearly corresponds to the repealed or superseded portion of Chapter 153. (1973, c. 822, s. 1.)

§§ 153A-6 through 153A-9: Reserved for future codification purposes.

ARTICLE 2.

Corporate Powers.

§ 153A-10. State has 100 counties.

North Carolina has 100 counties. They are: Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey. (1973, c. 822, s. 1.)

Editor's Note. — Session Laws 1998-15 provides for the ratification of the Meck Neck Transfer Joint Undertaking Agreement made as of November 18, 1997, by and between Iredell County and Mecklenburg County. Provision is provided for the filing and recording of public records, taxation, completion of the Street Assessment Program begun by Mecklenburg County, resolution of criminal actions, voter registration, jury lists and court jurisdiction, and education and tuition for children residing in the affected area.

CASE NOTES

Cited in In re University of N.C., 300 N.C. 563, 268 S.E.2d 472 (1980).

§ 153A-11. Corporate powers.

The inhabitants of each county are a body politic and corporate under the name specified in the act creating the county. Under that name they are vested with all the property and rights of property belonging to the corporation; have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property and rights of property, real and personal, that may be devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by the corporation, and from time to time may hold, invest, sell, or dispose of the property and rights of property; may have a common seal and alter and renew it at will; and have and may exercise in conformity with the laws of this State county powers, rights, duties, functions, privileges, and immunities of every name and nature. (1868, c. 20, ss. 1, 2, 3, 8; 1876-7, c. 141, s. 1; Code, ss. 702, 703, 704, 707; Rev., ss. 1309, 1310, 1318; C.S., ss. 1290, 1291, 1297; 1973, c. 822, s. 1.)

Legal Periodicals. — For note on abrogation of contractual sovereign immunity, see 12 Wake Forest L. Rev. 1082 (1976).

CASE NOTES

I. General Consideration.
II. Suits By and Against County.

I. GENERAL CONSIDERATION.

Editor's Note. — *Many of the cases cited below were decided under corresponding sections of former law.*

Counties Are Bodies Politic and Corporate. — Counties are bodies politic and corporate, which may exercise as agents for the State only such powers as are prescribed by statute and those which are necessarily implied therefrom by law, essential to the exercise of the powers specifically conferred. O'Neal v. Wake County, 196 N.C. 184, 145 S.E. 28 (1928). See also, Board of Comm'rs v. Hanchett Bond Co., 194 N.C. 137, 138 S.E. 614 (1927).

The Constitution recognizes the existence of counties as governmental agencies. White v. Commissioners of Chowan, 90 N.C. 437 (1884); Woodall v. Western Wake Hwy. Comm'n, 176 N.C. 377, 97 S.E. 226 (1918).

Which Are Part of the State Government. — Counties are of, and constitute a part of, the State government. Their chief purpose is to establish its political organization, and effectuate the local civil administration of its powers and authority. They are in their general nature governmental—mere instrumentalities of government—and possess corporate powers adapted to its purposes. It is not their purpose to create civil liability on their part, and become answerable to individuals civilly or otherwise. Manuel v. Board of Comm'rs, 98 N.C. 9, 3 S.E. 829 (1887), citing White v. Commissioners of Chowan, 90 N.C. 437 (1884) and McCormac v. Commissioners of Robeson, 90 N.C. 441 (1884).

Counties are a branch of the State government. Bell v. Commissioners of Johnston County, 127 N.C. 85, 37 S.E. 136 (1900).

By Art. VII of the Constitution of 1868, counties were regarded as municipal corporations. Winslow v. Commissioners of Perquimans County, 64 N.C. 218 (1870). See also, Gooch v. Gregory, 65 N.C. 142 (1871).

But counties are not, in a strictly legal sense, municipal corporations, like cities and towns. Their purposes are more general and partake more largely of the purposes and powers of government proper. Manuel v. Board of Comm'rs, 98 N.C. 9, 3 S.E. 829 (1887); Bell v. Commissioners of Johnston County, 127 N.C. 85, 37 S.E. 136 (1900); Martin v. Board of Comm'rs, 208 N.C. 354, 180 S.E. 777 (1935).

The powers of the legislature over counties are very broad and far-reaching, giving to it practically full control of them. Jones v. Commissioners, 137 N.C. 579, 50 S.E. 291 (1905); Woodall v. Western Wake Hwy. Comm'n, 176 N.C. 377, 97 S.E. 226 (1918).

Legislature May Create Counties and Invest Them with Powers. — It is within the power of the legislature to subdivide the territory of the State and invest the inhabitants of such subdivisions with corporate functions, more or less extensive and varied in their character, for the purpose of government. The legislature alone can create counties, directly or indirectly, and invest them, and agencies in them, with powers, corporate or otherwise in their nature, to effectuate the purposes of the government, whether these be local or general, or both. Such organizations are intended to be instrumentalities and agencies employed to aid in the administration of the government, and are always under the control of the power that created them unless the same shall be restricted by some constitutional limitations. McCormac v. Commissioners of Robeson, 90 N.C. 441 (1884); Board of Trustees v. Webb, 155 N.C. 379, 71 S.E. 520 (1911); Commissioners of Cumberland County v. Commissioners of Harnett County, 157 N.C. 517, 73 S.E. 195 (1911); Woodall v. Western Wake Hwy. Comm'n, 176 N.C. 377, 97 S.E. 226 (1918).

And May Impose Liability on Counties. — The legislature, subject to constitutional limitations, may confer upon counties such corporate powers to make contracts, create civil liabilities, and serve such business purposes, as it may deem expedient and wise, and may make them answerable in damages for the negligence of their officers and agents in failing to properly exercise the powers with which they are charged, or for exercising them improperly, to the injury of individuals. But such corporate authority and liability must be especially created by and appear from statutory provision, expressed in terms or necessarily implied. Manuel v. Board of Comm'rs, 98 N.C. 9, 3 S.E. 829 (1887).

The legislature may direct counties to perform as duties all things which it can empower them to do. State ex rel. Tate v. Board of Comm'rs, 122 N.C. 812, 30 S.E. 352 (1898).

And May Enlarge, Abridge or Modify Counties' Functions. — The functions of counties are not always the same, and they may be enlarged, abridged or modified at the will of the legislature. White v. Commissioners of Chowan, 90 N.C. 437 (1884).

As Well as Alter or Abolish Counties. — Counties are legislative creations and subject to be changed, even abolished, or divided and subdivided, at the will of the General Assembly. Jones v. Commissioners, 143 N.C. 59, 55 S.E. 427 (1906); Board of Trustees v. Webb, 155 N.C. 379, 71 S.E. 520 (1911); Woodall v. Western Wake Hwy. Comm'n, 176 N.C. 377, 97 S.E. 226 (1918).

As to construction of powers granted to counties under former statutes, see Vaughn v. Commissioners of Forsyth County, 118 N.C. 636, 24 S.E. 425 (1896).

Supervisory Control of Boards of Commissioners. — Under the Constitution and public laws of North Carolina, the boards of county commissioners are generally given supervision and control of governmental matters in the several counties. Bunch v. Commissioners of Randolph County, 159 N.C. 335, 74 S.E. 1048 (1912).

County Must Act Through Commissioners Convened in a Legal Session. — For a county to exercise its power to contract, it is essential that it act through its county commissioners as a body convened in legal session, regular, adjourned or special, and, as a rule, authorized meetings are prerequisite to corporate action, which should be based upon deliberate conference and intelligent discussion of proposed measures. O'Neal v. Wake County, 196 N.C. 184, 145 S.E. 28 (1928); Davenport v. Pitt County Drainage Dist., 220 N.C. 237, 17 S.E.2d 1 (1941); Jefferson Std. Life Ins. Co. v. Guilford County, 225 N.C. 293, 34 S.E.2d 430 (1945).

And Not in Joint Meeting with Other Governmental Agencies. — The commissioners of a county are without authority, constitutional or statutory, to enter into a joint meeting with other State governmental agencies functioning as entirely separate departments respectively of the county and the State, and therein to make a binding corporate contract by the adoption of a joint verbal agreement to pledge the faith and credit of the county for its part in paying for the employment of a person to render service in the capacity of a detective to determine and procure evidence against those who have committed a criminal offense. O'Neal v. Wake County, 196 N.C. 184, 145 S.E. 28 (1928).

In order to make a binding pecuniary obligation on a county under former statute imposing duty on county commissioners to provide for the poor, there had to be a contract to that effect, express in its terms, or the service had to be done at the express request of an officer or agent charged with the duty and having the power to make contracts concerning it. Copple v. Commissioners, 138 N.C. 127, 50 S.E. 574 (1905).

A county may not exercise jurisdiction over any part of a city located within its borders. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Authority to Allow Payment of Insurance Premiums for Disability Retiree. — In an action by a retired police officer seeking continuation of insurance payments by the county; individual county commissioners did not have authority to bind the county to such payments pursuant to G.S. 153A-92 or G.S. 153A-11, and a county manager did not did not have authority pursuant to G.S. 153A-82 to bind the county to an agreement to pay the insurance premiums without an express delegation of power by the Board of County Commissioners. Denson v. Richmond County, 159 N.C. App. 408, 583 S.E.2d 318, 2003 N.C. App. LEXIS 1498 (2003).

Applied in Malloy v. Durham County Dep't of Social Servs., 58 N.C. App. 61, 293 S.E.2d 285 (1982); Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984); Hubbard v. County of Cumberland, 143 N.C. App. 149, 544 S.E.2d 587, 2001 N.C. App. LEXIS 235 (2001).

Cited in Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976); In re University of N.C., 300 N.C. 563, 268 S.E.2d 472 (1980); Avery v. County of Burke, 660 F.2d 111 (4th Cir. 1981); Ratliff v. Burney, 505 F. Supp. 105 (W.D.N.C. 1981); Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280 (1987); Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987); Craig v.

County of Chatham, 143 N.C. App. 30, 545 S.E.2d 455, 2001 N.C. App. LEXIS 221 (2001).

II. SUITS BY AND AGAINST COUNTY.

Suit in Name of County. — Where a county is the real party in interest, it must sue and be sued in its own name. Lenoir County v. Crabtree, 158 N.C. 357, 74 S.E. 105 (1912); Fountain v. County of Pitt, 171 N.C. 113, 87 S.E. 990 (1916); Johnson v. Marrow, 228 N.C. 58, 44 S.E.2d 468 (1947).

A county is not required in an action for mandatory injunction to bring the suit in the name of the county commissioners. Such a suit should be brought in the name of the county. Lenoir County v. Crabtree, 158 N.C. 357, 74 S.E. 105 (1912).

Absent a refusal of the board of commissioners of a county to institute an action in its behalf, the action must be instituted in the name of the county or on relation of the county. Johnson v. Marrow, 228 N.C. 58, 44 S.E.2d 468 (1947).

As to requirement of former statute that all actions and proceedings by or against a county in its corporate capacity be in the name of the board of commissioners, see Pegram v. Commissioners of Cleveland County, 65 N.C. 114 (1871); Askew v. Pollock, 66 N.C. 49 (1872); State ex rel. Wescott v. Thees, 89 N.C. 55 (1883); Fountain v. County of Pitt, 171 N.C. 113, 87 S.E. 990 (1916).

As to venue of action under former statute providing that a county should sue and be sued in the name of the board of commissioners, see Jones v. Board of Comm'rs, 69 N.C. 412 (1873); Steele v. Commissioners of Rutherford, 70 N.C. 137 (1874).

Form of Action Against County. — Where a good cause of action exists, a county may be sued in any form appropriate to the cause of action, and its liability does not differ as respects the form of the action from that of a private corporation or of an individual. Winslow v. Commissioners of Perquimans County, 64 N.C. 218 (1870).

Failure to Join the County in Rezoning Dispute Was Fatal. — The trial court erred in denying the Board of Commissioners' motion to dismiss under G.S. 1A-1, Rule 12(b)(1), (2), (4), (6) and (7) where the plaintiffs brought their action challenging a rezoning solely against the board and not against the county, and where the plaintiffs' attempts to amend the complaint to substitute the county as the named defendant were ineffective as they occurred after the statute of limitations had run under G.S. 1-54.1. Piland v. Board of Comm'rs, 141 N.C. App. 293, 539 S.E.2d 669, 2000 N.C. App. LEXIS 1411 (2000).

Counties and County Commissioners Do Not Have Sovereign Immunity. — These powers and the many others enumerated in this Chapter show that a county and the county commissioners are not part of the State of North Carolina and they do not enjoy its sovereign immunity. Meares v. Brunswick County, 615 F. Supp. 14 (E.D.N.C. 1985).

Counties may be sued only in such cases and for such causes as may be allowed by statute. Bell v. Commissioners of Johnston County, 127 N.C. 85, 37 S.E. 136 (1900).

And Are Not Ordinarily Liable for Exercise of Corporate Powers. — Counties are not ordinarily liable to be sued civilly for the manner in which they exercise or fail to exercise their corporate powers. White v. Commissioners of Chowan, 90 N.C. 437 (1884).

Generally a county is not liable for damages by reason of the neglect of its officers or agents. Manuel v. Board of Comm'rs, 98 N.C. 9, 3 S.E. 829 (1887).

Absent Statutory Provisions Giving a Right of Action. — Counties are not liable in damages for the torts of their officials, in the absence of statutory provisions giving a right of action. Keenan v. Commissioners of New Hanover County, 167 N.C. 356, 83 S.E. 556 (1914), petition for rehearing denied, 169 N.C. 246, 85 S.E. 5 (1915). As to waiver of governmental immunity by county, see § 153A-435.

For case holding county not liable in damages for injury occasioned by a defective bridge forming a part of the highway, see Moffitt v. City of Asheville, 103 N.C. 237, 9 S.E. 695 (1889).

Power to Compromise Suits. — The power to sue and to defend suits carries with it, by necessary implication, the power to make bona fide compromise adjustments of such suits. Board of Comm'rs v. Tollman, 145 F. 753 (4th Cir. 1906).

Power to Enter Consent Judgment. — County commissioners have authority to assent to the entry of a consent judgment in an action pending against the county, when such judgment is entered in good faith and is free from fraud, etc., a consent judgment being a contract of the parties spread upon the records with the approval and sanction of a court of competent jurisdiction. Weaver v. Hampton, 204 N.C. 42, 167 S.E. 484 (1933).

County revenue is safe from seizure by creditors, or even for taxes due the federal government, because to admit the right to appropriate such revenue in satisfaction of a claim would be to concede the power to destroy the State government by depriving its agencies of the means of performing their proper functions. Subject to the restrictions contained in the federal Constitution, the State is a sovereignty, and it is essential to its preservation to give to all property held for it by such agencies as counties the same protection as is given to that held in its own name. Hughes v. Commissioners of Craven County, 107 N.C. 598, 12 S.E. 465 (1890); Vaughn v. Commissioners of Forsyth County, 118 N.C. 636, 24 S.E. 425 (1896).

Property and Revenue of County Not Subject to Execution. — A county can only acquire and hold property for necessary public purposes and for the benefit of all its citizens, and the principles of public policy prevent such property from being sold under execution to satisfy the debt of an individual. Hughes v. Commissioners of Craven County, 107 N.C. 598, 12 S.E. 465 (1890). See also, Gooch v. Gregory, 65 N.C. 142 (1871).

Ordinarily, the only remedy of a judgment creditor of a county is a writ of mandamus to compel its commissioners to levy a tax to pay the debt. Hughes v. Commissioners of Craven County, 107 N.C. 598, 12 S.E. 465 (1890), citing Pegram v. Commissioners of Cleveland County, 64 N.C. 557 (1870); Lutterloh v. Board of Comm'rs, 65 N.C. 403 (1871); Rogers v. Jenkins, 98 N.C. 129, 3 S.E. 821 (1887).

A plaintiff who has obtained a judgment against a county is not entitled to an execution against it. His remedy is by writ of mandamus against the board of commissioners of the county to compel them to levy a tax for the satisfaction of the judgment. Gooch v. Gregory, 65 N.C. 142 (1871).

When Mandamus Unnecessary. — An action may be maintained against county commissioners establishing a debt against the county without asking for a writ of mandamus where it appears that the county has property subject to trusts, or such as can be reached only by proceedings supplemental to execution. Hughes v. Commissioners of Craven County, 107 N.C. 598, 12 S.E. 465 (1890).

Disability Discrimination Claim. — District court declined to grant a county's Fed. R. Civ. P. 12(b)(1) motion to dismiss a former employee's disability discrimination claims where the county had the capacity to be sued under G.S. 153A-11 and as a county, it was not entitled to sovereign immunity under the Eleventh Amendment. Rivera v. Guilford County, 286 F. Supp. 2d 635, 2003 U.S. Dist. LEXIS 18214 (M.D.N.C. 2003).

§ 153A-12. Exercise of corporate power.

Except as otherwise directed by law, each power, right, duty, function, privilege and immunity of the corporation shall be exercised by the board of commissioners. A power, right, duty, function, privilege, or immunity shall be carried into execution as provided by the laws of the State; a power, right, duty, function, privilege, or immunity that is conferred or imposed by law without direction or restriction as to how it is to be exercised or performed shall be carried into execution as provided by ordinance or resolution of the board of commissioners. (1868, c. 20, ss. 1, 2; 1876-7, c. 141, s. 1; Code, ss. 702, 703; Rev., s. 1309; C.S., s. 1290; 1973, c. 882, s. 1.)

CASE NOTES

Counties and County Commissioners Do Not Have Sovereign Immunity. — These powers and the many others enumerated in this Chapter show that a county and the county commissioners are not part of the State of North Carolina and they do not enjoy its sovereign immunity. Meares v. Brunswick County, 615 F. Supp. 14 (E.D.N.C. 1985).

Failure to Join the County in Rezoning Dispute Was Fatal. — The trial court erred in denying the Board of Commissioners' motion to dismiss under G.S. 1A-1, Rule 12(b)(1), (2), (4), (6) and (7) where the plaintiffs brought their action challenging a rezoning solely against the board and not against the county, and where the plaintiffs' attempts to amend the complaint to substitute the county as the named defendant were ineffective as they occurred after the statute of limitations had run under G.S. 1-54.1. Piland v. Board of Comm'rs, 141 N.C. App. 293, 539 S.E.2d 669, 2000 N.C. App. LEXIS 1411 (2000).

Applied in Malloy v. Durham County Dep't of Social Servs., 58 N.C. App. 61, 293 S.E.2d 285 (1982).

Cited in Bethune v. County of Harnett, 349 N.C. 343, 507 S.E.2d 40 (1998).

§ 153A-13. Continuing contracts.

A county may enter into continuing contracts, some portion or all of which are to be performed in ensuing fiscal years. In order to enter into such a contract, the county must have sufficient funds appropriated to meet any amount to be paid under the contract in the fiscal year in which it is made. In each year, the board of commissioners shall appropriate sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into. (1959, c. 250; 1973, c. 822, s. 1.)

Cross References. — As to report on guaranteed energy savings contracts, see G.S. 143-64.17G.

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

§ 153A-14. Grants and loans from other governments.

A county may contract for and accept grants and loans as permitted by G.S. 160A-17.1. (1973, c. 822, s. 1; 2007-91, s. 2.)

Editor's Note. — Session Laws 2007-91, s. 3, provides, in part, that amendment to the section head made by that act expires on December 11, 2010.

Effect of Amendments. — Session Laws 2007-91, s. 2, effective June 20, 2007, and expiring December 31, 2010, inserted "and loans" in the section heading.

§ 153A-15. Consent of board of commissioners necessary in certain counties before land may be condemned or acquired by a unit of local government outside the county.

(a) Notwithstanding the provisions of Chapter 40A of the General Statutes or any other general law or local act conferring the power of eminent domain, before final judgment may be entered in any action of condemnation initiated by a county, city or town, special district, or other unit of local government which is located wholly or primarily outside another county, whereby the condemnor seeks to acquire property located in the other county, the condemnor shall furnish proof that the county board of commissioners of the county where the land is located has consented to the taking.

(b) Notwithstanding the provisions of G.S. 153A-158, 160A-240.1, 130A-55, or any other general law or local act conferring the power to acquire real property, before any county, city or town, special district, or other unit of local government which is located wholly or primarily outside another county acquires any real property located in the other county by exchange, purchase or lease, it must have the approval of the county board of commissioners of the county where the land is located.

(c) This section applies to Alamance, Alleghany, Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Montgomery, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Watauga, Wayne, Wilkes, and Yancey Counties only.

(d) This section does not apply as to any condemnation or acquisition of real property or an interest in real property by a city where the property to be condemned or acquired is within the corporate limits of that city. (1981, c. 134, ss. 1, 2; c. 270, ss. 1, 2; c. 283, ss. 1-3; c. 459, s. 1; c. 941, s. 1; 1981 (Reg. Sess., 1982), c. 1150, s. 1; 1989 (Reg. Sess., 1990), c. 973, s. 1; c. 1061, s. 1; 1991, c. 615, s. 3; 1991 (Reg. Sess., 1992), c. 790, s. 1; 1993 (Reg. Sess., 1994), c. 624, s. 1; c. 628, s. 1; 1995 (Reg. Sess., 1996), c. 681, s. 1; 1997-164, s. 1; 1997-263, s. 1; 1998-110, s. 1; 1998-217, s. 47; 1999-6, s. 1; 2005-33, s. 1.)

Local Modification. — Anson, Bertie, Buncombe, Burke, Caldwell: 1989 (Reg. Sess., 1990), c. 1061, s. 2; Caswell: 1981, c. 941, s. 2; Cleveland, Davidson, Davie, Forsyth: 1989 (Reg. Sess., 1990), c. 1061, s. 2; Granville: 1981, c. 941, s. 2; Kannapolis: 1997, c. 295; Martin, Montgomery: 1989 (Reg. Sess., 1990), c. 1061, s. 2; Person: 1981, c. 941, s. 2; Rowan, Transylvania: 1989 (Reg. Sess., 1990), c. 1061, s. 2; Vance, Warren: 1981, c. 941, s. 2; Wilkes: 1989 (Reg. Sess., 1990), c. 1061, s. 2; Town of Chapel Hill: 2004-119, s. 2.

Editor's Note. — Sections 1 and 2 of Session Laws 1981, cc. 134 and 270, and ss. 1 through 3 of Session Laws 1981, c. 283, as amended by Session Laws 1981, cc. 459, 941, and 1150, and Session Laws 1989 (Reg. Sess., 1990), cc. 973, and 1061, have been codified as this section under the direction of the Revisor of Statutes.

For similar provisions pertaining to Cabarrus County, see Session Laws 1985, c. 194.

CASE NOTES

Applicability. — Summary judgment was properly entered in a declaratory action regarding the applicability of G.S. 153A-15(b) because a condemnation action by a city in order to facilitate the construction of a water supply and distribution facility did not require any approval since the city and the land were located in the same county; moreover, the evidence showed that the real and substantial benefits of the condemnation accrued to the city in question, and not other parties in the case that were located in different counties. Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

Cited in County of Johnston v. City of Wilson, 136 N.C. App. 775, 525 S.E.2d 826, 2000 N.C. App. LEXIS 137 (2000).

§ 153A-15.1. Agreement to make payment in lieu of future ad valorem taxes required before wetlands acquisition by a unit of local government.

(a) Condemnation. — Notwithstanding the provisions of G.S. 153A-15, Chapter 40A of the General Statutes, or any other general law or local act conferring the power of eminent domain, before a final judgment may be entered or a final condemnation resolution adopted in an action of condemnation initiated by a unit of local government whose property is exempt from tax under Section 2(3) of Article V of the North Carolina Constitution, whereby the condemnor seeks to acquire land for the purpose of wetlands mitigation, the condemnor shall agree in writing to pay to the county where the land is located a sum equal to the estimated amount of ad valorem taxes that would have accrued to the county for the next 20 years had the land not been acquired by the condemnor.

(b) Purchase. — Notwithstanding the provisions of G.S. 130A-55, 153A-15, 153A-158, 160A-240.1, or any other general law or local act conferring the power to acquire real property, before any unit of local government whose property is exempt from tax under Section 2(3) of Article V of the North Carolina Constitution purchases any land for the purpose of wetlands mitigation, the unit shall agree in writing to pay to the county where the land is located a sum equal to the estimated amount of ad valorem taxes that would have accrued to the county for the next 20 years had the land not been acquired by the acquiring unit.

(c) Definition. — For purposes of this section, the "estimated amount of ad valorem taxes that would have accrued for the next 20 years" means the total assessed value of the acquired land excluded from the county's tax base multiplied by the tax rate set by the county board of commissioners in its most recent budget ordinance adopted under Chapter 159 of the General Statutes, and then multiplied by 20.

(d) Exception. — This section does not apply to any condemnation or acquisition of land by a city or special district if the land to be condemned or acquired is within the corporate limits of that city or special district or within the county where the city or special district is located.

(e) Application. — This section applies only to land acquired in counties designated as a development tier one area under G.S. 143B-437.08. (2004-188, s. 1; 2006-252, s. 2.17.)

§ 153A-16: Reserved for future codification purposes.

ARTICLE 3.

Boundaries.

§ 153A-17. Existing boundaries.

The boundaries of each county shall remain as presently established, until changed in accordance with law. (1973, c. 822, s. 1.)

§ 153A-18. Uncertain or disputed boundary.

(a) If two or more counties are uncertain as to the exact location of the boundary between them, they may cause the boundary to be surveyed, marked, and mapped. The counties may appoint special commissioners to supervise the surveying, marking, and mapping. A commissioner so appointed or a person surveying or marking the boundary may enter upon private property to view and survey the boundary or to erect boundary markers. Upon ratification of the survey by the board of commissioners of each county, a map showing the surveyed boundary shall be recorded in the office of the register of deeds of each county in the manner provided by law for the recordation of maps or plats and in the Secretary of State's office. The map shall contain a reference to the date of each resolution of ratification and to the page in the minutes of each board of commissioners where the resolution may be found. Upon recordation, the map is conclusive as to the location of the boundary.

(b) If two or more counties dispute the exact location of the boundary between them, and the dispute cannot be resolved pursuant to subsection (a) of this section, any of the counties may apply to a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in any of the districts or sets of districts as defined in G.S. 7A-41.1 in which any of the counties is located for appointment of a boundary commission. The application shall identify the disputed boundary and ask that a boundary commission be appointed. Upon receiving the application, the court shall set a date for a hearing on whether to appoint the commission. The court shall cause notice of the hearing to be served on the other county or counties. If, after the hearing, the court finds that the location of the boundary is disputed, it shall appoint a boundary commission.

The commission shall consist of one resident of each disputing county and a resident of some other county. The court may appoint one or more surveyors to assist the commission. The commission shall locate, survey, and map and may mark the disputed boundary. To do so it may take evidence and hear testimony, and any commissioner and any person surveying or marking the boundary may enter upon private property to view and survey the boundary or to erect boundary markers. Within 45 days after the day it is appointed, unless this time is extended by the court, the commission shall make its report (which shall include a map of the surveyed boundary) to the court. To be sufficient, the report must be concurred in by a majority of the commissioners. If the court is satisfied that the commissioners have made no error of law, it shall ratify the report, after which the map shall be recorded in the office of the register of deeds of each county in the manner provided by law for the recordation of maps or plats and in the Secretary of State's office. Upon recordation, the map is conclusive as to the location of the boundary.

The disputing counties shall divide equally the costs of locating, surveying, marking, and mapping the boundary, unless the court finds that an equal division of the costs would be unjust. In that case the court may determine the division of costs.

(c) Two or more counties may establish the boundary between them pursuant to subsection (a), above, by the use of base maps prepared from orthophotography, which base maps show the monuments of the United States Geological Survey and North Carolina State Plane Coordinate System established pursuant to Chapter 102 of the General Statutes. Upon ratification of the location of the boundary determined from orthophotography by the board of commissioners of each county, the map showing the boundary and the monuments of the United States Geological Survey and North Carolina State Plane Coordinate System shall be recorded in the Office of the Register of Deeds of each county and in the Secretary of State's office. The map shall contain a reference to the date of each resolution of ratification and to the page in the minutes of each board of commissioners where the resolution may be found. Upon recordation, the map is conclusive as to the location of the boundary. (1836, c. 3; R.C., c. 27; Code, s. 721; Rev., s. 1322; C.S., s. 1299; 1925, c. 251; 1973, c. 822, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 121; 1997-299, s. 1.)

Local Modification. — Session Laws 1997-299, s. 1, repealed the local modifications to this section.

Editor's Note. — Session Laws 2007-9, s. 1, provides: "(a) The official county lines of Gaston County, and the official township lines of the various townships in said county shall be as indicated on that certain map entitled "Gaston County, N. C., map of county and township lines, dated April, 1963, surveyed by Findlay, Witheres, McConnoughey, Inc., Registered Surveyors.

"(b) Notwithstanding subsection (a) of this section, the Counties of Gaston and Lincoln shall establish in accordance with G.S. 153A-18 the line between those two counties as provided on that map, but respecting to the extent practicable the line as it has been observed in practice, provided that the line does not make any territory in one county noncontiguous to the remainder of the county. In any case where the tax treatment of a parcel has in practice been divided in some proportion between the two counties without drawing of an actual line, the two counties may divide the properties proportionally between the two counties. Until the line has been established in accordance with this subsection, the line shall continue to be administered as it has been in practice, rather than as provided by subsection (a) of this section. This subsection does not have any effect on the action of the Board of Commissioners of Gaston County in 1979 to alter the boundary between Gastonia and Southpoint Townships."

§ 153A-19. Establishing and naming townships.

(a) A county may by resolution establish and abolish townships, change their boundaries, and prescribe their names, except that no such resolution may become effective during the period beginning January 1, 1998, and ending January 2, 2000, and any resolution providing that the boundaries of a township shall change automatically with changes in the boundaries of a city shall not be effective during that period. The current boundaries of each township within a county shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk.

(b) Any provision of a city charter or other local act which provides that the boundaries of a township shall change automatically upon a change in a city boundary shall not be effective during the period beginning January 1, 1998, and ending January 2, 2000.

(c) The county manager or, where there is no county manager, the chairman of the board of commissioners, shall report township boundaries and changes in those boundaries to the United States Bureau of the Census in the Boundary and Annexations Survey. In responding to the surveys, each county manager or, if there is no manager, chairman of the board of commissioners shall consult with the county board of elections and other appropriate local agencies as to the location of township boundaries, so that the Census Bureau's mapping of township boundaries does not disagree with any county voting precinct boundaries that may be based on township boundaries. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C.S., s. 1297; 1973, c. 822, s. 1; 1987, c. 715, s. 1; c. 879, s. 2; 1993, c. 352, s. 1; 1995, c. 423, s. 4.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under corresponding sections of former law.*

Townships are within the power and control of the General Assembly, just as are counties, cities, towns and other municipal corporations. It may confer upon them, or any single one of them, corporate powers, with the view to accomplish any lawful purpose. Such powers may be conferred for a single purpose as well as many. Brown v. Commissioners of Hertford, 100 N.C. 92, 5 S.E. 178 (1888); Jones v. Commissioners of Person County, 107 N.C. 248, 12 S.E. 69 (1890).

Power to Subdivide Territory and Bestow Corporate Functions. — It is within the power of the legislature to subdivide the territory of the State and invest the inhabitants of such subdivisions with corporate functions. Moreover, it is not essential that such subdivisions be created directly by legislative enactment, certain agencies may be required by statute to establish them. McCormac v. Commissioners of Robeson, 90 N.C. 441 (1884).

As to former corporate powers of townships and former boards of township trustees, see Mitchell v. Board of Trustees, 71 N.C. 400 (1874); Wallace v. Board of Trustees, 84 N.C. 164 (1881); Jones, Gaskill & Co. v. Commissioners of Rowan, 85 N.C. 278 (1881); Brown v. Commissioners of Hertford, 100 N.C. 92, 5 S.E. 178 (1888); Jones v. Commissioners of Person County, 107 N.C. 248, 12 S.E. 69 (1890).

As to liability of trustees for torts, see Price v. Board of Trustees, 172 N.C. 84, 89 S.E. 1066 (1916).

Charging of County Officers with Township Duties. — The townships are constituent parts of the county organization, and the county officers may well be charged with duties and authority in respect to debts they may be allowed by statute to contract. Jones v. Commissioners of Person County, 107 N.C. 248, 12 S.E. 69 (1890).

County commissioners are not authorized to issue bonds on the credit of a township for construction of a railroad. Graves v. Commissioners, 135 N.C. 49, 47 S.E. 134 (1904).

County Bonds Not to Be Issued for Road Purposes of One Township or Taxing District. — While the building of public roads has been held a necessary expense, application of the principle may not be extended to instances where a statute requires the county to issue its bonds for road purposes to obtain aid for a township or local taxing district therein, upon the approval of the voters of the particular district alone, and without benefit to the others. Commissioners of Johnston County v. Lacy, 174 N.C. 141, 93 S.E. 482 (1917).

Cited in River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

§ 153A-20. Map of electoral districts.

If a county is divided into electoral districts for the purpose of nominating or electing persons to the board of commissioners, the current boundaries of the electoral districts shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk. (1973, c. 822, s. 1.)

§ 153A-21: Repealed by Session Laws 1973, c. 884.

Editor's Note. — Session Laws 1975, c. 389, applicable only to Robeson County, reenacted this section.

§ 153A-22. Redefining electoral district boundaries.

(a) If a county is divided into electoral districts for the purpose of nominating or electing persons to the board of commissioners, the board of commissioners may find as a fact whether there is substantial inequality of population among the districts.

(b) If the board finds that there is substantial inequality of population among the districts, it may by resolution redefine the electoral districts.

(c) Redefined electoral districts shall be so drawn that the quotients obtained by dividing the population of each district by the number of commissioners apportioned to the district are as nearly equal as practicable, and each district shall be composed of territory within a continuous boundary.

(d) No change in the boundaries of an electoral district may affect the unexpired term of office of a commissioner residing in the district and serving on the board on the effective date of the resolution. If the terms of office of members of the board do not all expire at the same time, the resolution shall state which seats are to be filled at the initial election held under the resolution.

(e) A resolution adopted pursuant to this section shall be the basis of electing persons to the board of commissioners at the first general election for members of the board of commissioners occurring after the resolution's effective date, and thereafter. A resolution becomes effective upon its adoption, unless it is adopted during the period beginning 150 days before the day of a primary and ending on the day of the next succeeding general election for membership on the board of commissioners, in which case it becomes effective on the first day after the end of the period.

(f) Not later than 10 days after the day on which a resolution becomes effective, the clerk shall file in the Secretary of State's office, in the office of the register of deeds of the county, and with the chairman of the county board of elections, a certified copy of the resolution.

(g) This section shall not apply to counties where under G.S. 153A-58(3)d. or under public or local act, districts are for residence purposes only, and the qualified voters of the entire county nominate all candidates for and elect all members of the board. (1981, c. 795.)

Local Modification. — Dare: 1991, Ex. Sess., c. 2, ss. 4-5.1 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

Editor's Note. — Session Laws 1993, c. 521, s. 2 provides: "Section 1 of this act supersedes any previous action under G.S. 153A-22." Section 1 provides: "Chapter 136, Session Laws of 1991, [relating to expanding and redistricting the Guilford County Board of Commissioners] is reenacted."

§§ 153A-23, 153A-24: Reserved for future codification purposes.

Article 4.

Form of Government.

Part 1. General Provisions.

§ 153A-25. Qualifications for appointive office.

The board of commissioners may fix qualifications for any appointive office, including a requirement that a person serving in such an office reside within the county. The board may not waive qualifications fixed by law for an appointive office but may fix additional qualifications for that office. (1973, c. 822, s. 1.)

Local Modification. — (As to Article 4 of Chapter 153A) Dare and Watauga: 2009-1.

§ 153A-26. Oath of office.

Each person elected by the people or appointed to a county office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, Sec. 7 of the Constitution. The oath of office shall be administered by some person authorized by law to administer oaths and shall be filed with the clerk.

On the first Monday in December following each general election at which county officers are elected, the persons who have been elected to county office in that election shall assemble at the regular meeting place of the board of commissioners. At that time each such officer shall take and subscribe the oath of office. An officer not present at this time may take and subscribe the oath at a later time. (1868, c. 20, s. 8; 1874-5, c. 237, s. 3; Code, ss. 707, 708; 1895, c. 135, ss. 3, 4; Rev., ss. 1316, 1318; C.S., ss. 1295, 1297; 1965, c. 26; 1973, c. 822, s. 1.)

CASE NOTES

Applied in Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

§ 153A-27. Vacancies on the board of commissioners.

If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any five registered voters of the county. If for any other reason the remaining members of the board do not fill a vacancy within 60 days after the day the vacancy occurs, the clerk shall immediately report the vacancy to the clerk of superior court of the county. The clerk of superior court shall, within 10 days after the day the vacancy is reported to him, fill the vacancy.

If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 60 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated, either to the remainder of the unexpired term or, if the term has expired, to a full term.

To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts. The board of commissioners or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling a vacancy, but neither the board nor the clerk of the superior court is bound by the committee's recommendation. (Code, s. 719; 1895, c. 135, s. 7; Rev., s. 1314; 1909, c. 490, s. 1; C.S., s. 1294; 1959, c. 1325; 1965, cc. 239, 382; 1967, cc. 7, 424, 439, 1022; 1969, cc. 82, 222; 1971, c. 743, s. 1; 1973, c. 822, s. 1; 1985, c. 563, ss. 7.3, 7.4.)

Cross References. — As to counties not subject to this section, see G.S. 153A-27.1.

CASE NOTES

Authority to Accept Resignation. — Under former statute which authorized the clerk of the superior court to fill vacancies on boards of commissioners in all cases, it was held that a tender of resignation by a county commissioner to the clerk of the superior court was a tender to the proper authority. While the mere filing of the resignation did not vacate the office, its acceptance by the clerk was final, and after its acceptance the commissioner had no power to withdraw it. Rockingham County v. Luten Bridge Co., 35 F.2d 301 (4th Cir. 1929).

§ 153A-27.1. Vacancies on board of commissioners in certain counties.

(a) If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any registered voters of the county.

(b) If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 60 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated for the remainder of the unexpired term.

(c) To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts.

(d) If the member who vacated the seat was elected as a nominee of a political party, the board of commissioners, the chairman of the board, or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling the vacancy, and shall appoint the person recommended by the county executive committee of the political party of which the commissioner being replaced was a member, if the party makes a recommendation within 30 days of the occurrence of the vacancy.

(e) Whenever because of G.S. 153A-58(3)b. or because of any local act, only the qualified voters of an area which is less than the entire county were eligible to vote in the general election for the member whose seat is vacant, the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territorial area of the district of the county commissioner.

(f) The provisions of any local act which provides that a county executive committee of a political party shall fill any vacancy on a board of county commissioners are repealed.

(g) Counties subject to this section are not subject to G.S. 153A-27.

(h) This section shall apply only in the following counties: Alamance, Alexander, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Cumberland, Dare, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lee, Lincoln, Macon, Madison, McDowell, Mecklenburg, Moore, Pender, Polk, Randolph, Rockingham, Rutherford, Sampson, Stanly, Stokes, Transylvania, Wake, and Yancey. (1981, c. 763, ss. 6, 14; c. 830; 1983, c. 418; 1985, c. 563, s. 7.2; 1987, c. 196, s. 1; 1989, c. 296; c. 497, s. 2; 1991, c. 395, s. 1; c. 558, s. 1; 1995 (Reg. Sess., 1996), c. 683, s. 1; 1997-88, s. 1; 2009-32, s. 1.)

Local Modification. — Wake: 1981, c. 763, s. 12.

Effect of Amendments. — Session Laws 2009-32, s. 1, effective May 21, 2009, inserted "Lee" in subsection (h).

OPINIONS OF ATTORNEY GENERAL

For a discussion of the proper authority and procedures for appointing an interim county tax collector, see opinion of Attorney General to The Honorable Charles Beall, North Carolina House of Representatives, 1998 N.C.A.G. 35 (8/5/98).

§ 153A-28. Compensation of board of commissioners.

The board of commissioners may fix the compensation and allowances of the chairman and other members of the board by inclusion of the compensation and allowances in and adoption of the budget ordinance. In addition, if the chairman or any other member of the board becomes a full-time county official, pursuant to G.S. 153A-81 or 153A-84, his compensation and allowances may be adjusted at any time during his service as a full-time official, for the duration of that service. (Code, s. 709; Rev., s. 2785; 1907, c. 500; C.S., s. 3918; 1969, c. 180, s. 1; 1971, c. 1125, s. 1; 1973, c. 822, s. 1.)

CASE NOTES

Erroneous But Innocent Mileage Allowance. — Where a board of county commissioners audited in favor of its members for mileage, to which they were not entitled, and it was found as a fact that they did so under advice and without any corrupt or fraudulent motive, it was held that the members of the board were not indictable either under G.S. 14-234 or at common law. State v. Norris, 111 N.C. 652, 16 S.E. 2 (1892), decided under former law.

OPINIONS OF ATTORNEY GENERAL

Authority of the county commissioners to amend the county budget to raise or lower their compensation at any time during the fiscal year is limited by their authority to fix their compensation in the adoption of the annual budget. See opinion of Attorney General to Mr. James C. Fox, New Hanover County Attorney, 42 N.C.A.G. 132 (1972), issued under former law.

§ 153A-29: Repealed by Session Laws 1975, c. 514, s. 17.

§§ 153A-30 through 153A-33: Reserved for future codification purposes.

Part 2. Structure of the Board of Commissioners.

§ 153A-34. Structure of boards of commissioners.

Each county is governed by a board of commissioners. The structure and manner of election of the board of commissioners in each county shall remain as it is on February 1, 1974, until changed in accordance with law. (Rev., s. 1311; C.S., s. 1292; 1973, c. 822, s. 1.)

Editor's Note. — Session Laws 1973, c. 822, s. 2, provided, in part, that the repeal of former G.S. 153-4 and 153-5 did not affect in any way the structure or manner of election of any board of county commissioners nor the structure or manner of election of which was established by those sections, and that each board of commissioners would continue to have the same structure and manner of election as it had on the effective date of the 1973 act until that structure or manner of election was changed in accordance with law.

Legal Periodicals. — For note on one man, one vote as applied to local governing bodies, see 47 N.C.L. Rev. 413 (1969).

CASE NOTES

Editor's Note. *— The cases cited below were decided under corresponding sections of former law.*

Board of commissioners of a county has a perpetual existence, continued by members who succeed each other, and the body remains the same, notwithstanding a change in the individuals who compose it. Pegram v. Commissioners of Cleveland County, 65 N.C. 114 (1871).

Powers of Board of Commissioners. — The board of commissioners in a county possesses only those powers which have been prescribed by statute and those necessarily implied by law, and no others. This is the general rule. Fidelity & Deposit Co. v. Fleming, 132 N.C. 332, 43 S.E. 899 (1903).

Powers of De Facto Board. — An old board of commissioners, holding over as de facto officers, has the right and duty of performing, to the fullest extent, all the appropriate functions of office. State ex rel. Jones v. Jones, 80 N.C. 127 (1879).

Exercise of Powers by Board as Exercise by County. — The board's exercise of statutory powers is, in contemplation of law, the exercise of such powers by the county. Board of Comm'rs v. Hanchett Bond Co., 194 N.C. 137, 138 S.E. 614 (1927).

Powers to Be Exercised by Majority. — A majority of the commissioners constitute the legal body, and generally a majority of the members of the legally organized body can exercise the powers delegated to the county. Cleveland Cotton Mills v. Commissioners of Cleveland County, 108 N.C. 678, 13 S.E. 271 (1891).

There is no grade among the duties and powers of county commissioners, and no preference is given to one over another. Long v. Commissioners of Richmond County, 76 N.C. 273 (1877).

The board of commissioners has the power and duty of auditing and passing upon the validity of claims. Reed v. Farmer, 211 N.C. 249, 189 S.E. 882 (1937), citing Martin v. Clark, 135 N.C. 178, 47 S.E. 397 (1904).

Remedy for Failure of Board to Act on Claim. — If the board of commissioners refuses to audit or act upon a claim, mandamus will lie to compel them to do so. If after a hearing the board refuses to allow or issue a warrant for its payment, an action will lie against the commissioners to establish the debt and for such other relief as the party may be entitled to. Reed v. Farmer, 211 N.C. 249, 189 S.E. 882 (1937), citing Martin v. Clark, 135 N.C. 178, 47 S.E. 397 (1904).

Mandamus will lie against county commissioners who refuse to issue bonds, as required by an act of the legislature. Jones v. Commissioners, 137 N.C. 579, 50 S.E. 291 (1905).

Who Must Obey Mandamus When Membership of Board Changes Between Order and Service Thereof. — When a writ of mandamus is obtained against a board of commissioners, and there is a change in the individual members between the time when the writ is ordered and the time when it is served, those who compose the board at the time of service must obey it. Pegram v. Commissioners of Cleveland County, 65 N.C. 114 (1871).

Correction of Clerical Error in Record by Board. — Where the record of the board of county commissioners, through a clerical error, stated that a twenty cents (20¢) tax levy for general county purposes was on $100.00 valuation of property, this error could subsequently be corrected by the board, at its own instance, to correctly show that in fact the levy was actually made for 15 cents for general county purposes, 5 cents thereof being for the improvement of the courthouse and county home, and thus within the constitutional requirement. Norfolk S.R.R. v. Forbes, 188 N.C. 151, 124 S.E. 132 (1924).

Retaining the consideration of an ultra vires contract can impose no contractual liability upon a municipal corporation of this character. Berlin Iron Bridge Co. v. Board of Comm'rs, 111 N.C. 317, 16 S.E. 314 (1892), citing Weir v. Page, 109 N.C. 220, 13 S.E. 773 (1891).

A court has no power to interfere with the domestic administration of affairs of a county, so long as the board of commissioners acts intra vires. Long v. Commissioners of Richmond County, 76 N.C. 273 (1877).

As to remedies to try title to the office of county commissioner, see Lyon v. Board of Comm'rs, 120 N.C. 237, 26 S.E. 929 (1897); State ex rel. Houghtalling v. Taylor, 122 N.C. 141, 122 N.C. 171, 29 S.E. 101, 29 S.E. 101 (1898). See also § 1-515.

Personal Liability of Commissioners as Imposed by Legislature. — Where the legislature has created certain duties to be performed by county commissioners, and has expressly imposed a personal liability upon their failure to perform some of them but not others, such liability only attaches where it is expressly so declared. Fore v. Feimster, 171 N.C. 551, 88 S.E. 977 (1916).

Personal Liability for Negligent Performance or Omission of Ministerial Duties. — County commissioners are held to an individual liability in the negligent performance of, or negligent omission to perform, a purely ministerial duty, to a person specially injured thereby, when the means to act are available and the matter does not involve the exercise of a discretionary or judicial power conferred upon them by statute. Hipp v. Farrell, 169 N.C. 551, 86 S.E. 570 (1915).

Personal Liability for Judicial and Discretionary Acts. — Public officers are not personally liable to persons specially injured by their acts done in the exercise of judicial or discretionary powers conferred on them by statute, unless it is alleged and shown that in doing the acts complained of they did so corruptly and with malice. Hipp v. Farrell, 169 N.C. 551, 86 S.E. 570 (1915).

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

§§ 153A-35 through 153A-38: Reserved for future codification purposes.

Part 3. Organization and Procedures of the Board of Commissioners.

§ 153A-39. Selection of chairman and vice-chairman; powers and duties.

On:

(1) The first Monday in December of each even-numbered year; and

(2) Its first regular meeting in December of each odd-numbered year, the board of commissioners shall choose one of its members as chairman for the ensuing year, unless the chairman is elected as such by the people or otherwise designated by law. The board shall also at that time choose a vice-chairman to act in the absence or disability of the chairman. If the chairman and the vice-chairman are both absent from a meeting of the board, the members present may choose a temporary chairman.

The chairman is the presiding officer of the board of commissioners. Unless excused by rule of the board, the presiding officer has the duty to vote on any question before the board, but he has no right to break a tie vote in which he participated. (Code, s. 706; Rev., s. 1317; C.S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1; 1993, c. 95, s. 1.)

§ 153A-40. Regular and special meetings.

(a) The board of commissioners shall hold a regular meeting at least once a month, and may hold more frequent regular meetings. The board may by resolution fix the time and place of its regular meetings. If such a resolution is adopted, at least 10 days before the first meeting to which the resolution is to apply, the board shall cause a copy of it to be posted on the courthouse bulletin board and a summary of it to be published. If no such resolution is adopted, the board shall meet at the courthouse on the first Monday of each month, or on the next succeeding business day if the first Monday is a holiday.

If use of the courthouse or other designated regular meeting place is made temporarily impossible, inconvenient, or unwise, the board may change the time or place or both of a regular meeting or of all regular meetings within a specified period of time. The board shall cause notice of the temporary change to be posted at or near the regular meeting place and shall take any other action it considers helpful in informing the public of the temporary change.

The board may adjourn a regular meeting from day to day or to a day certain until the business before the board is completed.

(b) The chairman or a majority of the members of the board may at any time call a special meeting of the board of commissioners by signing a written notice stating the time and place of the meeting and the subjects to be considered. The person or persons calling the meeting shall cause the notice to be delivered to the chairman and each other member of the board or left at the usual dwelling place of each at least 48 hours before the meeting and shall cause a copy of the notice to be posted on the courthouse bulletin board at least 48 hours before the meeting. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or those not present have signed a written waiver.

If a special meeting is called to deal with an emergency, the notice requirements of this subsection do not apply. However, the person or persons calling such a special meeting shall take reasonable action to inform the other members and the public of the meeting. Only business connected with the emergency may be discussed at a meeting called pursuant to this paragraph.

In addition to the procedures set out in this subsection, a person or persons calling a special or emergency meeting of the board of commissioners shall comply with the notice requirements of Article 33B of General Statutes Chapter 143.

(c) The board of commissioners shall hold all its meetings within the county except:

(1) In connection with a joint meeting of two or more public bodies; provided, however, that such a meeting shall be held within the boundaries of the political subdivision represented by the members of one of the public bodies participating;

(2) In connection with a retreat, forum, or similar gathering held solely for the purpose of providing members of the board with general information relating to the performance of their public duties; provided, however, that members of the board of commissioners shall not vote upon or otherwise transact public business while in attendance at such a gathering;

(3) In connection with a meeting between the board of commissioners and its local legislative delegation during a session of the General Assembly; provided, however, that at any such meeting the members of the board of commissioners may not vote upon or otherwise transact public business except with regard to matters directly relating to legislation proposed to or pending before the General Assembly;

(4) While in attendance at a convention, association meeting or similar gathering; provided, however, that any such meeting may be held solely to discuss or deliberate the board's position concerning convention resolutions, elections of association officers and similar issues that are not legally binding upon the board of commissioners or its constituents.

All meetings held outside the county shall be deemed "official meetings" within the meaning of G.S. 143-318.10(d). (Code, s. 706; Rev., s. 1317; C.S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1; 1977, 2nd Sess., c. 1191, s. 6; 1985, c. 745.)

Editor's Note. — Article 33B of Chapter 143, referred to in subsection (b) of this section, was repealed. For present provisions concerning meetings of public bodies, see Chapter 143, Article 33C (G.S. 143-318.9 through 143-318.18.)

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

CASE NOTES

Statute setting days for meetings was directory and was intended to forbid commissioners from receiving compensation for attendance on days other than those of regular meetings. It did not disable the commissioners from acting at other times on due notice to all concerned. People ex rel. McNeill v. Green, 75 N.C. 329 (1876), decided under former law.

Commissioners elected by county commissioners at an adjourned meeting subject to the call of the chairman were at least de facto officers, whose title could not be collaterally attacked. Tripp v. Commissioners of Pitt County, 158 N.C. 180, 73 S.E. 896 (1912), decided under former law.

Cited in News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976); MacDonald v. Newsome, 437 F. Supp. 796 (E.D.N.C. 1977); Wright v. County of Macon, 64 N.C. App. 718, 308 S.E.2d 97 (1983); Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-41. Procedures.

The board of commissioners may adopt its own rules of procedure, in keeping with the size and nature of the board and in the spirit of generally accepted principles of parliamentary procedure. (Code, s. 706; Rev., s. 1317; C.S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1.)

§ 153A-42. Minutes to be kept; ayes and noes.

The clerk shall keep full and accurate minutes of the proceedings of the board of commissioners, which shall be available for public inspection. The clerk shall record the results of each vote in the minutes; and upon the request of any member of the board, the ayes and noes upon any question shall be taken and recorded. (Code, s. 712; 1905, c. 530; Rev., s. 1325; C.S., s. 1310; 1953, c. 973, s. 3; 1973, c. 822, s. 1.)

CASE NOTES

Record of a board of county commissioners may be corrected nunc pro tunc to speak the truth by the board itself. Norfolk S.R.R. v. Reid, 187 N.C. 320, 121 S.E. 534 (1924), decided under former law.

Where county commissioners exercised their statutory authority to loan county funds to the State Highway Commission (now the Board of Transportation), anticipating the allotment of State funds for the building of highways within the county, and lawfully contracted for that purpose, they could not, after the passage of a later act taking away this power, materially change the contract, but the county commissioners nunc pro tunc could correct the entries on their minutes theretofore duly passed and entered of record so as to make the entry speak the truth as to what had been regularly done, to this end parol evidence being admissible, the time of the correction so made relating back to the time the entry should have been correctly made. Oliver v. Board of Comm'rs, 194 N.C. 380, 139 S.E. 767 (1927), decided under former law.

§ 153A-43. Quorum.

A majority of the membership of the board of commissioners constitutes a quorum. The number required for a quorum is not affected by vacancies. If a member has withdrawn from a meeting without being excused by majority vote of the remaining members present, he shall be counted as present for the purposes of determining whether a quorum is present. The board may compel the attendance of an absent member by ordering the sheriff to take the member into custody. (Code, s. 706; Rev., s. 1317; C.S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1.)

§ 153A-44. Members excused from voting.

The board may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 153A-340(g), or 153A-345(e1). For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct. (Code, s. 706; Rev., s. 1317; C.S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1; 2001-409, s. 8; 2005-426, s. 5.1(b).)

Editor's Note. — Session Laws 2001-409, s. 10, provides that prosecutions for offenses committed before the effective dates of the provisions of the act are not abated or affected by the act, and the statutes that would be applicable but for the act remain applicable to those prosecutions.

OPINIONS OF ATTORNEY GENERAL

Disqualification. — Any situation in which a county commissioner has a personal economic interest would disqualify that commissioner from voting. See opinion of Attorney General to C. Preston Cornelius, Senior Resident Superior Court Judge, 60 N.C.A.G. 50 (1990).

No Conflict of Interest Found. — A county commissioner who is also chairman of the county social services board can present the department of social services budget to the county commissioners and thereafter participate and vote as a member of the county commissioners regarding the approval or disapproval of that budget, as the budget for the department of social services would not ordinarily involve an economic conflict of interest. See opinion of Attorney General to C. Preston Cornelius, Senior Resident, Superior Court Judge, 60 N.C.A.G. 50 (1990).

The chairman of the county social services board, who is also a county commissioner, can participate in discussions and vote at county commission meetings in matters pertaining to personnel and the operation of the county department of social services. It is apparent that the legislature contemplates county commissioners serving on other boards and commissions as an extension of commissioner duties, and that such service will not ordinarily disqualify the commissioners from participating in discussions and voting at county commission meetings. See opinion of Attorney General to C. Preston Cornelius, Senior Resident, Superior Court Judge, 60 N.C.A.G. 50 (1990).

§ 153A-45. Adoption of ordinances.

To be adopted at the meeting at which it is first introduced, an ordinance or any action having the effect of an ordinance (except the budget ordinance, any bond order, or any other ordinance on which a public hearing must be held before the ordinance may be adopted) must receive the approval of all the members of the board of commissioners. If the ordinance is approved by a majority of those voting but not by all the members of the board, or if the ordinance is not voted on at that meeting, it shall be considered at the next regular meeting of the board. If it then or at any time thereafter within 100 days of its introduction receives a majority of the votes cast, a quorum being present, the ordinance is adopted. (1963, c. 1060, ss. 1, 11/2; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 822, s. 1.)

CASE NOTES

For discussion of the distinction between an ordinance and a resolution, see Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

Personnel Rules. — Absent evidence that "personnel resolution" containing "rules and regulations" for the dismissal of county employees, incorporated in an employee handbook, was passed with the formality required for the enactment of an ordinance, the court would conclude that it was not an ordinance. Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

Cited in MacDonald v. Newsome, 437 F. Supp. 796 (E.D.N.C. 1977); Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991); Vereen v. Holden, 127 N.C. App. 205, 487 S.E.2d 822 (1997); Hewett v. County of Brunswick, 155 N.C. App. 138, 573 S.E.2d 688, 2002 N.C. App. LEXIS 1592 (2002).

§ 153A-46. Franchises.

No ordinance making a grant, renewal, extension, or amendment of any franchise may be finally adopted until it has been passed at two regular meetings of the board of commissioners. No such grant, renewal, extension, or amendment may be made except by ordinance. (1973, c. 822, s. 1.)

Cross References. — As to approval, under this section, of long-term contracts entered into by boards of county commissioners for the disposal of solid waste, see G.S. 153A-299.5.

§ 153A-47. Technical ordinances.

Subject to G.S. 143-138(e), a county may in an ordinance adopt by reference a published technical code or a standard or regulation promulgated by a public agency. A technical code or standard or regulation so adopted has the force of law in any area of the county in which the ordinance is applicable. An official copy of a technical code or standard or regulation adopted by reference shall be available for public inspection in the office of the clerk and need not be filed in the ordinance book. (1973, c. 822, s. 1.)

CASE NOTES

Ordinance Cannot Be Waived. — As a County Zoning Ordinance had the force of law, its provisions could not be waived. A county planning board or official had no authority to modify the provisions of the Zoning Ordinance by interpretation; thus, the trial court properly reversed the Board of Commissioner's approval of a property owner's rezoning requests. Murdock v. Chatham County, — N.C. App. —, 679 S.E.2d 850, 2009 N.C. App. LEXIS 1164 (July 21, 2009).

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

§ 153A-48. Ordinance book.

The clerk shall maintain an ordinance book, separate from the minute book of the board of commissioners. The ordinance book shall be indexed and shall be available for public inspection in the office of the clerk. Except as provided in this section and in G.S. 153A-47, each county ordinance shall be filed and indexed in the ordinance book.

The budget ordinance and any amendments thereto, any bond order, and any other ordinance of limited interest or transitory nature may be omitted from the ordinance book. However, the ordinance book shall contain a section showing the caption of each omitted ordinance and the page in the commissioners' minute book at which the ordinance may be found.

If a county adopts and issues a code of its ordinances, county ordinances need be recorded and indexed in the ordinance book only until they are placed in the codification. (1963, c. 1060, ss. 1, 11/2; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 822, s. 1.)

CASE NOTES

For discussion of the distinction between an ordinance and a resolution, see Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

Personnel Rules. — Absent evidence that "personnel resolution" containing "rules and regulations" for the dismissal of county employees, incorporated in an employee handbook, was passed with the formality required for the enactment of an ordinance, the court would conclude that it was not an ordinance. Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-49. Code of ordinances.

A county may adopt and issue a code of its ordinances. The code may be reproduced by any method that gives legible and permanent copies, and may be issued as a securely bound book or books with periodic separately bound supplements, or as a loose-leaf book maintained by replacement pages. Supplements or replacement pages should be adopted and issued at least annually, unless there have been no additions to or modifications of the code during the year.

A code may consist of two parts, the "General Ordinances" and the "Technical Ordinances." The technical ordinances may be published as separate books or pamphlets, and may include ordinances regarding the construction of buildings, the installation of plumbing and electric wiring, and the installation of cooling and heating equipment; ordinances regarding the use of public utilities, buildings, or facilities operated by the county; the zoning ordinance; the subdivision control ordinance; the privilege license tax ordinance; and other similar ordinances designated as technical ordinances by the board of commissioners. The board may omit from the code the budget ordinance, any bond orders, and other designated classes of ordinances of limited interest or transitory nature, but the code shall clearly describe the classes of ordinances omitted from it.

The board of commissioners may provide that ordinances (i) establishing or amending the boundaries of county zoning areas or (ii) establishing or amending the boundaries of zoning districts shall be codified by appropriate entries upon official map books to be retained permanently in the office of the clerk or some other county office generally accessible to the public. (1973, c. 822, s. 1.)

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

§ 153A-50. Pleading and proving county ordinances.

County ordinances shall be pleaded and proved under the rules and procedures of G.S. 160A-79. References to G.S. 160A-77 and G.S. 160A-78 appearing in G.S. 160A-79 are deemed, for purposes of this section, to refer to G.S. 153A-49 and G.S. 153A-48, respectively. (1973, c. 822, s. 1.)

§ 153A-51: Reserved for future codification purposes.

§ 153A-52. Conduct of public hearing.

The board of commissioners may hold public hearings at any place within the county. The board may adopt reasonable rules governing the conduct of public hearings, including but not limited to rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same position, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing.

The board may continue a public hearing without further advertisement. If a public hearing is set for a given date and a quorum of the board is not then present, the board shall continue the hearing without further advertisement until its next regular meeting. (1973, c. 822, s. 1.)

§ 153A-52.1. Public comment period during regular meetings.

The board of commissioners shall provide at least one period for public comment per month at a regular meeting of the board. The board may adopt reasonable rules governing the conduct of the public comment period, including, but not limited to, rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing. The board is not required to provide a public comment period under this section if no regular meeting is held during the month. (2005-170, s. 2.)

§ 153A-53. Ethics.

(a) The board of commissioners shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-83.

(b) All members of the board of commissioners, whether elected or appointed, shall receive the ethics education required by G.S. 160A-84. (2009-403, s. 4.)

Editor's Note. — Session Laws 2009-403, s. 8, makes this section effective January 1, 2010.

Session Laws 2009-403, s. 7, provides: "The resolution or policy containing a code of ethics that is required by G.S. 160A-83 shall be adopted by each municipality, county, local board of education, unified government, sanitary district, and consolidated city-county on or before January 1, 2011. The governing board may look to model local government codes of ethics for guidance in developing the resolution or policy."

Session Laws 2009-403, s. 8, provides in part: "All members of governing boards covered by this act shall receive their initial training to comply with G.S. 160A-87 within 12 months after that date."

§§ 153A-54 through 153A-57: Reserved for future codification purposes.

Part 4. Modification in the Structure of the Board of Commissioners.

§ 153A-58. Optional structures.

A county may alter the structure of its board of commissioners by adopting one or any combination of the options prescribed by this section.

(1) Number of members of the board of commissioners: The board may consist of any number of members not less than three, except as limited by subdivision (2)d of this section.

(2) Terms of office of members of the board of commissioners:
  a. Members shall be elected for two-year terms of office.
  b. Members shall be elected for four-year terms of office.
  c. Members shall be elected for overlapping four-year terms of office.
  d. The board shall consist of an odd number of members, who are elected for a combination of four- and two-year terms of office, so that a majority of members is elected each two years. This option may be used only if all members of the board are nominated and elected by the voters of the entire county, and only if the chairman of the board is elected by and from the members of the board.

(3) Mode of election of the board of commissioners:
  a. The qualified voters of the entire county shall nominate all candidates for and elect all members of the board.

  For options b, c, and d, the county shall be divided into electoral districts, and board members shall be apportioned to the districts so that the quotients obtained by dividing the population of each district by the number of commissioners apportioned to the district are as nearly equal as practicable.

  b. The qualified voters of each district shall nominate candidates and elect members who reside in the district for seats apportioned to that district; and the qualified voters of the entire county shall nominate candidates and elect members apportioned to the county at large, if any.
  c. The qualified voters of each district shall nominate candidates who reside in the district for seats apportioned to that district, and the qualified voters of the entire county shall nominate candidates for seats apportioned to the county at large, if any; and the qualified voters of the entire county shall elect all the members of the board.

d. Members shall reside in and represent the districts according to the apportionment plan adopted, but the qualified voters of the entire county shall nominate all candidates for and elect all members of the board.

If any of options b, c, or d is adopted, the board shall divide the county into the requisite number of electoral districts according to the apportionment plan adopted, and shall cause a delineation of the districts so laid out to be drawn up and filed as required by G.S. 153A-20. No more than half the board may be apportioned to the county at large.

(4) Selection of chairman of the board of commissioners:
  a. The board shall elect a chairman from among its membership to serve a one-year term, as provided by G.S. 153A-39.
  b. The chairmanship shall be a separate office. The qualified voters of the entire county nominate candidates for and elect the chairman for a two- or four-year term. (1927, c. 91, s. 3; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

Local Modification. — (As to Part 4 of Article 4) Bladen: 1987, c. 646; Dare: 1991, Ex. Sess., c. 2, s. 4 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7); Lee (as to Part 4 and G.S. 153A-58): 1989, c. 195, ss. 4, 5 (effective June 1, 1989, but only applicable to resolutions approved on or before Aug. 1, 1990), as amended by 1989, c. 770, s. 43; (as to part 4 of Article 4) Union: 2007-328, s. 1 (suspended until January 1, 2012).

CASE NOTES

Cited in Ratcliff v. County of Buncombe, 759 F.2d 1183 (4th Cir. 1985); Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

§ 153A-59. Implementation when board has members serving a combination of four- and two-year terms.

If the structure of the board of commissioners is altered to establish a board with an odd number of members serving a combination of four- and two-year terms of office, the new structure shall be implemented as follows:

At the first election all members of the board shall be elected. A simple majority of those elected shall be elected for two-year terms, and the remaining members shall be elected for four-year terms. The candidate or candidates receiving the highest number of votes shall be elected for the four-year terms.

At each subsequent general election, a simple majority of the board shall be elected. That candidate who is elected with the least number of votes shall be elected for a two-year term, and the other member or members elected shall be elected for four-year terms. (1927, c. 91, s. 3; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

§ 153A-60. Initiation of alterations by resolution.

The board of commissioners shall initiate any alteration in the structure of the board by adopting a resolution. The resolution shall:

(1) Briefly but completely describe the proposed alterations;
(2) Prescribe the manner of transition from the existing structure to the altered structure;
(3) Define the electoral districts, if any, and apportion the members among the districts;

(4) Call a special referendum on the question of adoption of the alterations. The referendum shall be held and conducted by the county board of elections. The referendum may be held at the same time as any other state, county or municipal primary, election, special election or referendum, or on any date set by the board of county commissioners, provided, that such referendum shall not be held within the period of time beginning 60 days before and ending 60 days after any other primary, election, special election or referendum held in the county.

Upon its adoption, the resolution shall be published in full. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1; 1977, c. 382.)

Local Modification. — Craven: 2001-447, s. 1 (applicable only to resolutions adopted before January 1, 2002); Dare: 1991, Ex. Sess., c. 2, s. 1 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7); Lee: 1989, c. 195, s. 1 (effective June 1, 1989, but only applicable to resolutions approved on or before Aug. 1, 1990); Wayne: 1987, c. 119 (only applicable to resolutions approved on or before Nov. 30, 1988).

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

CASE NOTES

Cited in Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-61. Submission of proposition to voters; form of ballot.

A proposition to approve an alteration shall be printed on the ballot in substantially the following form:

"Shall the structure of the board of commissioners be altered? (Describe the effect of the alteration.)

☐ YES
☐ NO"

The ballot shall be separate from other ballots used at the election.

If a majority of the votes cast on the proposition are in the affirmative, the plan contained in the resolution shall be put into effect as provided in this Part. If a majority of the votes cast are in the negative, the resolution and the plan contained therein are void. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

Local Modification. — Craven: 2001-447, s. 1 (applicable only to resolutions adopted before January 1, 2002); Dare: 1991, Ex. Sess., c. 2, s. 2 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7); Lee: 1989, c. 195, s. 2 (effective June 1, 1989, but only applicable to resolutions approved on or before Aug. 1, 1990); Wayne: 1987, c. 119 (only applicable to resolutions approved on or before Nov. 30, 1988).

§ 153A-62. Effective date of any alteration.

Any approved alteration shall be the basis for nominating and electing the members of the board of commissioners at the first succeeding primary and general election for county offices held after approval of the alteration; and the alteration takes effect on the first Monday in December following that general election. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Effect of County Referendum. — A referendum on reorganizing the Board of Commissioners in Madison County, if approved, would be effective for the next general election in which county offices are scheduled to be filled. See opinion of Attorney General to Mr. Larry Leake, Chairman, State Board of Elections, 1998 N.C.A.G. 37 (8/27/98).

§ 153A-63. Filing copy of resolution.

A copy of a resolution approved pursuant to this Part shall be filed and indexed in the ordinance book required by G.S. 153A-48. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

§ 153A-64. Filing results of election.

If the proposition is approved under G.S. 153A-61, a certified true copy of the resolution and a copy of the abstract of the election shall be filed with the Secretary of State, and with the Legislative Library. (1985 (Reg. Sess., 1986), c. 935, s. 1; 1989, c. 191, s. 1.)

Local Modification. — Craven: 2001-447, s. 2 (applicable only to resolutions adopted before January 1, 2002); Dare: 1991, Ex. Sess., c. 2, s. 3 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7); Lee: 1989, c. 195, s. 3 (effective June 1, 1989, but only applicable to resolutions approved on or before Aug. 1, 1990); Wayne: 1987, c. 119 (only applicable to resolutions approved on or before Nov. 30, 1988).

§§ 153A-65 through 153A-75: Reserved for future codification purposes.

Article 5.

Administration.

Part 1. Organization and Reorganization of County Government.

§ 153A-76. Board of commissioners to organize county government.

The board of commissioners may create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the county government, may impose ex officio the duties of more than one office on a single officer, may change the composition and manner of selection of boards, commissions, and agencies, and may generally organize and reorganize the county government in order to promote orderly and efficient administration of county affairs, subject to the following limitations:

(1) The board may not abolish an office, position, department, board, commission, or agency established or required by law.

(2) The board may not combine offices or confer certain duties on the same officer when this action is specifically forbidden by law.

(3) The board may not discontinue or assign elsewhere a function or duty assigned by law to a particular office, position, department, board, commission, or agency.

(4) The board may not change the composition or manner of selection of a local board of education, the board of health, the board of social

services, the board of elections, or the board of alcoholic beverage control. (1973, c. 822, s. 1.)

Cross References. — As to prevalence of Article 7 of Chapter 115C (G.S. 115C-65 et seq.) over subdivision (4) of this section, see G.S. 115C-68.3.

CASE NOTES

County Department and Board of Social Services Do Not Have Sovereign Immunity. — Because a county department of social services and a county board of social services are extensions of the county, which does not enjoy sovereign immunity, neither do they have sovereign immunity. Meares v. Brunswick County, 615 F. Supp. 14 (E.D.N.C. 1985).

These powers and the many others enumerated in this Chapter show that a county and the county commissioners are not part of the State of North Carolina and they do not enjoy its sovereign immunity. Meares v. Brunswick County, 615 F. Supp. 14 (E.D.N.C. 1985).

OPINIONS OF ATTORNEY GENERAL

For a discussion of the proper authority and procedures for appointing an interim county tax collector, see opinion of Attorney General to The Honorable Charles Beall, North Carolina House of Representatives, 1998 N.C.A.G. 35 (8/5/98).

Division of County Health Department. — Although a board of commissioners may organize county government pursuant to this section, the section expressly prohibits the board from abolishing a department, such as the county health department, and assigning elsewhere its functions and duties. Therefore, a county health department may not be divided into two or more agencies. See opinion of Attorney General to Dr. Ronald H. Levine, State Health Director, 52 N.C.A.G. 44 (1982).

The Gaston County Board of Commissioners may not abolish the Gaston County Police Department or assign its duties to some other entity unless and until that action is authorized by the General Assembly. See opinion of Attorney General to Heath R. Jenkins, Chairman, Gaston County Board of Commissioners, 2001 N.C. AG LEXIS 11 (3/12/2001).

§ 153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc.

(a) In the exercise of its jurisdiction over commissions, boards and agencies, the board of county commissioners may assume direct control of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the board of county commissioners all powers, responsibilities and duties of any such commission, board or agency. This subsection shall apply to the board of health, the social services board, area mental health, developmental disabilities, and substance abuse area board and any other commission, board or agency appointed by the board of county commissioners or acting under and pursuant to authority of the board of county commissioners of said county. A board of county commissioners exercising the power and authority under this subsection may, notwithstanding G.S. 130A-25, enforce public health rules adopted by the board through the imposition of civil penalties. If a public health rule adopted by a board of county commissioners imposes a civil penalty, the provisions of G.S. 130A-25 making its violation a misdemeanor shall not be applicable to that public health rule unless the rule states that a violation of the rule is a misdemeanor. The board of county commissioners may exercise the power and authority herein conferred only after a public hearing held by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners may also appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county.

(b) In the exercise of its jurisdiction over commissions, boards, and agencies, the board of county commissioners of a county having a county manager pursuant to G.S. 153A-81 may:

(1) Consolidate the provision of human services in the county under the direct control of a human services director appointed and supervised by the county manager in accordance with subsection (e) of this section;

(2) Create a consolidated human services board having the powers conferred by subsection (c) of this section;

(3) Create a consolidated county human services agency having the authority to carry out the functions of the local health department, the county department of social services, and the area mental health, developmental disabilities, and substance abuse services authority; and

(4) Assign other county human services functions to be performed by the consolidated human services agency under the direction of the human services director, with policy-making authority granted to the consolidated human services board as determined by the board of county commissioners.

(c) A consolidated human services board appointed by the board of county commissioners shall serve as the policy-making, rule-making, and administrative board of the consolidated human services agency. The consolidated human services board shall be composed of no more than 25 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include:

(1) Eight persons who are consumers of human services, public advocates, or family members of clients of the consolidated human services agency, including: one person with mental illness, one person with a developmental disability, one person in recovery from substance abuse, one family member of a person with mental illness, one family member of a person with a developmental disability, one family member of a person with a substance abuse problem, and two consumers of other human services.

(2) Eight persons who are professionals, each with qualifications in one of these categories: one psychologist, one pharmacist, one engineer, one dentist, one optometrist, one veterinarian, one social worker, and one registered nurse.

(3) Two physicians licensed to practice medicine in this State, one of whom shall be a psychiatrist.

(4) One member of the board of county commissioners.

(5) Other persons, including members of the general public representing various occupations.

The board of county commissioners may elect to appoint a member of the consolidated human services board to fill concurrently more than one category of membership if the member has the qualifications or attributes of more than one category of membership.

All members of the consolidated human services board shall be residents of the county. The members of the board shall serve four-year terms. No member may serve more than two consecutive four-year terms. The county commissioner member shall serve only as long as the member is a county commissioner.

The initial board shall be appointed by the board of county commissioners upon the recommendation of a nominating committee comprised of members of the preconsolidation board of health, social services board, and area mental health, developmental disabilities, and substance abuse services board. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a four-year term. After the subsequent establishment of the board, its board shall be appointed by the board of county commissioners from nominees presented by the human services board. Vacancies shall be filled for any unexpired portion of a term.

A chairperson shall be elected annually by the members of the consolidated human services board. A majority of the members shall constitute a quorum. A member may be removed from office by the county board of commissioners for (i) commission of a felony or other crime involving moral turpitude; (ii) violation of a State law governing conflict of interest; (iii) violation of a written policy adopted by the county board of commissioners; (iv) habitual failure to attend meetings; (v) conduct that tends to bring the office into disrepute; or (vi) failure to maintain qualifications for appointment required under this subsection. A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

A member may receive a per diem in an amount established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners. The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

(d) The consolidated human services board shall have authority to:

(1) Set fees for departmental services based upon recommendations of the human services director. Fees set under this subdivision are subject to the same restrictions on amount and scope that would apply if the fees were set by a county board of health, a county board of social services, or a mental health, developmental disabilities, and substance abuse area authority.
(2) Assure compliance with laws related to State and federal programs.
(3) Recommend creation of local human services programs.
(4) Adopt local health regulations and participate in enforcement appeals of local regulations.
(5) Perform regulatory health functions required by State law.
(6) Act as coordinator or agent of the State to the extent required by State or federal law.
(7) Plan and recommend a consolidated human services budget.
(8) Conduct audits and reviews of human services programs, including quality assurance activities, as required by State and federal law or as may otherwise be necessary periodically.
(9) Advise local officials through the county manager.
(10) Perform public relations and advocacy functions.
(11) Protect the public health to the extent required by law.
(12) Perform comprehensive mental health services planning.
(13) Develop dispute resolution procedures for human services contractors and clients and public advocates, subject to applicable State and federal dispute resolution procedures for human services programs, when applicable.

Except as otherwise provided, the consolidated human services board shall have the powers and duties conferred by law upon a board of health, a social services board, and an area mental health, developmental disabilities, and substance abuse services board.

Local employees who serve as staff of a consolidated county human services agency are subject to county personnel policies and ordinances only and are not subject to the provisions of the State Personnel Act.

(e) The human services director of a consolidated county human services agency shall be appointed and dismissed by the county manager with the advice and consent of the consolidated human services board. The human services director shall report directly to the county manager. The human services director shall:

(1) Appoint staff of the consolidated human services agency with the county manager's approval.
(2) Administer State human services programs.
(3) Administer human services programs of the local board of county commissioners.
(4) Act as secretary and staff to the consolidated human services board under the direction of the county manager.
(5) Plan the budget of the consolidated human services agency.
(6) Advise the board of county commissioners through the county manager.
(7) Perform regulatory functions of investigation and enforcement of State and local health regulations, as required by State law.
(8) Act as an agent of and liaison to the State, to the extent required by law.

Except as otherwise provided by law, the human services director or the director's designee shall have the same powers and duties as a social services director, a local health director, and a director of an area mental health, developmental disabilities, and substance abuse services authority.

(f) This section applies to counties with a population in excess of 425,000. (1973, c. 454, ss. 1-21/2; 1985, c. 589, s. 56; c. 754, s. 1; 1987, c. 217, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 690, s. 3; 2001-120, s. 1.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 690, s. 16, effective July 1, 1996, and expiring on January 1, 2001, provides that counties which consolidate human services pursuant to G.S. 153A-77(b) shall report by January 1, 1998, and annually thereafter to the Chairs of the House Appropriations Subcommittees on Human Resources and Natural and Economic Resources and the Chairs of the Senate Appropriations Committees on Human Resources and Natural and Economic Resources, to the Joint Legislative Commission on Governmental Operations, and to the Fiscal Research Division regarding the county's implementation of consolidated human services.

CASE NOTES

Personal Jurisdiction Involving Negligent Placement of Foster Child. — Where defendants raised the issues of failure to state a claim and lack of subject matter jurisdiction, but failed to raise the issue of personal jurisdiction, and stipulated in the record before the appellate court that they were properly before the trial court, the defendants could not argue that they were not subject to suit under this section and Chapters 108A and 122C. Hobbs v. North Carolina Dep't of Human Resources, 135 N.C. App. 412, 520 S.E.2d 595, 1999 N.C. App. LEXIS 1146 (1999).

Cited in Meares v. Brunswick County, 615 F. Supp. 14 (E.D.N.C. 1985).

OPINIONS OF ATTORNEY GENERAL

County Board of Health. — Pursuant to this section, a board of commissioners, in a county with a population in excess of 325,000 (now 425,000), may assume all powers, responsibilities and duties of a county board of health. The board may exercise the power and authority after conducting a public hearing pursuant to 30 days' notice. Although the board may appoint advisory groups, the statute does not authorize the delegation of the former power and authority of the county board of health to another agency. See Opinion of Attorney General to Dr. Ronald H. Levine, State Health Director, 52 N.C.A.G. 44 (1982).

Local Health Director. — The authority conferred by this section is limited to commissions, boards and agencies appointed by the board of commissioners or acting pursuant to its authority. The local health director is appointed by the county board of health and his authority is conferred by statute. Furthermore, the authority of the board of commissioners to assume the power and responsibilities of agencies is limited by the statute to boards, such as health and social services, and similar agencies. The office of local health director is unaffected by this section and must be filled by the board of commissioners. See opinion of Attorney General to Dr. Ronald H. Levine, State Health Director, 52 N.C.A.G. 44 (1982).

Counties Not Exempted from Mandates of Chapter 122C. — Subsection (a) of this section and G.S. 122C-115, permitting counties, subject to certain prerequisites, to choose to operate their own mental health, developmental disabilities, and substance abuse services, do not exempt any county from the service delivery mandates of Chapter 122C because subsection (a) of this section only pertains to the governing structure of a county program and not to the provision of services. See opinion of Attorney General to Eddie S. Winstead III, Esq., Harrington, Ward, Gilleland & Winstead, L.L.P., 2002 N.C.A.G. 24 (9/6/02).

Constitutionality. — This section does not violate N.C. Const. Art. II, § 24(1)(a) on the basis that it is local legislation because statutes such as this section and G.S. 122C-115, permitting counties, subject to certain prerequisites, to choose to operate their own mental health, developmental disabilities, and substance abuse services, operate uniformly throughout the state, even though there are different classifications based upon population. See opinion of Attorney General to Eddie S. Winstead III, Esq., Harrington, Ward, Gilleland & Winstead, L.L.P., 2002 N.C.A.G. 24 (9/6/02).

§ 153A-77.1. Single portal of entry.

A county may develop for human services a single portal of entry, a consolidated case management system, and a common data base; provided that if the county is part of a district health department or multicounty public health authority or a multicounty area mental health, developmental disabilities, and substance abuse authority, such action must be approved by the district board of health or public health authority board or the area mental health, developmental disabilities, and substance abuse board to affect any matter within the jurisdiction of that board. Nothing in this section shall be construed to abrogate a patient's right to confidentiality as provided by law. (1987, c. 422, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 47; 1997-502, s. 5.)

§§ 153A-78 through 153A-80: Reserved for future codification purposes.

Part 2. Administration in Counties Having Managers.

§ 153A-81. Adoption of county-manager plan; appointment or designation of manager.

The board of commissioners may by resolution adopt or discontinue the county-manager plan. If it adopts the county-manager plan, the board may, in the alternative:

(1) Appoint a county manager to serve at its pleasure. The manager shall be appointed solely on the basis of his executive and administrative qualifications. He need not be a resident of the county or the State at the time of his appointment.

(2) Confer upon the chairman or some other member of the board of commissioners the duties of county manager. If this is done, the chairman or member shall become a full-time county official, and the board may increase his salary pursuant to G.S. 153A-28.

(3) Confer upon any other officer, employee, or agent of the county the duties of county manager.

As used in this Part, the word "manager" includes the chairman or any member of the board of commissioners exercising the duties of manager or any officer, employee, or agent of a county exercising the duties of manager. (1927, c. 91, ss. 5, 8; 1973, c. 822, s. 1.)

CASE NOTES

Applied in Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

Cited in Ratcliff v. County of Buncombe, 759 F.2d 1183 (4th Cir. 1985).

§ 153A-82. Powers and duties of manager.

The manager is the chief administrator of county government. He is responsible to the board of commissioners for the administration of all departments of county government under the board's general control and has the following powers and duties:

(1) He shall appoint with the approval of the board of commissioners and suspend or remove all county officers, employees, and agents except those who are elected by the people or whose appointment is otherwise provided for by law. The board may by resolution permit the manager to appoint officers, employees, and agents without first securing the board's approval. The manager shall make his appointments, suspensions, and removals in accordance with any general personnel rules, regulations, policies, or ordinances that the board may adopt. The board may require the manager to report each suspension or removal to the board at the board's first regular meeting following the suspension or removal; and, if the board has permitted the manager to make appointments without board approval, the board may require the manager to report each appointment to the board at the board's first regular meeting following the appointment.

(2) He shall direct and supervise the administration of all county offices, departments, boards, commissions and agencies under the general control of the board of commissioners, subject to the general direction and control of the board.

(3) He shall attend all meetings of the board of commissioners and recommend any measures that he considers expedient.

(4) He shall see that the orders, ordinances, resolutions, and regulations of the board of commissioners are faithfully executed within the county.

(5) He shall prepare and submit the annual budget and capital program to the board of commissioners.

(6) He shall annually submit to the board of commissioners and make available to the public a complete report on the finances and administrative activities of the county as of the end of the fiscal year.

(7) He shall make any other reports that the board of commissioners may require concerning the operations of county offices, departments, boards, commissions, and agencies.

(8) He shall perform any other duties that may be required or authorized by the board of commissioners. (1927, c. 91, ss. 6, 7; 1973, c. 822, s. 1.)

CASE NOTES

Severance Pay. — The right of a public officer to receive compensation can only arise out of the rendition of the public services related to his office. Leete v. County of Warren, 341 N.C. 116, 462 S.E.2d 476 (1995).

Where county manager worked one month after giving notice of his resignation and received all compensation due him under the terms of his employment with the County, severance pay would be compensation beyond that due for services rendered and, thus, constitutionally impermissible. Leete v. County of Warren, 341 N.C. 116, 462 S.E.2d 476 (1995).

Severance pay to county manager who voluntarily resigned violated North Carolina Constitution, Art. 1, sec. 32, because county manager was to be compensated for duties that were not performed, since the record reflected that the compensation was not for prior services rendered, and he was paid all benefits due him. Leete v. County of Warren, 341 N.C. 116, 459 S.E.2d 232 (1995).

Authority to Order Payment of Insurance Premiums for Disability Retiree. — In an action by a retired police officer seeking continuation of insurance payments by the county, individual county commissioners did not have authority to bind the county to such payments pursuant to G.S. 153A-92 or G.S. 153A-11, and a county manager did not did not have authority pursuant to G.S. 153A-82 to bind the county to an agreement to pay the insurance premiums without an express delegation of power by the Board of County Commissioners. Denson v. Richmond County, 159 N.C. App. 408, 583 S.E.2d 318, 2003 N.C. App. LEXIS 1498 (2003).

Applied in Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

Cited in Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-83. Acting county manager.

By letter filed with the clerk, the manager may designate, subject to the approval of the board of commissioners, a qualified person to exercise the powers and perform the duties of manager during the manager's temporary absence or disability. During an absence or disability, the board may revoke the designation at any time and appoint another person to serve until the manager returns or his disability ceases. (1973, c. 822, s. 1.)

§ 153A-84. Interim county manager.

Whenever the position of county manager is vacant, the board of commissioners shall designate a qualified person to exercise the powers and perform the duties of manager until the vacancy is filled. The board may designate the chairman or some other member as interim manager; for the interim the chairman or member shall become a full-time county official, and the board may increase his salary pursuant to G.S. 153A-28. (1973, c. 822, s. 1.)

CASE NOTES

Cited in Ratcliff v. County of Buncombe, 759 F.2d 1183 (4th Cir. 1985).

§§ 153A-85, 153A-86: Reserved for future codification purposes.

Part 3. Administration in Counties Not Having Managers.

§ 153A-87. Administration in counties not having managers.

In a county that has not adopted or does not operate under the county-manager plan, the board of commissioners shall appoint, suspend, and remove all county officers, employees, and agents except those who are elected by the people or whose appointment is otherwise provided for by law. The board may delegate to the head of any county department the power to appoint, suspend, and remove county officers or employees assigned to his department. (1973, c. 822, s. 1.)

§ 153A-88. Acting department heads.

By letter filed with the clerk, the head of a department may designate, subject to the approval of the board of commissioners, a qualified person to exercise the powers and perform the duties of head of that department during the department head's temporary absence or disability. During an absence or disability, the board may revoke the designation at any time and appoint another person to serve until the department head returns or his disability ceases. (1973, c. 822, s. 1.)

§ 153A-89. Interim department heads.

Whenever the position of head of a department is vacant, the board may designate a qualified person to exercise the powers and perform the duties of head of the department until the vacancy is filled. (1973, c. 822, s. 1.)

§§ 153A-90, 153A-91: Reserved for future codification purposes.

Part 4. Personnel.

§ 153A-92. Compensation.

(a) Subject to the limitations set forth in subsection (b) of this section, the board of commissioners shall fix or approve the schedule of pay, expense allowances, and other compensation of all county officers and employees, whether elected or appointed, and may adopt position classification plans.

(b) In exercising the authority granted by subsection (a) of this section, the board of commissioners is subject to the following limitations:

(1) The board of commissioners may not reduce the salary, allowances, or other compensation paid to an officer elected by the people for the duties of his elective office if the reduction is to take effect during the term of office for which the incumbent officer has been elected, unless the officer agrees to the reduction or unless the Local Government Commission pursuant to Chapter 159, Article 10, orders a reduction.

(2) During the year of a general election, the board of commissioners may reduce the salary, allowances, or other compensation of an officer to be elected at the general election only in accordance with this subdivision. The board of commissioners shall by resolution give notice of intention to make the reduction no later than 14 days before the last day for filing notice of candidacy for the office. The resolution shall set forth the reduced salary, allowances, and other compensation and shall provide that the reduction is to take effect at the time the person elected to the office in the general election takes office. Once adopted, the resolution may not be altered until the person elected to the office in the general election has taken office. The filing fee for the office shall be determined by reference to the reduced salary.

(3) If the board of commissioners reduces the salaries, allowances, or other compensation of employees assigned to an officer elected by the people, and the reduction does not apply alike to all county offices and departments, the elected officer involved must approve the reduction. If the elected officer refuses to approve the reduction, he and the board of commissioners shall meet and attempt to reach agreement. If agreement cannot be reached, either the board or the officer may refer the dispute to arbitration by the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the county is located. The judge shall make an award within 30 days after the day the matter is referred to him. The award may extend for no more than two fiscal years, including the fiscal year for which it is made.

(4) The board of commissioners shall fix their own salaries, allowances, and other compensation in accordance with G.S. 153A-28.

(5) The board of commissioners shall fix the salaries, allowances and other compensation of county employees subject to the State Personnel Act according to the procedures set forth in Chapter 126. The board may make these employees subject to a county position classification plan only as provided in Chapter 126.

(c) In counties with a county manager, the manager is responsible for preparing position classification and pay plans for submission to the board of commissioners and for administering the pay plan and any position classification plan in accordance with general policies and directives adopted by the board. In counties without a county manager, the board of commissioners shall appoint or designate a personnel officer, who shall then be responsible for administering the pay plan and any position classification plan in accordance with general policies and directives adopted by the board.

(d) A county may purchase life insurance or health insurance or both for the benefit of all or any class of county officers and employees as a part of their compensation. A county may provide other fringe benefits for county officers and employees. (1927, c. 91, s. 8; 1953, c. 1227, ss. 1-3; 1969, c. 358, s. 1; c. 1017; 1973, c. 822, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 122.)

Cross References. — As to compensation of board of education members, see G.S. 115C-38.

CASE NOTES

Severance Pay. — The right of a public officer to receive compensation can only arise out of the rendition of the public services related to his office. Leete v. County of Warren, 341 N.C. 116, 462 S.E.2d 476 (1995).

Where county manager worked one month after giving notice of his resignation and received all compensation due him under the terms of his employment with the County, severance pay would be compensation beyond that due for services rendered and, thus, constitutionally impermissible. Leete v. County of Warren, 341 N.C. 116, 462 S.E.2d 476 (1995).

Severance pay to county manager who voluntarily resigned violated North Carolina Constitution, Art. 1, Sec. 32, because county manager was to be compensated for duties that were not performed, since the record reflected that the compensation was not for prior services rendered, and he was paid all benefits due him. Leete v. County of Warren, 341 N.C. 116, 459 S.E.2d 232 (1995).

Authority to Order Payment of Insurance Premiums for Disability Retiree. — In an action by a retired police officer seeking continuation of insurance payments by the county, individual county commissioners did not have authority to bind the county to such payments pursuant to G.S. 153A-92 or G.S. 153A-11, and a county manager did not did not have authority pursuant to G.S. 153A-82 to bind the county to an agreement to pay the insurance premiums without an express delegation of power by the Board of County Commissioners. Denson v. Richmond County, 159 N.C. App. 408, 583 S.E.2d 318, 2003 N.C. App. LEXIS 1498 (2003).

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984); Hubbard v. County of Cumberland, 143 N.C. App. 149, 544 S.E.2d 587, 2001 N.C. App. LEXIS 235 (2001).

OPINIONS OF ATTORNEY GENERAL

County Board of Commissioners Has No Authority to Abolish Office or Reduce Salary of Incumbent Coroner During Term of Office. — See opinion of Attorney General to Mr. Harold Price, Chairman, Alexander County Board of Elections, 40 N.C.A.G. 568 (1970).

As to authority of county to increase officers' salaries in election year, see opinion of Attorney General to Mr. Dallas W. McPherson, Greene County Attorney, 40 N.C.A.G. 569 (1970).

As to when a local or special act is applicable in fixing salaries, see opinion of Attorney General to Mr. James R. Sugg, Craven County Attorney, 41 N.C.A.G. 22A (1970).

§ 153A-93. Retirement benefits.

(a) The board of commissioners may provide for enrolling county officers and employees in the Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Benefit and Relief Fund, the Firemen's Pension Fund, or a retirement plan certified to be actuarially sound by a qualified actuary as defined in subsection (c) of this section and may make payments into such a retirement system or plan on behalf of its employees.

(b) No county may make payments into a retirement system or plan established or authorized by a local act unless the system or plan is certified to be actuarially sound by a qualified actuary as defined in subsection (c) of this section.

(c) A qualified actuary means a member of the American Academy of Actuaries or an individual certified as qualified by the Commissioner of Insurance.

(d) A county which is providing health insurance under G.S. 153A-92(d) may provide health insurance for all or any class of former officers and employees of the county. Such health insurance may be paid entirely by the county, partly by the county and former officer or employee, or entirely by the former officer or employee, at the option of the county.

(d1) On and after October 1, 2009, a county which is providing health insurance under G.S. 153A-92(d) may provide health insurance for all or any class of former officers and employees of the county who have obtained at least 10 years of service with the county prior to separation from the county and who are not receiving benefits under subsection (a) of this section. Such health insurance may be paid entirely by the county, partly by the county and former officer or employee, or entirely by the former officer or employee, at the option of the county.

(d2) Notwithstanding subsection (d) of this section, any county that has elected to and is covering its active employees only, or its active and retired employees, under the State Health Plan, or elects such coverage under the Plan, may not provide health insurance through the State Health Plan to all or any class of former officers and employees who are not receiving benefits under subsection (a) of this section. The county may, however, provide health insurance to such former officers and employees by any other means authorized by G.S. 153A-92(d). The health insurance premium may be paid entirely by the county, partly by the county and former officer or employee, or entirely by the former officer or employee, at the option of the county.

(e) The board of commissioners may provide a deferred compensation plan. Where the board of commissioners provides a deferred compensation plan, the investment of funds for the plan shall be exempt from the provisions of G.S. 159-30 and G.S. 159-31. Counties may invest deferred compensation plan funds in life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, or other forms of investments approved by the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan. (1973, c. 822, s. 1; 1981, c. 347, s. 1; 1991, c. 277, s. 1; 2009-564, ss. 1, 2.)

Local Modification. — Guilford: 2007-255, s. 2; Mecklenburg: 2007-255, s. 2; Wake: 2007-255, s. 2; city of Greensboro: 2007-255, s. 2; city of Raleigh: 2007-255, s. 2.

Editor's Note. — Session Laws 2009-564, s. 3, provides in part: "Section 1 of this act is effective when it becomes law [August 28, 2009] and applies to any county providing health insurance to former officers and employees on that date. Section 2 of this act becomes effective when it becomes law [August 28, 2009] and applies to any officer or employee who separates from service with the county on or after October 1, 2009."

Effect of Amendments. — Session Laws 2009-564, ss. 1 and 2, effective August 28, 2009, deleted "who are receiving benefits under subsection (a) of this section" following "county" at the end of the first sentence of subsection (d); and added subsections (d1) and (d2). For applicability, see Editor's note.

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

§ 153A-94. Personnel rules; office hours, workdays, and holidays.

(a) The board of commissioners may adopt or provide for rules and regulations or ordinances concerning but not limited to annual leave, sick leave, special leave with full pay or with partial pay supplementing workers' compensation payments for employees injured in accidents arising out of and in the course of employment, working conditions, service award and incentive award programs, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and honest career employees.

(b) The board of commissioners may prescribe the office hours, workdays, and holidays to be observed by the various offices, departments, boards, commissions, and agencies of the county. (1959, c. 251; 1973, c. 822, s. 1; 1991, c. 636, s. 3.)

§ 153A-94.1. (See note on condition precedent) Smallpox vaccination policy.

All counties that employ firefighters, law enforcement officers, paramedics, other first responders, or health department employees shall, not later than 90 days after this section becomes law, enact a policy regarding sick leave and salary continuation for those employees for absence from work due to an adverse medical reaction resulting from the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)). (2003-169, s. 6.)

Cross References. — As to tort claims arising from certain smallpox vaccinations of State employees, see G.S. 143-300.1A.

Condition Precedent to Recovery Under This Act. — Session Laws 2003-169, s. 7, provides: "In the event that federal regulatory or statutory provisions providing compensation and benefits to persons for infection with smallpox, infection with vaccinia, or any adverse medical reaction incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) are adopted, a condition precedent to recovery under this act shall be that the person claiming compensation and benefits under this act shall first seek compensation and benefits under the federal provisions, with those provisions constituting primary coverage and the person then being entitled to compensation and benefits under this act not exceeding a total recovery under the federal provisions and this act equal to the amount available under the applicable provisions of this act."

On April 20, 2003, President Bush signed into law the Smallpox Emergency Personnel Protection Act of 2003, Public Law 108-20, 117 Stat. 638, which authorized the Secretary of Health and Human Services to establish the Smallpox Vaccine Injury Compensation Program, which covers individuals immunized through Jan, 23. 2005 (smallpox) or vaccinia contacts who show symptoms by Feb. 22, 2005.

Editor's Note. — Session Laws 2003-169, s. 8, is a severability clause.

Session Laws 2003-169, s. 9, makes this section effective June 12, 2003, and applicable to claims arising from infection or adverse medical reactions related to smallpox vaccinations incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No.107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) whether the infection or adverse medical reactions occurred before, on, or after June 12, 2003.

§ 153A-94.2. Criminal history record checks of employees permitted.

The board of commissioners may adopt or provide for rules and regulations or ordinances concerning a requirement that any applicant for employment be subject to a criminal history record check of State and National Repositories of Criminal Histories conducted by the Department of Justice in accordance with G.S. 114-19.14. The local or regional public employer may consider the results of these criminal history record checks in its hiring decisions. (2005-358, s. 2.)

Cross References. — As to criminal record checks for municipalities and county governments, see G.S. 114-19.14.

§ 153A-95. Personnel board.

The board of commissioners may establish a personnel board with authority, as regards employees in offices, departments, boards, commissions, and agencies under the general control of the board of commissioners, to administer tests designed to determine the merit and fitness of candidates for appointment or promotion, to conduct hearings upon the appeal of employees who have been suspended, demoted, or discharged, to hear employee grievances, or to undertake any other duties relating to personnel administration that the board of commissioners may direct. (1973, c. 822, s. 1.)

§ 153A-96. Participation in the Social Security Act.

The board of commissioners may take any action necessary to allow county officers and employees to participate fully in benefits provided by the Federal Social Security Act. (1973, c. 822, s. 1.)

§ 153A-97. Defense of officers, employees and others.

A county may, pursuant to G.S. 160A-167, provide for the defense of:

(1) Any county officer or employee, including the county board of elections or any county election official.

(2) Any member of a volunteer fire department or rescue squad which receives public funds.

(2a) Any soil and water conservation supervisor, and any local soil and water conservation employee, whether the employee is a county employee or an employee of a soil and water conservation district.

(3) Any person or professional association who at the request of the board of county commissioners provides medical or dental services to inmates in the custody of the sheriff and is sued pursuant to 42 U.S.C. § 1983 with respect to the services. (1957, c. 436; 1973, c. 822, s. 1; 1977, c. 307, s. 1; 1989, c. 733, s. 2; 2001-300, s. 1.)

CASE NOTES

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

§ 153A-98. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a county are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the county with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the county.

(b) The following information with respect to each county employee is a matter of public record: name; age; date of original employment or appointment to the county service; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the county has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity. The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a county employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A county employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of such records may release the name, address, and

telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The county manager, with concurrence of the board of county commissioners, or, in counties not having a manager, the board of county commissioners may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a county employee and the reasons for that personnel action. Before releasing the information, the manager or board shall determine in writing that the release is essential to maintaining public confidence in the administration of county services or to maintaining the level and quality of county services. This written determination shall be retained in the office of the manager or the county clerk, is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the county's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The board of county commissioners may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the county as long as each personnel file so examined is retained.

(c3) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former local governmental employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees.

(d) The board of commissioners of a county that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars ($500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 701, s. 1; 1981, c. 926, ss. 1, 5-8; 1993, c. 539, ss. 1059, 1060; 1994, Ex. Sess., c. 24, s. 14(c); 2007-508, s. 6; 2008-194, s. 11(d).)

Effect of Amendments. — Session Laws 2008-194, s. 11(d), effective August 8, 2008, added subsection (c3).

Legal Periodicals. — For comment, "You Can't Always Get What You Want: A Look at North Carolina's Public Records Law," see 72 N.C.L. Rev. 1527 (1994).

CASE NOTES

Applications for position of county sheriff sought by board of county commissioners were governed by the provisions of this section rather than the Public Records Law and, therefore were not subject to disclosure to the public. Durham Herald Co. v. County of Durham, 334 N.C. 677, 435 S.E.2d 317 (1993).

Exemption from Public Disclosure. — When a county employee wrote to the board of county commissioners about the employee's experience working with the county medical director, when the board was considering whether to renew the director's contract, and recommended another person for the director's job and discussed the employee's interaction with the board regarding the board's decision-making process, the fact that the county manager chose to place the letter in the employee's personnel file had no bearing on whether the letter was exempt from public disclosure under G.S. 132-1 because it was a personnel record covered by G.S. 153A-98. News Reporter Co. v. Columbus County, 184 N.C. App. 512, 646 S.E.2d 390, 2007 N.C. App. LEXIS 1471 (2007).

Cited in Paschal v. Myers, 129 N.C. App. 23, 497 S.E.2d 311 (1998); Jones v. Bryant, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 8006 (M.D.N.C. May 4, 2004); Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005).

OPINIONS OF ATTORNEY GENERAL

For discussion concerning legal impediments which prohibit employers from disclosing personal information about their employees, see opinion of Attorney General to Bryan E. Beatty, Inspector General, North Carolina Department of Justice, 1998 N.C.A.G. 49 (12/1/98).

Employee's Letter to Board of County Commissioners. — Parts of the letter to the board of county commissioners recommending a certain person for the medical director's job and discussing the employee's interaction with the board were subject to public disclosure under G.S. 132-1 because G.S. 153A-98(a), protecting certain employee information from public disclosure, did not protect all information "with respect to" an employee, as the information had to relate to an illustrative list of subjects arising out of the employment, and there was no basis for considering these parts of the letter to be "any information" gathered by the county "with respect to" the types of matters governed by G.S. 153A-98(a). News Reporter Co. v. Columbus County, 184 N.C. App. 512, 646 S.E.2d 390, 2007 N.C. App. LEXIS 1471 (2007).

§ 153A-99. County employee political activity.

(a) Purpose. The purpose of this section is to ensure that county employees are not subjected to political or partisan coercion while performing their job duties, to ensure that employees are not restricted from political activities while off duty, and to ensure that public funds are not used for political or partisan activities.

It is not the purpose of this section to allow infringement upon the rights of employees to engage in free speech and free association. Every county employee has a civic responsibility to support good government by every available means and in every appropriate manner. Employees shall not be restricted from affiliating with civic organizations of a partisan or political nature, nor shall employees, while off duty, be restricted from attending political meetings, or advocating and supporting the principles or policies of civic or political organizations, or supporting partisan or nonpartisan candidates of their choice in accordance with the Constitution and laws of the State and the Constitution and laws of the United States of America.

(b) Definitions. For the purposes of this section:

(1) "County employee" or "employee" means any person employed by a county or any department or program thereof that is supported, in whole or in part, by county funds;

(2) "On duty" means that time period when an employee is engaged in the duties of his or her employment; and

(3) "Workplace" means any place where an employee engages in his or her job duties.

(c) No employee while on duty or in the workplace may:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for political office; or

(2) Coerce, solicit, or compel contributions for political or partisan purposes by another employee.

(d) No employee may be required as a duty or condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes.

(e) No employee may use county funds, supplies, or equipment for partisan purposes, or for political purposes except where such political uses are otherwise permitted by law.

(f) To the extent that this section conflicts with the provisions of any local act, local ordinance, resolution, or policy, this section prevails to the extent of the conflict. (1991, c. 619, s. 1; 1993, c. 298, s. 1.)

Legal Periodicals. — For article, "Political Patronage and North Carolina Law: Is Political Conformity With the Sheriff a Permissible Job Requirement for Deputies?," see 79 N.C.L. Rev. 1743 (2001).

CASE NOTES

Summary Judgment Granted in Retaliatory Discharge Case. — In the former deputy sheriff's retaliatory discharge in violation of G.S. 153A-99 cause of action against the sheriff and the surety, the sheriff and surety were entitled to summary judgment pursuant to G.S. 1A-1, N.C. R. Civ. P. 56; the former deputy's assertion that the former deputy was fired due to the former deputy's affiliation with the sheriff's primary election foe was insufficient to establish a nexus between the protected activity and the discharge, because the evidence of the nexus was from the former deputy's deposition testimony that amounted to mere conjecture. Venable v. Vernon, 162 N.C. App. 702, 592 S.E.2d 256, 2004 N.C. App. LEXIS 250 (2004).

Cited in Carter v. Good, 951 F. Supp. 1235 (W.D.N.C. 1996).

OPINIONS OF ATTORNEY GENERAL

The provisions of this section and § 160A-169 are applicable to elected officials of counties and cities. See opinion of Attorney General to Mr. William R. Gilkeson, Staff Attorney, N.C. General Assembly, 1998 N.C.A.G. 1 (1/14/98).

§ 153A-100: Reserved for future codification purposes.

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-101. Board of commissioners to direct fiscal policy of the county.

The board of commissioners has and shall exercise the responsibility of developing and directing the fiscal policy of the county government under the provisions and procedures of the Local Government Budget and Fiscal Control Act. (1777, c. 129, s. 4, P.R.; R.C., c. 28, s. 16; Code, s. 753; Rev., s. 1379; C.S., s. 1325; 1927, c. 91, s. 11; 1953, c. 973, s. 2; 1973, c. 822, s. 1.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under corresponding sections of former law.*

The legislature may confer upon a county the power to create debts for necessary expenses, without the approval of a majority of the qualified voters in the county. Evans v. Commissioners of Cumberland, 89 N.C. 154 (1883).

Necessity of Expense to Be Determined by Commissioners. — What is a "necessary expense" for a county is to be determined by the sound judgment and discretion of its board of commissioners. Broadnax v. Groom, 64 N.C. 244 (1870); Commissioners of Yancey County v. Road Comm'rs, 165 N.C. 632, 81 S.E. 1001 (1914); Hargrave v. Board of Comm'rs, 168 N.C. 626, 84 S.E. 1044 (1915); Wilson v. Holding, 170 N.C. 352, 86 S.E. 1043 (1915).

The commissioners' exercise of their discretion will not be reviewed except when mala fides is shown. Jackson v. Board of Comm'rs, 171 N.C. 379, 88 S.E. 521 (1916).

If the entire fund which can be raised by taxation is required to meet necessary expenses of an economical administration of the county government, and none can be diverted to pay its indebtedness without serious detriment to the public, none ought to be thus appropriated. Cromartie v. Commissioners of Bladen, 85 N.C. 211 (1881).

As to the province of the courts and the legislature, see Burgin v. Smith, 151 N.C. 561, 66 S.E. 607 (1909), citing Cromartie v. Commissioners of Bladen, 87 N.C. 134 (1882); Hightower v. City of Raleigh, 150 N.C. 569, 65 S.E. 279 (1909).

County May Hire Auditors. — The commissioners of a county have the right to contract with skilled expert accountants for auditing of the books and accounts of the various departments of the county at a price agreed upon, and may order that such sum to be paid by the county treasurer out of county funds. Wilson v. Holding, 170 N.C. 352, 86 S.E. 1043 (1915).

Support of county convicts must be paid out of the general county fund. Chambers v. Walker, 120 N.C. 401, 27 S.E. 77 (1897).

Legislature to Determine Care of Indigents. — It is the exclusive right of the legislature to determine how the indigents of the State who are entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board of Educ. v. Commissioners of Bladen, 113 N.C. 379, 18 S.E. 661 (1893).

Severance pay to county manager who voluntarily resigned violated North Carolina Constitution, Art. 1, Sec. 32, because county manager was to be compensated for duties that were not performed, since the record reflected that the compensation was not for prior services rendered, and he was paid all benefits due him. Leete v. County of Warren, 341 N.C. 116, 459 S.E.2d 232 (1995).

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984); Leete v. County of Warren, 341 N.C. 116, 462 S.E.2d 476 (1995).

§ 153A-102. Commissioners to fix fees.

The board of commissioners may fix the fees and commissions charged by county officers and employees for performing services or duties permitted or required by law. The board may not, however, fix fees in the General Court of Justice or modify the fees of the register of deeds prescribed by G.S. 161-10 or the fees of the board of elections prescribed by G.S. 163-107. (1953, c. 1227, ss. 1-3; 1969, c. 358, s. 1; c. 1017; 1973, c. 822, s. 1.)

OPINIONS OF ATTORNEY GENERAL

A county may charge a fee for issuing licenses pursuant to § 127B-3. See Opinion of Attorney General to Mr. Garris N. Yarborough, Cumberland County Attorney, 55 N.C.A.G. 41 (1985).

CASE NOTES

Statute Does Not Authorize School Impact Fees. — G.S. 153A-102 did not authorize a county to impose a "school impact fee" upon new residential construction; its plain language limited the power to fix only those fees charged by county officers and employees for performing services or duties permitted or required by law, and under G.S. 115C-408(b), it was the duty of a county itself, not its officers or employees, to provide adequate school facilities. Furthermore, the statute's textual limitations on the power to charge fees indicated that the services were routine, document-oriented tasks. Durham Land Owners Ass'n v. County of Durham, 177 N.C. App. 629, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

§ 153A-102.1. Electronic notice of new fees and fee increases; public comment period.

(a) If a county has a Web site maintained by one or more of its employees, the county shall provide notice of the imposition of or increase in fees or charges applicable solely to the construction of development subject to the provisions of Part 2 of Article 18 of this Chapter on the county's Web site at least seven days prior to the first meeting where the imposition of or increase in the fees or charges is on the agenda for consideration.

(b) During the consideration of the imposition of or increase in fees or charges as provided in subsection (a) of this section, the governing body of the county shall permit a period of public comment.

(c) This section shall not apply if the imposition of or increase in fees or charges is contained in a budget filed in accordance with the requirements of G.S. 159-12. (2009-436, s. 1.)

Editor's Note. — Session Laws 2009-436, s. 5, made this section effective September 1, 2009.

§ 153A-103. Number of employees in offices of sheriff and register of deeds.

Subject to the limitations set forth below, the board of commissioners may fix the number of salaried employees in the offices of the sheriff and the register of deeds. In exercising the authority granted by this section, the board of commissioners is subject to the following limitations:

(1) Each sheriff and register of deeds elected by the people has the exclusive right to hire, discharge, and supervise the employees in his office. However, the board of commissioners must approve the appointment by such an officer of a relative by blood or marriage of nearer kinship than first cousin or of a person who has been convicted of a crime involving moral turpitude.

(2) Each sheriff and register of deeds elected by the people is entitled to at least two deputies who shall be reasonably compensated by the county, provided that the register of deeds justifies to the Board of County Commissioners the necessity of the second deputy. Each

deputy so appointed shall serve at the pleasure of the appointing officer.

Notwithstanding the foregoing provisions of this section, approval of the board of commissioners is not required for the reappointment or continued employment of a near relative of a sheriff or register of deeds who was not related to the appointing officer at the time of initial appointment. (1953, c. 1227, ss. 1, 2; 1969, c. 358, s. 1; 1973, c. 822, s. 1; 1977, c. 36; 1979, c. 551; 1987, c. 362.)

Legal Periodicals. — For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2281 (1997).

CASE NOTES

Sheriff Can Make Official Government Policy. — Official government policy can be established not only by the formal policymaking actions of the lawmakers, but also by the actions of officials with final policymaking authority; the sheriff is such an official, as indicated in subsection (1), which gives the sheriff exclusive control over supervision of employees in his office. Flood v. Hardy, 868 F. Supp. 809 (E.D.N.C. 1994).

Government Employees Cannot Impose Unconstitutional Conditions on Public Employment. — Deputies work at the pleasure of the sheriff. However, government employees including sheriffs can neither impose unconstitutional conditions upon public employment such as requiring employees to relinquish their rights of free speech and association nor discharge employees for a constitutionally infirm reason. Joyner v. Lancaster, 553 F. Supp. 809 (M.D.N.C. 1982).

Control of the employees hired by the sheriff is vested exclusively in the sheriff. The sheriff has the exclusive right to fire any deputy or employee in his office. The only authority vested in the board of commissioners is in determining the number of employees the sheriff can hire and the ability to approve the appointment of a relative or a person convicted of a crime involving moral turpitude. Peele v. Provident Mut. Life Ins. Co., 90 N.C. App. 447, 368 S.E.2d 892, appeal dismissed, 323 N.C. 366, 373 S.E.2d 547 (1988).

Sheriff Not Liable for County's Salary Administration. — Because there was absolutely no evidence that defendant sheriff "acted in concert" with defendant county, as alleged, or had anything to do with the administration of plaintiffs' salaries, he was an unnecessary party to their case. Hubbard v. County of Cumberland, 143 N.C. App. 149, 544 S.E.2d 587, 2001 N.C. App. LEXIS 235 (2001), cert. denied, 354 N.C. 69, 553 S.E.2d 40 (2001).

This section explicitly grants sheriffs exclusive power over employment decisions, and the North Carolina courts have interpreted this statute to deny sheriffs' employees any property right in their employment. Jackson v. Long, 102 F.3d 722 (4th Cir. 1996).

Employee of Sheriff Held Not an Employee of the County. — Plaintiff's argument that even though she was hired by the sheriff, she remained the employee of the county, and that thus all the protections and privileges provided by the Board of Commissioners to other county employees should have been afforded her, was without merit. Peele v. Provident Mut. Life Ins. Co., 90 N.C. App. 447, 368 S.E.2d 892, appeal dismissed, 323 N.C. 366, 373 S.E.2d 547 (1988).

County, having no control over sheriff's deputy department, could not be a party to any employment contract deputy may have had, and therefore, deputy could not recover against the county for breach of her employment contract. Spencer v. Byrd, 899 F. Supp. 1439 (M.D.N.C. 1995).

County May Be Bound by Sheriff's Decisions. — In North Carolina, where the sheriff is given exclusive control over the supervision of his employees, including deputies and jailers, the sheriff may bind the county by his decisions. Flood v. Hardy, 868 F. Supp. 809 (E.D.N.C. 1994).

County is not liable for deputy's or sheriff's actions, as their employer. Clark v. Burke County, 117 N.C. App. 85, 450 S.E.2d 747 (1994).

County Not Liable for Sheriff's Decision. — County could not be liable under 42 U.S.C. 1983 for sheriff's employment decisions where the state gives the sheriff final policymaking authority on employment decisions. Harter v. Vernon, 953 F. Supp. 685 (M.D.N.C. 1996), aff'd, 101 F.3d 334 (4th Cir. 1996), cert. denied, 521 U.S. 1120, 117 S. Ct. 2511, 138 L. Ed. 2d 1014 (1997).

Because, pursuant to this section, sheriff/defendant, and not the county, had exclusive responsibility for discharging plaintiff/jailer (who claimed the discharge was retaliatory), the district court properly granted summary judgment for the county on plaintiff's G.S. 1983 claims. Knight v. Vernon, 214 F.3d 544, 2000 U.S. App. LEXIS 12098 (4th Cir. 2000).

There was no North Carolina statute authorizing suit against a county's sheriff's department for employment law violations since, pursuant to G.S. 153A-103, a sheriff has the exclusive right to hire, discharge, and supervise the employees in his office; thus, the sheriff, rather than the department or associated county, could be held liable for employment law violations within the department. Efird v. Riley, 342 F. Supp. 2d 413, 2004 U.S. Dist. LEXIS 22140 (M.D.N.C. 2004).

Deputy Sheriffs enjoy no property right in continued employment. Burns v. Brinkley, 933 F. Supp. 528 (E.D.N.C. 1996).

The fact that North Carolina has established a generous pension system for its public employees as part of its compensatory and incentive package does not confer upon those employees a property interest in continued employment; the programs are merely part of the consideration forming the basis for public employment contracts, and do not alter the at-will nature of such employment relationships. Burns v. Brinkley, 933 F. Supp. 528 (E.D.N.C. 1996).

Plaintiffs who made no claim that they were exempted from the employment-at-will rule other than that their employment was subject to a general order allowing appeal to a Termination Review Board had no property interest in their employment which could form the basis for a denial of due process. Buchanan v. Hight, 133 N.C. App. 299, 515 S.E.2d 225 (1999).

Sheriff Must Be Named as Defendant in Title VII Suit. — Pursuant to G.S. 153A-103, the duly elected sheriff of a county under G.S. 162-1 has the exclusive right to hire, discharge, and supervise the employees in his office; thus, each county's sheriff is an "employer" within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., and had to be named as a defendant in a Title VII suit. Efird v. Riley, 342 F. Supp. 2d 413, 2004 U.S. Dist. LEXIS 22140 (M.D.N.C. 2004).

Employee Was an At-Will Employee. — Employee failed to state a claim for wrongful termination in violation of public policy as the employee was an at-will employee under G.S. 153A-103(1), and the employee did not meet a heightened pleading standing by alleging a violation of any "explicit statutory or constitutional provision" or that a sheriff encouraged the employee to violate any law that might result in potential harm to the public. Gillis v. Montgomery County Sheriff's Dep't, 191 N.C. App. 377, 663 S.E.2d 447, 2008 N.C. App. LEXIS 1314 (2008), review denied, appeal dismissed, 668 S.E.2d 26 (N.C. 2008).

Cited in Cline v. Brown, 24 N.C. App. 209, 210 S.E.2d 446 (1974); Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984); Harter v. Vernon, 101 F.3d 334 (4th Cir. 1996); Jenkins v. Medford, 119 F.3d 1156 (4th Cir. 1997); Knight v. Vernon, 23 F. Supp. 2d 634 (M.D.N.C. 1998).

§ 153A-104. Reports from officers, employees, and agents of the county.

The board of commissioners may require any officer, employee, or agent of the county to make to the board, either directly or through the county manager, periodic or special reports concerning any matter connected with the officer's, employee's or agent's duties. The board may require that such a report be made under oath. If a person fails or refuses to obey a reasonable order to make a report, issued pursuant to this section, the board may apply to the appropriate division of the General Court of Justice for an order requiring that its order be obeyed. The court has jurisdiction to issue these orders. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C.S., s. 1297; 1973, c. 822, s. 1.)

§§ 153A-105 through 153A-110: Reserved for future codification purposes.

Part 6. Clerk to the Board of Commissioners.

§ 153A-111. Appointment; powers and duties.

The board of commissioners shall appoint or designate a clerk to the board. The board may designate the register of deeds or any other county officer or employee as clerk. The clerk shall perform any duties that may be required by law or the board of commissioners. The clerk shall serve as such at the pleasure of the board. (Const., art. 7, s. 2; Code, s. 710; 1895, c. 135, s. 4; Rev., s. 1324; C.S., s. 1309; 1955, c. 247, s. 1; 1963, c. 372; 1969, c. 207; 1973, c. 822, s. 1.)

CASE NOTES

County Commissioners' Actions Not Protected by Legislative Immunity. — The county commissioners' refusal to reappoint plaintiff as clerk, the elimination of the clerk's salary, the consolidation of the clerk's position with another, and the refusal to select plaintiff for the combined position constituted administrative actions that were not entitled to immunity. Alexander v. Holden, 66 F.3d 62 (4th Cir. 1995).

§§ 153A-112, 153A-113: Reserved for future codification purposes.

Part 7. County Attorney.

§ 153A-114. Appointment; duties.

The board of commissioners shall appoint a county attorney to serve at its pleasure and to be its legal adviser. (1973, c. 822, s. 1.)

§§ 153A-115 through 153A-120: Reserved for future codification purposes.

ARTICLE 6.

Delegation and Exercise of the General Police Power.

§ 153A-121. General ordinance-making power.

(a) A county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances.

(b) This section does not authorize a county to regulate or control vehicular or pedestrian traffic on a street or highway under the control of the Board of Transportation, nor to regulate or control any right-of-way or right-of-passage belonging to a public utility, electric or telephone membership corporation, or public agency of the State. In addition, no county ordinance may regulate or control a highway right-of-way in a manner inconsistent with State law or an ordinance of the Board of Transportation.

(c) This section does not impair the authority of local boards of health to adopt rules and regulations to protect and promote public health. (1963, c. 1060, ss. 1, 11/2; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 507, s. 5; c. 822, s. 1.)

Local Modification. — Orange: 1991, c. 246, s. 5.

Legal Periodicals. — For article on local legislation in the General Assembly, discussing former G.S. 153-9(55), see 45 N.C.L. Rev. 340 (1967).

For article, "Regulating Obscenity Through the Power to Define and Abate Nuisances," see 14 Wake Forest L. Rev. 1 (1978).

For survey of 1983 developments in property law, see 62 N.C.L. Rev. 1346 (1984).

For note, "Preemption Hogwash: North Carolina's Judicial Repeal of Local Authority to Regulate Hog Farms in Craig v. County of Chatham," see 80 N.C.L. Rev. 2121 (2002).

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided under former G.S. 153-9.*

Ordinance Upheld. — County ordinance which regulated the location of adult and sexually oriented businesses (but did not prohibit them) for the stated purpose of promoting the health, safety and morals and general welfare of the citizenry of the county was well within the parameters of this section. Maynor v. Onslow County, 127 N.C. App. 102, 488 S.E.2d 289 (1997), appeal dismissed, 347 N.C. 268, 493 S.E.2d 458 (1997), cert. denied, 347 N.C. 400, 496 S.E.2d 385 (1997).

The enactment of the Sign Control Ordinance of Transylvania County, North Carolina, was a valid exercise of the general police power of Transylvania County, North Carolina, under G.S. 153A-121, and, therefore, Transylvania County did not have to follow the enactment procedures of ch. 153A, art. 18 in enacting the ordinance. Transylvania County v. Moody, 151 N.C. App. 389, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002).

Former § 153-9(55) Was a Home Rule Statute. — Former G.S. 153-9(55), authorizing boards of county commissioners to adopt ordinances for the better government of the county, was a Home Rule statute, applicable throughout the State. It enabled the county commissioners of every county to enact ordinances in the exercise of the general police power within the prescribed territory, just as other statutes enable the governing bodies of cities and towns to enact ordinances in the exercise of the general police powers within their corporate limits. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

And a General Law. — Former G.S. 153-9(55) was a general law and therefore did not contravene N.C. Const. 1868, Art. II, § 29. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

Conferring General Police Powers. — Former G.S. 153-9(55) did not confer or withhold authority in respect of specific activities; on the contrary, it conferred authority to enact ordinances in the exercise of the general police power. In this respect, the statute was similar to the statutes which confer general police power upon cities and towns. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970); State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

Such as That Conferred Upon Cities and Towns. — The authority conferred by former G.S. 153-9(55) upon the boards of commissioners of the respective counties was the same as that conferred upon cities and towns by G.S. 160A-174 and 160A-181. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

County Cannot Enact Its Own Employment Discrimination Ordinance. — G.S. 153A-121 did not empower a county to enact its own employment discrimination ordinance, as the county only possessed those powers validly delegated to it by the state, and the state's attempted delegation of this power to the county violated N.C. Const. art. II, § 24. Williams v. Blue Cross Blue Shield, 357 N.C. 170, 581 S.E.2d 415, 2003 N.C. LEXIS 595 (2003).

Regulation of Signs Held Constitutional. — The off-premise/on-premise classification is a constitutionally valid basis for regulation of outdoor advertising signs. Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

County ordinance regulating off-premises signs larger than 15 square feet held to meet the constitutional requirements of due process. Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

Regulation of Signs Did Not Constitute a Taking. — Five year amortization provisions of county ordinance regulating off-premises signs of over 15 square feet were sufficient, and the ordinance did not constitute a taking of plaintiff's property without compensation. Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

This section and § 153A-340 do not operate exclusively of each other. Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

Subsection (a) of this section confers general police power upon cities and towns. Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

Legislative Authority of County Board of Commissioners. — A county board of commissioners has no legislative authority not granted to it expressly or by necessary implication from expressly granted powers. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

Power of General Assembly to Delegate Authority to County Boards. — Subject to constitutional limitations, the power of the General Assembly to delegate to county commissioners the authority to adopt ordinances in the lawful exercise of the police power is well established. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

Courts Are Not Concerned with Motives,

Wisdom or Expediency of Board's Acts. — If the board of commissioners does not exceed its delegated or constitutional authority, the courts are not concerned with the motives, wisdom or expediency which prompt its actions. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

When the most that can be said against an ordinance is that it is fairly debatable whether it is an unreasonable, arbitrary or unequal exercise of power, the courts will not interfere. County of Hoke v. Byrd, 107 N.C. App. 658, 421 S.E.2d 800 (1992).

Ordinance May Not Forbid Conduct Dealt with by Statute. — The board of commissioners of a county cannot enact a valid ordinance forbidding certain conduct if a statewide statute in effect at the time the ordinance in question is adopted deals specifically with the identical conduct. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

And Repeal of Statute Does Not Breathe Life into Ordinance. — The repeal of a statewide law which, during its life, prohibited the enactment of a county ordinance, is prospective and does not breathe life into an ordinance which was beyond the authority of the ordaining body when it was adopted. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

A county's zoning authority is limited: it can be applied only to buildings within the county's borders which are outside city limits, and it is confined to the purposes of promoting health, safety, morals, or the general welfare. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Right of County to Proscribe Obscenity Which Is Not Forbidden by State Law. — Nothing in G.S. 14-190.1 through 14-190.9, statewide laws relating to obscene literature and exhibitions and to indecent exposure, expresses or indicates an intent by the General Assembly to preclude cities and towns or counties from enacting and enforcing ordinances requiring a higher standard of conduct or condition within their respective jurisdictions. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

Authority to Regulate Signs. — Fact that defendant county had authority to regulate signs under the zoning power in G.S. 153A-340 did not mean that it could not regulate signs in a similar manner under the general police powers in this section, allowing regulation of "conditions detrimental to the health, safety or welfare of its citizens and the peace and dignity of the county." Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

County's moratorium on outdoor advertising signs did not require a notice or a public hearing prior to passage, as it was enacted pursuant to the county's general police powers, and a property owner did not have a statutory vested right to erect a sign. PNE AOA Media, L.L.C. v. Jackson County, 146 N.C. App. 470, 554 S.E.2d 657, 2001 N.C. App. LEXIS 981 (2001).

Defendant county's ordinance regulating off-premises signs larger than 15 square feet was well within the parameters of this section; while it might have been more desirable and better planning for defendant county to adopt a county-wide zoning ordinance, the fact that defendant did not do so did not preclude it from regulating outdoor advertising signs under this section. Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

Authority for County Ordinance Concerning Drive-In Theaters. — Former G.S. 153-9(55) provided plenary authority for enacting a county ordinance making it unlawful to operate a drive-in motion picture theater near streets or highways in such a manner that the screen is visible to passing motorists. Variety Theaters, Inc. v. Cleveland County, 282 N.C. 272, 192 S.E.2d 290 (1972), appeal dismissed, 411 U.S. 911, 93 S. Ct. 1548, 36 L. Ed. 2d 303 (1973).

As to constitutionality of county ordinance concerning drive-in theaters, see Variety Theaters, Inc. v. Cleveland County, 282 N.C. 272, 192 S.E.2d 290 (1972), appeal dismissed, 411 U.S. 911, 93 S. Ct. 1548, 36 L. Ed. 2d 303 (1973).

Authority to Regulate Location of Adult and Sexually Oriented Businesses. — Failure of a county to adopt a county-wide comprehensive zoning plan did not preclude it from regulating the location of adult and sexually oriented businesses pursuant to its police powers. Onslow County v. Moore, 129 N.C. App. 376, 499 S.E.2d 780 (1998).

Regulation of Sexually Oriented Businesses. — County's amended ordinance requiring the licensure and other conditions of sexually oriented businesses was a civil regulatory law that did not violate the ex post facto clause of the United States Constitution. Pitt County v. Deja Vue, Inc., 185 N.C. App. 545, 650 S.E.2d 12, 2007 N.C. App. LEXIS 1937 (2007).

Sunday Closing Ordinances. — Former G.S. 153-9(55) conferred authority to enact Sunday closing ordinances upon the boards of commissioners of the respective counties. State v. Atlas, 283 N.C. 165, 195 S.E.2d 496 (1973).

As to constitutionality of Sunday closing ordinances, see State v. Atlas, 283 N.C. 165, 195 S.E.2d 496 (1973).

Authority for County Ordinance Concerning Collection and Disposal of Solid Waste. — County governments are delegated by the state with a general police power. Additionally, counties are specifically vested by statute with authority to regulate by ordinance the collection and disposal of solid waste within their jurisdictions. In order to effect this regulatory power and meet their police power responsibilities, counties are specifically authorized by statute to enact ordinances granting exclusive franchises to commercially collect or dispose of solid waste within all or a defined portion of the county. Stillings v. City of Winston-Salem, 63 N.C. App. 618, 306 S.E.2d 489 (1983), rev'd on other grounds, 311 N.C. 689, 319 S.E.2d 233 (1984).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Regulation of Asphalt Plants. — A county's enactment of a moratorium on the building of asphalt plants and adoption of a polluting industries development ordinance pursuant to the statute's general grant of police power, rather than through the specific statutory provisions governing zoning, was proper. Tri-County Paving, Inc. v. Ashe County, 281 F.3d 430, 2002 U.S. App. LEXIS 2747 (4th Cir. 2002).

Regulation of Junkyards. — Requirements of ordinance which imposed expensive requirements on junkyard owners which could prohibit them from continuing to use their property in one manner did not exceed the boundaries of the board's discretion and, therefore, the ordinance would be left undisturbed. County of Hoke v. Byrd, 107 N.C. App. 658, 421 S.E.2d 800 (1992).

Notice Required for Ordinance Regulating Issuance of Building Permits. — Where the county argued that it did not have to issue notice in compliance with G.S. 153A-323 because the ordinance, imposing a moratorium on the issuance of building permits for the construction or operation of heavy industry, was enacted pursuant to the county's police power under G.S. 153A-121, the claim failed; the county adopted an ordinance that imposed a moratorium on the issuance of building permits, which was governed by G.S. 153A-323, and which was, therefore, not governed by G.S. 153A-121. Sandy Mush Props., Inc. v. Rutherford County, 160 N.C. App. 683, 586 S.E.2d 849, 2003 N.C. App. LEXIS 1934 (2003).

Trial court erred in granting a county's summary judgment motion and in denying a property owner's summary judgment motion where: (1) an ordinance prohibiting heavy industry was enacted after the county was enjoined from enforcing a moratorium on the issuance of building permits in the same area, (2) the moratorium was covered by N.C. Gen. Stat. ch. 153A, art. 18 as it dealt with the issuance of building permits, (3) the county could not avoid the notice requirements G.S. 153A-323, by stating that the moratorium was enacted pursuant to the police powers under G.S. 153A-121, and (4) although the county complied with the notice requirements before enacting the ordinance, the county had already been ordered to issue the building permit. Sandy Mush Props., Inc. v. Rutherford County, 164 N.C. App. 162, 595 S.E.2d 233, 2004 N.C. App. LEXIS 743 (2004).

Notice Requirements for Zoning Ordinance Could Not be Avoided by Citing to Police Powers. — County's failure to comply with G.S. 153A-323 in enacting the Buncombe County, N.C., Multi-Family Dwelling Ordinance (Ordinance) rendered the ordinance invalid; although the county claimed that the Ordinance was adopted in the exercise of its general police power pursuant to G.S. 153A-121, the Ordinance substantially affected land use, was therefore a zoning ordinance, and the county was not permitted to evade the legislative notice requirements imposed by G.S. 153A-323 by labeling the Ordinance an exercise of police power. Thrash Ltd. P'ship v. County of Buncombe, — N.C. App. —, 673 S.E.2d 689, 2009 N.C. App. LEXIS 256 (2009).

Statute Did Not Authorize "School Impact Fees." — G.S. 153A-121 and 153A-340 did not authorize a county to impose "school impact fees" on new residential construction. They did not allow a county to charge a fee for providing its own governmental services, such as school construction, to the public. Durham Land Owners Ass'n v. County of Durham, 177 N.C. App. 629, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

County Exceeded Statutory Authority With Regard to Zoning Regulations for Manufactured Homes. — County exceeded the power the general assembly conferred upon it with regard to zoning regulations for manufactured homes because an ordinance, as amended, did not employ appearance and dimensional criteria as intended in G.S. 153A-341.1 and G.S. 160A-383.1 when the intent of the ordinance was to increase the tax base by the elimination of housing that rapidly depreciated in value, and that wealth based criterion was neither an appearance nor dimensional criteria; G.S. 160A-383.1, as made applicable to counties by G.S. 153A-341.1, limits a county's power to enact zoning regulations for manufactured homes, and a county may not use its broad police powers as a guise to enact zoning regulations for manufactured homes inconsistent with G.S. 160A-383.1. Five C'S, Inc. v. County of Pasquotank, — N.C. App. —, 672 S.E.2d 737, 2009 N.C. App. LEXIS 152 (2009).

Cited in State v. Taylor, 128 N.C. App. 616, 495 S.E.2d 413 (1998); Derwort v. Polk County, 129 N.C. App. 789, 501 S.E.2d 379 (1998); Craig v. County of Chatham, 143 N.C. App. 30, 545 S.E.2d 455, 2001 N.C. App. LEXIS 221 (2001); Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002); Williams v. Blue Cross Blue Shield, 357 N.C. 170, 581 S.E.2d 415, 2003 N.C. LEXIS 595 (2003); Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156, 2005 N.C. App. LEXIS 906 (2005).

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Height of State Owned and Operated Structures. — This section does not grant authority to a county to regulate the height of state owned and operated structures under its general police power. See opinion of Attorney General to Mr. Jeffery M. Hedrick, Watauga County Attorney, 2000 N.C. AG LEXIS 33 (9/20/2000).

§ 153A-122. Territorial jurisdiction of county ordinances.

Except as otherwise provided in this Article, the board of commissioners may make any ordinance adopted pursuant to this Article applicable to any part of the county not within a city. In addition, the governing board of a city may by resolution permit a county ordinance adopted pursuant to this Article to be applicable within the city. The city may by resolution withdraw its permission to such an ordinance. If it does so, the city shall give written notice to the county of its withdrawal of permission; 30 days after the day the county receives this notice the county ordinance ceases to be applicable within the city. (1963, c. 1060, ss. 1, 1 1/2; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 822, s. 1.)

Local Modification. — Catawba: 1987 (Reg. Sess., 1988), c. 1021, s. 3; Currituck: 1985 (Reg. Sess., 1986), c. 875; 2001-33; Davie: 1985 (Reg. Sess., 1986), c. 830, s. 1; New Hanover: 1981, c. 458; Rowan: 1985, c. 63, ss. 2, 4.

CASE NOTES

Power to Enact Ordinances Giving Franchise Rights. — In general, a state legislature has the power to delegate to the state or inferior agency the authority to make ordinances, such as those giving rise to franchise rights, as it deems appropriate in the lawful exercise of the police power. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

Authority of counties to issue exclusive solid waste collection franchises is derived from this section and G.S. 153A-136. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

Effect of Annexation on Franchises. — Given the limited territorial jurisdiction of a county ordinance granting exclusive solid waste collection franchises, such franchises were not protected from the city's actions in annexing some areas of the county served by the franchisees and providing free solid waste collection services in the newly annexed areas, and therefore did not survive annexation as to those areas which became part of the city. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

Cited in State v. Baggett, 133 N.C. App. 47, 514 S.E.2d 536 (1999).

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A City Is Not Required to Approve by Resolution County Parking Ordinances Pertaining to County Property Located Within the City. — See opinion of Attorney General to Mr. F.L. Carr, 43 N.C.A.G. 409 (1974).

§ 153A-123. Enforcement of ordinances.

(a) A county may provide for fines and penalties for violation of its ordinances and may secure injunctions and abatement orders to further insure compliance with its ordinances, as provided by this section.

(b) Unless the board of commissioners has provided otherwise, violation of a county ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4.

(c) An ordinance may provide that violation subjects the offender to a civil penalty to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

(c1) An ordinance may provide for the recovery of a civil penalty by the county for violation of the fire prevention code of the State Building Code as authorized under G.S. 143-139.

(d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such a case, the General Court of Justice has jurisdiction to issue any order that may be appropriate, and it is not a defense to the county's application for equitable relief that there is an adequate remedy at law.

(e) An ordinance that makes unlawful a condition existing upon or use made of real property may provide that it may be enforced by injunction and order of abatement, and the General Court of Justice has jurisdiction to issue such an order. When a violation of such an ordinance occurs, the county may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt and the county may execute the order of abatement. If the county executes the order, it has a lien on the property, in the nature of a mechanic's and materialman's lien, for the costs of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter was heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

(f) Subject to the express terms of the ordinance, a county ordinance may be enforced by any one or more of the remedies authorized by this section.

(g) A county ordinance may provide, when appropriate, that each day's continuing violation is a separate and distinct offense. (1973, c. 822, s. 1; 1985, c. 764, s. 34; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993, c. 329, s. 5.)

Local Modification. — Orange: 1989, c. 478, s. 3; 1995, c. 339, s. 3.

Editor's Note. — The Rules of Civil Procedure are found in G.S. 1A-1.

CASE NOTES

Enforcement of Zoning Ordinances. — This section and G.S. 153A-345 give the superior court the power to enforce zoning ordinances through the issuance of an injunction. Mize v. County of Mecklenburg, 80 N.C. App. 279, 341 S.E.2d 767 (1986).

Ordinance's Enforcement Provisions Not Followed. — Although G.S. 153A-123 authorized Transylvania County, North Carolina, to collect a civil penalty for the violation of the terms of the Sign Control Ordinance of Transylvania County, North Carolina, a civil penalty was erroneously imposed on defendants, a property owner and an advertising company, where the enforcement procedures of the ordinance were not followed. Transylvania County v. Moody, 151 N.C. App. 389, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002).

Ordinance Itself Need Not Provide for Equitable Enforcement. — It is unnecessary for a zoning ordinance itself to contain any specific provision for equitable enforcement because G.S. 153A-324 allows any remedy under this section to be used at the county's election as a matter of right and without qualification, unless the county's zoning ordinance provides otherwise. New Hanover County v. Pleasant, 59 N.C. App. 644, 297 S.E.2d 760 (1982).

Verification of Complaint Not Required. — In a suit wherein a county filed a declaratory judgment action pursuant to G.S. 153A-123 seeking enforcement of an ordinance and seeking equitable relief, plaintiffs were not required to verify the complaint; therefore, no error occurred as a result of the trial court refusing to dismiss plaintiff's complaint for failure to have the pleading verified. Pitt County v. Deja Vue, Inc., 185 N.C. App. 545, 650 S.E.2d 12, 2007 N.C. App. LEXIS 1937 (2007).

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984); Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-124. Enumeration not exclusive.

The enumeration in this Article or other portions of this Chapter of specific powers to define, regulate, prohibit, or abate acts, omissions, or conditions is not exclusive, nor is it a limit on the general authority to adopt ordinances conferred on counties by G.S. 153A-121. (1973, c. 822, s. 1.)

CASE NOTES

Cited in Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

§ 153A-125. Regulation of solicitation campaigns, flea markets and itinerant merchants.

A county may by ordinance regulate, restrict, or prohibit the solicitation of contributions from the public for charitable or eleemosynary purposes, and also the business activities of itinerant merchants, salesmen, promoters, drummers, peddlers, flea market operators and flea market vendors and hawkers. These ordinances may include, but are not limited to, requirements that an application be made and a permit issued, that an investigation be made, that activities be reasonably limited as to time and place, that proper credentials and proof of financial stability be submitted, that not more than a stated percentage of contributions to solicitation campaigns be retained for administrative expenses, and that an adequate bond be posted to protect the public from fraud. A county may charge a fee for a permit issued pursuant to such an ordinance. (1967, c. 80, ss. 1-21/2; 1973, c. 822, s. 1; 1987, c. 708, s. 7.)

CASE NOTES

***Editor's Note.** — The cases cited below were decided under former G.S. 105-53.*

I. General Consideration.
II. Regulation and Taxation by Cities and Counties.

I. GENERAL CONSIDERATION.

Tax Is on Occupation, Not Goods. — Peddlers and transient dealers are commonly taxed a specific sum because they are likely to escape any other tax. A peddler's tax is on the occupation, not on the goods, and one who engages in the business, whether as agent or owner, must pay it. State v. Rhyne, 119 N.C. 905, 26 S.E. 126 (1896).

Statute Not Applicable to Citizens of Other States. — The provision of a statute similar to this was held unconstitutional on the grounds that it was made to apply to citizens of other states, thus regulating interstate commerce. In re Spain, 47 F. 208 (E.D.N.C. 1891). See also In re Flinn, 57 F. 496 (W.D.N.C. 1893).

Subsections (e) and (g) relate exclusively to privileges taxes upon peddlers. State v. Bridgers, 211 N.C. 235, 189 S.E. 869 (1937).

"Peddler" Defined. — A peddler is one who sells and delivers the identical goods he carries about with him. State v. Lee, 113 N.C. 681, 18 S.E. 713 (1893).

A peddler is primarily one who travels around on foot, selling or bartering the identical goods he carries. State v. Frank, 130 N.C. 724, 41 S.E. 785 (1902).

Peddling Is Lawful Business. — Under general State law, "peddling," as defined in this section, is a lawful business or occupation. State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963).

Peddling Is a Privilege and Not a Right. — To peddle is not a matter of right under the laws, which any person can demand upon the payment of the tax. It is a privilege. It is discretionary with the county commissioners whether or not they will grant a license to a peddler. The privilege is personal to the applicant, and is not assignable. State v. Rhyne, 119 N.C. 905, 26 S.E. 126 (1896).

State license issued under this section authorizes the licensee to engage in the business of peddling. State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963).

Such as Peddling Ice Cream. — Under a license issued in accordance with general State law, the sale and offering for sale of ice cream products on public streets in the area covered by such license is a lawful business or occupation. State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963).

Sales by Samples. — It was held that a former statute, similar to this section, did not apply to sales by sample of goods not at the time of sale within the State and ready for immediate delivery, but applied only where goods were actually exposed and offered for sale, and ready for delivery at once to the purchaser. In re Flinn, 57 F. 496 (W.D.N.C. 1893).

A person who travels from house to house on foot selling goods by sample, and afterwards delivers them on foot, is not a peddler. State v. Frank, 130 N.C. 724, 41 S.E. 785 (1902).

One who sells goods by sample, which goods are shipped to the purchaser in care of one who sold them and delivered by him, is a peddler. State v. Franks, 127 N.C. 510, 37 S.E. 70 (1900).

A picture dealer who contracts to sell pictures, has them sent out to him, delivers to the purchaser, and receives the price agreed upon beforehand, is no peddler. City of Greensboro v. Williams, 124 N.C. 167, 32 S.E. 492 (1899).

Selling Fruit in Wholesale Lots. — It was held that a former statute, similar to this section, did not apply to a person selling watermelons in wholesale lots in the city of Salisbury, to be shipped from a nearby town, and only delivered to those from whom he had taken orders. State v. Ninestein, 132 N.C. 1039, 132 N.C. 4039, 43 S.E. 936, 43 S.E. 936 (1903).

The words "any articles of the farm," in an earlier statute, were used to embrace all the products of the farm, and a farmer who butchered cattle raised on his farm and sold the beef was not a peddler. State v. Smith, 173 N.C. 772, 92 S.E. 325 (1917).

Use of Motor Vehicles. — And the statutory provisions contemplate the use of motor vehicles by peddlers in the prosecution of their business or occupation. State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963).

Presumption as to Having License. — If a peddler is required by proper authorities to exhibit his license and he fails to do so the presumption is that he has none. State v. Crump, 104 N.C. 763, 10 S.E. 468 (1889).

Former Subsection Requiring License for Display of Goods by One Not Regular Retailer Was Unconstitutional. — Former subsection (e), requiring one not a regular retail merchant in North Carolina to obtain a $250 license to entitle him to display goods for purpose of securing orders for retail sale, violated "commerce" clause of federal Constitution as applied to a New York merchandise establishment which rented display room in a North Carolina hotel for several days and took orders for goods corresponding to samples, which orders were filled by shipping direct to customers from New York City, where regular retail merchants in North Carolina were subject to only an annual $1 license tax for privilege of doing business. Best & Co. v. Maxwell, 311 U.S. 454, 61 S. Ct. 334, 85 L. Ed. 275 (1940), commented on in 18 N.C.L. Rev. 48.

Cited in Kohn v. Elizabeth City, 199 N.C. 529, 155 S.E. 152 (1930).

II. REGULATION AND TAXATION BY CITIES AND COUNTIES.

Subsection (g) Does Not Prohibit City Tax on Trades and Businesses. — A tax levied under the general authority given a city in its charter, authorizing the levying of a tax upon trades and businesses carried on within its corporate limits is not such a tax as is prohibited by subsection (g) of this section. The prohibition relates to license taxes levied "under this section." The tax complained of was not levied "under this section." State v. Bridgers, 211 N.C. 235, 189 S.E. 869 (1937).

There Is No Express Grant of Powers as to Peddling. — Section 160A-11 which sets forth express powers conferred on municipal corporations, contains no provision relating to the prohibition or regulation of the business or occupation of peddling. State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963).

Other Than to Impose License Taxes. — No express power has been conferred by the General Assembly on municipal corporations to prohibit or to regulate the business or occupation of peddling otherwise than by imposing license taxes thereon. State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963).

Whether City May Prohibit or Regulate Selling on Streets Depends on Delegated Powers. — Whether a municipal corporation has the power to regulate or prohibit the sale of articles of merchandise on its streets and sidewalks depends upon the legislative power delegated to it by the State legislature. State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963).

City cannot, by ordinance, prohibit conduct that is legalized and sanctioned by the General Assembly. Eastern Carolina Tastee-Freez, Inc. v. City of Raleigh, 256 N.C. 208, 123 S.E.2d 632 (1962), holding invalid a municipal ordinance prohibiting the peddling of ice cream along the streets and sidewalks of a city.

City Has Implied Power to Regulate Selling on Streets from Mobile Units. — In the exercise of express powers conferred upon municipal corporations by the General Assembly a municipal corporation has the implied power to adopt an ordinance providing for the reasonable regulation, but not for the prohibition, of the sale and offering for sale of merchandise upon its streets from mobile units. State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963).

Discretion of County Commissioners to Grant Exemptions. — The discretion vested in the county commissioners to exempt from the peddler's tax the "poor and infirm" is necessary to the administration of statutes like this, and will not be interfered with unless arbitrarily exercised. Smith v. Wilkins, 164 N.C. 135, 80 S.E. 168 (1913).

OPINIONS OF ATTORNEY GENERAL

Applicability to Traveling Auctioneers. — If an auctioneer travels into a city or county in which he does not maintain a regular place of business and sells or auctions property owned by him, he must obtain an itinerant merchant license pursuant to this section, as well as comply with any ordinances of the particular city or county governing itinerant merchants. See opinion of Attorney General to Mr. DeWitt S. McCarley, City Attorney, Greenville, North Carolina, 55 N.C.A.G. 38 (1985).

An auctioneer is not deemed to be an itinerant merchant if he travels into a city or county in which he does not maintain a regular place of business and auctions merchandise belonging to another person, whether or not that person maintains a regular place of business in the particular city or county. Therefore, such an auctioneer would not be required to comply with G.S. 105-53(d) or any local ordinances of the particular city or county governing itinerant merchants. However, if the owner of the goods to be auctioned off does not maintain a regular place of business in the particular city or county, that person would be required to comply with G.S. 105-53(d) and any local ordinances governing itinerant merchants. See opinion of Attorney General to Mr. DeWitt S. McCarley, City Attorney, Greenville, North Carolina, 55 N.C.A.G. 38 (1985).

§ 153A-126. Regulation of begging.

A county may by ordinance prohibit or regulate begging or otherwise canvassing the public for contributions for the private benefit of the solicitor or any other person. (1973, c. 822, s. 1.)

CASE NOTES

Cited in Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-127. Abuse of animals.

A county may by ordinance define and prohibit the abuse of animals. (1973, c. 822, s. 1.)

§ 153A-128. Regulation of explosive, corrosive, inflammable, or radioactive substances.

A county may by ordinance regulate, restrict, or prohibit the sale, possession, storage, use or conveyance of any explosive, corrosive, inflammable, or radioactive substance or of any weapon or instrumentality of mass death and destruction. (1973, c. 822, s. 1.)

CASE NOTES

Constitutionality. — G.S. 153A-128, which permitted the county to enact its ordinances regulating the use and storage of explosives, did not constitute an unlawful local law under N.C. Const. art. II, § 24, since it applied to all counties in the state. S. Blasting Servs. v. Wilkes County, 288 F.3d 584, 2002 U.S. App. LEXIS 7853 (4th Cir. 2002).

§ 153A-129. Firearms.

A county may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place except when used to take birds or animals pursuant to Chapter 113, Subchapter IV, when used in defense of person or property, or when used pursuant to lawful directions of law-enforcement officers. A county may also regulate the display of firearms on the public roads, sidewalks, alleys, or other public property. This section does not limit a county's authority to take action under Chapter 14, Article 36A. (1973, c. 822, s. 1; 2006-264, s. 16.)

Local Modification. — Davidson: 1989 (Reg. Sess., 1990), c. 852, s. 1; Davie: 1989 (Reg. Sess., 1990), c. 929, s. 1.

Editor's Note. — Subchapter III of Chapter 113, referred to in this section, was repealed and its contents recodified elsewhere by Session Laws 1979, c. 830. As to current game laws, see subchapter IV of Chapter 113, G.S. 113-127 et seq.

CASE NOTES

Cited in Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-130. Pellet guns.

A county may by ordinance regulate, restrict, or prohibit the sale, possession, or use of pellet guns or any other mechanism or device designed or used to project a missile by compressed air or mechanical action with less than deadly force. (1973, c. 822, s. 1.)

§ 153A-131. Possession or harboring of dangerous animals.

A county may by ordinance regulate, restrict, or prohibit the possession or harboring of animals which are dangerous to persons or property. No such ordinance shall have the effect of permitting any activity or condition with respect to a wild animal which is prohibited or more severely restricted by regulations of the Wildlife Resources Commission. (1973, c. 822, s. 1; 1977, c. 407, s. 1.)

Cross References. — As to the power of cities to regulate, restrict or prohibit the possession or harboring of dangerous animals, see G.S. 160A-187.

§ 153A-132. Removal and disposal of abandoned and junked motor vehicles.

(a) Grant of Power. — A county may by ordinance prohibit the abandonment of motor vehicles on public grounds and private property within the county's ordinance-making jurisdiction and on county-owned property wherever located. The county may enforce the ordinance by removing and disposing of abandoned or junked motor vehicles according to the procedures prescribed in this section.

(b) Definitions. — "Motor vehicle" includes any machine designed or intended to travel over land or water by self-propulsion or while attached to self-propelled vehicle.

(1) An "abandoned motor vehicle" is one that:
  a. Is left on public grounds or county-owned property in violation of a law or ordinance prohibiting parking; or
  b. Is left for longer than 24 hours on property owned or operated by the county; or
  c. Is left for longer than two hours on private property without the consent of the owner, occupant, or lessee of the property; or
  d. Is left for longer than seven days on public grounds.

(2) A "junked motor vehicle" is an abandoned motor vehicle that also:
  a. Is partially dismantled or wrecked; or
  b. Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
  c. Is more than five years old and appears to be worth less than one hundred dollars ($100.00); or
  d. Does not display a current license plate.

(c) Removal of Vehicles. — A county may remove to a storage garage or area an abandoned or junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section. A vehicle may not be removed from private property, however, without the written request of the owner, lessee, or occupant of the premises unless the board of commissioners or a duly authorized county official or employee has declared the vehicle to be a health or safety hazard. Appropriate county officers and employees have a right, upon presentation of proper credentials, to enter on any premises within the county ordinance-making jurisdiction at any reasonable hour in order to determine if any vehicles are health or safety hazards. The county may require a person requesting the removal from private property of an abandoned or junked motor vehicle to indemnify the county against any loss, expense, or liability incurred because of the vehicle's removal, storage, or sale.

When an abandoned or junked motor vehicle is removed, the county shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(d) Hearing Procedure. — Regardless of whether a county does its own removal and disposal of motor vehicles or contracts with another person to do so, the county shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the county operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the county operates in such a way that it is responsible for collecting towing fees, it shall:
  a. Provide by contract or ordinance for a schedule of reasonable towing fees,
  b. Provide a procedure for a prompt fair hearing to contest the towing,
  c. Provide for an appeal to district court from that hearing,
  d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
  e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the county may destroy it.

(e), (f) Repealed by Session Laws 1983, c. 420, s. 10.

(g) No Liability. — No person nor any county may be held to answer in a civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, junked, lost, or stolen motor vehicle for disposing of the vehicle as provided in this section.

(h) Exceptions. — This section does not apply to any vehicle in an enclosed building, to any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the county. (1971, c. 489; 1973, c. 822, s. 1; 1975, c. 716, s. 5; 1983, c. 420, ss. 8-10; 1997-456, s. 27.)

Editor's Note. — Subdivision designations in subsection (b) were renumbered pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Local Modification. — Wake: 1979, c. 375.

§ 153A-132.1. To provide for the removal and disposal of trash, garbage, etc.

The board of county commissioners of any county is hereby authorized to enact ordinances governing the removal, method or manner of disposal, depositing or dumping of any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever within the rural areas of the county and outside and beyond the corporate limits of any municipality of said county. An ordinance adopted pursuant hereto may make it unlawful to place, discard, dispose, leave or dump any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever upon a street or highway located within that county or upon property owned or operated by the county unless such trash, debris, garbage, litter, discarded cans or receptacles or any waste matter is placed in a designated location or container for removal by a specific garbage or trash service collector.

Boards of county commissioners may also provide by ordinance enacted pursuant to this section, that the placing, discarding, disposing, leaving or dumping of the articles forbidden by this section shall, for each day or portion thereof the articles or matter are left, constitute a separate offense, and that a person in violation of the ordinance may be punished by a fine not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days, or both, for each offense. (1973, c. 952.)

Local Modification. — Davie: 1985 (Reg. Sess., 1986), c. 830, s. 1; Rowan: 1985, c. 63, ss. 1, 4.

§ 153A-132.2. Regulation, restraint and prohibition of abandonment of junked motor vehicles.

(a) A county may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the county's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing and disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be supplemental to any other authority conferred upon counties. Nothing in this section shall be construed to authorize a county to require the removal or disposal of a motor vehicle kept or stored at a bona fide "automobile graveyard" or "junkyard" as defined in G.S. 136-143.

For purposes of this section, the term "junked motor vehicle" means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or
(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
(3) Is more than five years old and appears to be worth less than one hundred dollars ($100.00).

(a1) Any junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the board of commissioners or a duly authorized county official or employee finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered:

(1) Protection of property values;
(2) Promotion of tourism and other economic development opportunities;
(3) Indirect protection of public health and safety;
(4) Preservation of the character and integrity of the community; and
(5) Promotion of the comfort, happiness, and emotional stability of area residents.

(a2) The county may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the county against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the county shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(a3) Hearing Procedure. — Regardless of whether a county does its own removal and disposal of motor vehicles or contracts with another person to do so, the county shall provide a prior hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the county operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the county operates in such a way that it is responsible for collecting towing fees, it shall:

a. Provide by contract or ordinance for a schedule of reasonable towing fees,

b. Provide a procedure for a prompt fair hearing to contest the towing,

c. Provide for an appeal to district court from that hearing,

d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and

e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(a4) Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(b) Any ordinance adopted pursuant to this section shall include a prohibition against removing or disposing of any motor vehicle that is used on a regular basis for business or personal use. (1983, c. 841, s. 1; 1985, c. 737, s. 1; 1987, c. 42, s. 1; c. 451, s. 1; 1987 (Reg. Sess., 1988), c. 902, s. 1; 1989, c. 743, s. 1.)

Editor's Note. — As enacted by Session Laws 1983, c. 841, s. 1, effective October 1, 1983, this section was applicable only to the Counties of Dare, Stokes, Alleghany, Carteret and Columbus. Subsequently, Session Laws 1985, c. 737, s. 1, effective July 12, 1985, amended this section by making it applicable to an additional 19 counties. Subsequently, Session Laws 1987, cc. 42 and 451, added six additional counties to those listed in subsection (a). At the direction of the Revisor of Statutes, the section has been set out above as G.S. 153A-132.2.

§ 153A-133. Noise regulation.

A county may by ordinance regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens. (1973, c. 822, s. 1.)

Local Modification. — Currituck: 1991, c. 5; Rockingham: 1991 (Reg. Sess., 1992), c. 996, s. 1.

CASE NOTES

Ordinance Declared Partially Unconstitutional. — The partial unconstitutionality of county's noise ordinance did not support the granting of plaintiff's motions to dismiss the charges, where part of it remained valid and enforceable, and the State was entitled to proceed with the prosecution under this ordinance. State v. Garren, 117 N.C. App. 393, 451 S.E.2d 315 (1994).

Cited in State v. Taylor, 128 N.C. App. 616, 495 S.E.2d 413 (1998).

§ 153A-134. Regulating and licensing businesses, trades, etc.

A county may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. In licensing trades, occupations, and professions, the county may, consistent with the general law of the State, require applicants for licenses to be examined and charge a reasonable fee therefor. This section does not authorize a county to examine or license a person holding a license issued by an occupational licensing board of this State as to the profession or trade that he has been licensed to practice or pursue by the State.

This section does not impair the county's power to levy privilege license taxes on occupations, businesses, trades, professions, and other activities pursuant to G.S. 153A-152. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C.S., s. 1297; 1973, c. 822, s. 1.)

CASE NOTES

For cases as to licenses to retail spirituous and other liquors, decided prior to enactment of Chapter 18B and former Chapters 18 and 18A, relating to regulation of alcoholic beverages, see W.O. Muller & Co. v. Commissioners of Buncombe County, 89 N.C. 171 (1883); State v. Voight, 90 N.C. 741 (1884); Jones v. Commissioners of Moore County, 106 N.C. 436, 11 S.E. 514 (1890); Board of Comm'rs v. Smith, 110 N.C. 417, 14 S.E. 972 (1892), all decided under former law prior to enactment of this Chapter.

Regulation of Employment Discrimination. — G.S. 160A-492 and the Orange County, N.C., Civil Rights Ordinance art. II, § 2.1(a) violated N.C. Const. art. II, § 24, because neither § 160A-492, the enabling statute, nor the ordinance suggested any rational basis for justifying the treatment of Orange County differently from all other North Carolina counties as to employment rights; by seeking to curb unlawful discrimination by regulating covered employers, the enabling legislation and of the ordinance had the practical effect of regulating labor, which was forbidden by N.C. Const. art. II, § 24(1)(j). Williams v. Blue Cross Blue Shield, 357 N.C. 170, 581 S.E.2d 415, 2003 N.C. LEXIS 595 (2003).

Cited in Treants Enters., Inc. v. Onslow County, 320 N.C. 776, 360 S.E.2d 783 (1987); Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988); Williams v. Blue Cross Blue Shield, 357 N.C. 170, 581 S.E.2d 415, 2003 N.C. LEXIS 595 (2003).

§ 153A-135. Regulation of places of amusement.

A county may by ordinance regulate places of amusement and entertainment, and may regulate, restrict, or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses, or itinerant shows or exhibitions of any kind. Places of amusement and entertainment include coffeehouses, cocktail lounges, nightclubs, beer halls, and similar establishments, but any regulation of such places shall be consistent with any permit or license issued by the North Carolina Alcoholic Beverage Control Commission. (1963, c. 1060, ss. 1, 11/2; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 822, s. 1; 1981, c. 412, ss. 4, 5.)

CASE NOTES

Cited in Treants Enters., Inc. v. Onslow County, 320 N.C. 776, 360 S.E.2d 783 (1987).

§ 153A-136. Regulation of solid wastes.

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private.

(2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding 30 years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Require the source separation of materials prior to collection of solid waste for disposal.

(6) Require participation in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the county or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the county or its designee, then ownership of these materials is transferred to the county or its designee.

(6a) Regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by county employees specially appointed as environmental enforcement officers.

(7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Public Health or the Department of Environment and Natural Resources.

(c) The board of commissioners of a county shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).

(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.

(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(d) As used in this section, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste.

(e) A county that has planning jurisdiction over any portion of the site of a sanitary landfill may employ a local government landfill liaison. No person who is responsible for any aspect of the management or operation of the landfill may serve as a local government landfill liaison. A local government landfill liaison shall have a right to enter public or private lands on which the landfill facility is located at reasonable times to inspect the landfill operation in order to:

(1) Ensure that the facility meets all local requirements.

(2) Identify and notify the Department of suspected violations of applicable federal or State laws, regulations, or rules.

(3) Identify and notify the Department of potentially hazardous conditions at the facility.

(f) Entry pursuant to subsection (e) of this section shall not constitute a trespass or taking of property. (1955, c. 1050; 1957, cc. 120, 376; 1961, c. 40; c. 514, s. 1; cc. 711, 803; c. 806, s. 1; 1965, c. 452; 1967, cc. 34, 90; c. 183, s. 1; cc. 304, 339; c. 495, s. 4; 1969, cc. 79, 155, 176; c. 234, s. 1; c. 452; c. 1003, s. 4; 1973, c. 476, s. 128; c. 822, s. 1; 1989 (Reg. Sess., 1990), c. 1009, s. 1; 1991 (Reg. Sess., 1992), c. 1013, s. 1; 1993, c. 165, s. 1; 1997-443, s. 11A.123; 2001-512, s. 5; 2007-182, s. 2; 2007-550, s. 11(a).)

Local Modification. — Orange: 2000-107, s. 2; 2002-117, s. 1.

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1013, which amended this section, in s. 8 provides: "Any contract for solid waste collection or disposal entered into by any county, city, or town that would have been lawful if this act had been in effect at the time the contract was entered into is validated. The provisions of this act that limit a contract or franchise for the collection and disposal of solid waste to a period of not more than 30 years shall not be construed to invalidate any contract or franchise for a longer period up to 60 years that was entered into by any county, city, or town prior to the date this act is effective." The act became effective July 22, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 1013, s. 9 provides: "G.S. 153A-136(c), as enacted by Section 1 of this act, and G.S. 160A-325(a), as enacted by Section 3 of this act, shall not apply to the selection or approval of a site for a new sanitary landfill if, prior to the effective date of this act:

"(1) The site was selected or approved by the board of commissioners of a county or the governing board of a city;

"(2) A public hearing on the selection or approval of the site has been held;

"(3) A long-term contract was approved by the Department of Environment, Health, and Natural Resources [now the Department of Environment and Natural Resources] under Part 4 of Article 15 of Chapter 153A of the General Statutes; or

"(4) An application for a permit for a sanitary landfill to be located on the site has been submitted to the Department of Environment, Health and Natural Resources [now the Department of Environment or Natural Resources]." The act became effective July 22, 1992.

Session Laws 2001-512, s. 15, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency."

Session Laws 2007-550, s. 19, is a severability clause.

CASE NOTES

Constitutionality of Former G.S. 153-272. — Former G.S. 153-272, authorizing counties to regulate private collectors of garbage, was not an unconstitutional delegation of legislative power, but came within the exception permitting the delegation to municipal corporations and counties of power to legislate concerning local problems. Porter v. Suburban San. Serv., Inc., 283 N.C. 479, 196 S.E.2d 760 (1973), decided under former § 153-272.

For history of former statute, see Lafayette Transp. Serv., Inc. v. County of Robeson, 283 N.C. 494, 196 S.E.2d 770 (1973).

Power to Enact Ordinances Giving Franchise Rights. — In general, a state legislature has the power to delegate to the state or inferior agency the authority to make ordinances, such as those giving rise to franchise rights, as it deems appropriate in the lawful exercise of the police power. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

Authority of County Ordinance Concerning Collection and Disposal of Solid Waste. — County governments are delegated by the state with a general police power. Additionally, counties are specifically vested by statute with authority to regulate by ordinance the collection and disposal of solid waste within their jurisdictions. In order to effect this regulatory power and meet their police power responsibilities, counties are specifically authorized by statute to enact ordinances granting exclusive franchises to commercially collect or dispose of solid waste within all or a defined portion of the county. Stillings v. City of Winston-Salem, 63 N.C. App. 618, 306 S.E.2d 489 (1983), rev'd on other grounds, 311 N.C. 689, 319 S.E.2d 233 (1984).

Authority of counties to issue exclusive solid waste collection franchises is derived from G.S. 153A-122 and this section. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

County was without power to impose its own fee schedule on city for landfill operated by the city but located in the county. Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

A county ordinance providing that no fees could be charged residents of the county or franchise haulers by the owners or operators of a sanitary landfill located within the county was improper, because it based fees upon the wrong criteria (residence rather than kind and degree of service) in violation of G.S. 160A-314. Therefore, the county could not enforce the ordinance against a city which operated a sanitary landfill in the county. Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

Consideration of Alternative Sites. — Subsection (c) requires a board of commissioners to give careful and thorough consideration to alternative sites for a landfill within the county. Greene Citizens for Responsible Growth, Inc. v. Greene County Bd. of Comm'rs, 143 N.C. App. 702, 547 S.E.2d 480, 2001 N.C. App. LEXIS 321 (2001), cert. denied, 354 N.C. 69, 553 S.E.2d 41 (2001).

Superior court did not err in concluding that G.S. 153A-136(c) was inapplicable to a county's application for a proposed landfill site because the actions of the county's board were sufficient to constitute selection of the landfill site prior to the effective date of the subsection. Accordingly, the county was not required to consider alternative sites and socioeconomic and demographic data, or to hold a public hearing prior to selecting the site. County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002), cert. dismissed, 357 N.C. 62, 579 S.E.2d 387 (2003).

Motion to dismiss plaintiffs' Fourteenth Amendment and Title VI of the Civil Rights Act of 1964's intentional discrimination claims with regard to placement of a landfill was denied only to the extent that they were based on an alleged failure to follow G.S. 153A-136(c) because the court had previously ruled that if the county's alleged violation of G.S. 153A-136(c) was no longer relevant, then it would no longer be used as proof of the county's wrongdoing by plaintiffs. Franks v. Ross, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 21929 (E.D.N.C. Nov. 21, 2003).

Effect of Annexation on Franchises. — Given the limited territorial jurisdiction of a county ordinance granting exclusive solid waste collection franchises, such franchises were not protected from the city's actions in annexing some areas of the county served by the franchisees and providing free solid waste collection services in the newly annexed areas, and therefore did not survive annexation as to those areas which became part of the city. Stillings v. City of Winston-Salem, 311 N.C.

689, 319 S.E.2d 233 (1984).

Competing Government Service. — The word "commercially," as used in this section, leads to the conclusion that a commercial service franchise does not provide protection to the holder against government service which would compete with it. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

Cited in Grassy Creek Neighborhood Alliance v. City of Winston-Salem, 142 N.C. App. 290, 542 S.E.2d 296, 2001 N.C. App. LEXIS 84 (2001).

§ 153A-137: Repealed by Session Laws 2006-151, s. 10, effective January 1, 2007.

§ 153A-138. Registration of mobile homes, house trailers, etc.

A county may by ordinance provide for the annual registration of mobile homes, house trailers and similar vehicular equipment designed for use as living or business quarters and for the display of a sticker or other device thereon as evidence of such registration. No fee shall be charged for such registration. (1975, c. 693.)

§ 153A-139. Regulation of traffic at parking areas and driveways.

The governing body of any county may, by ordinance, regulate the stopping, standing, or parking of vehicles in specified areas of any parking areas or driveways of a hospital, shopping center, apartment house, condominium complex, or commercial office complex or any other privately owned public vehicular area, or prohibit such stopping, standing, or parking during any specified hours, provided the owner or person in general charge of the operation and control of that area requests in writing that such an ordinance be adopted. The owner of a vehicle parked in violation of an ordinance adopted pursuant to this subsection shall be deemed to have appointed any appropriate law-enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle. (1979, c. 745, s. 1.)

Local Modification. — Wake: 1981, c. 256.

§ 153A-140. Abatement of public health nuisances.

A county shall have authority, subject to the provisions of Article 57 of Chapter 106 of the General Statutes, to remove, abate, or remedy everything that is dangerous or prejudicial to the public health or safety. Pursuant to this section, a board of commissioners may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the nuisance arose, and shall be collected as unpaid taxes. The authority granted by this section may only be exercised upon adequate notice, the right to a hearing, and the right to appeal to the General Court of Justice. Nothing in this section shall be deemed to restrict or repeal the authority of any municipality to abate or remedy health nuisances pursuant to G.S. 160A-174, 160A-193, or any other general or local law. This section shall not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to this section. (1981 (Reg. Sess., 1982), c. 1314, s. 1; 2002-116, s. 2.)

§ 153A-140.1. Stream-clearing programs.

(a) A county shall have the authority to remove natural and man-made obstructions in stream channels and in the floodway of streams that may impede the passage of water during rain events.

(b) The actions of a county to clear obstructions from a stream shall not create or increase the responsibility of the county for the clearing or maintenance of the stream, or for flooding of the stream. In addition, actions by a county to clear obstructions from a stream shall not create in the county any ownership in the stream, obligation to control the stream, or affect any otherwise existing private property right, responsibility, or entitlement regarding the stream. These provisions shall not relieve a county for negligence that might be found under otherwise applicable law.

(c) Nothing in this section shall be construed to affect existing rights of the State to control or regulate streams or activities within streams. In implementing a stream-clearing program, the county shall comply with all requirements in State or federal statutes and rules. (2005-441, s. 1.)

Editor's Note. — Session Laws 2005-441, s. 4, made this section effective September 27, 2005, and applicable to stream-clearing activities commenced on or after that date.

The preamble to Session Laws 2005-441, provides: "Whereas, the clearing of obstructions in streams, such as dead trees, fallen tree limbs, root balls, underbrush, and trash and debris furthers the health, safety, and welfare of the State's citizens by allowing such streams to function more efficiently to remove stormwater, thus reducing flooding; and

"Whereas, local governments are deterred from engaging in stream-clearing activities by the possibility that they will become legally responsible for regular stream clearing, or the possibility that they will become legally responsible for the impact on private properties of natural events such as flooding, which have never been the legal responsibility of local governments; and

"Whereas, many private landowners do not have the resources to clear obstructions from the streams that are located on their property, and it is in the public interest to facilitate the establishment of stream-clearing programs by local governments; Now, therefore,"

§ 153A-140.2. Annual notice to chronic violators of public nuisance ordinance.

A county may notify a chronic violator of the county's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the county shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the county gave notice of violation at least three times under any provision of the public nuisance ordinance. (2009-287, s. 2.)

Editor's Note. — Session Laws 2009-287, s. 4, made this section effective July 10, 2009.

Session Laws 2009-287, s. 4, provides, in part: "A municipality or county may adopt an ordinance under G.S. 160A-200.1 or G.S. 153A-140.2 when this act becomes law [July 10, 2009], but the ordinances may not become effective prior to October 1, 2009. The repeal in this act of any local act does not affect the rights or liabilities of a municipality or county that arose during the time the act was in effect, or under an ordinance adopted under such an act. If any municipality or county adopted an ordinance under any act repealed by this act, and the ordinance would be permitted under G.S. 160A-200.1 or G.S. 153A-140.2, as enacted by this act, that ordinance shall remain in effect until amended or repealed by that municipality or county."

§ 153A-141: Repealed by Session Laws 1995, c. 501, s. 3.

§ 153A-142. Curfews.

A county may by an appropriate ordinance impose a curfew on persons of any age less than 18. (1997-189, s. 2.)

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 417 (1998).

§ 153A-143. Regulation of outdoor advertising.

(a) As used in this section, the term "off-premises outdoor advertising" includes off-premises outdoor advertising visible from the main-traveled way of any road.

(b) A county may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and may regulate the use of off-premises outdoor advertising within the jurisdiction of the county in accordance with the applicable provisions of this Chapter.

(c) A county shall give written notice of its intent to require removal of off-premises outdoor advertising by sending a letter by certified mail to the last known address of the owner of the outdoor advertising and the owner of the property on which the outdoor advertising is located.

(d) No county may enact or amend an ordinance of general applicability to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign without the payment of monetary compensation to the owners of the off-premises outdoor advertising, except as provided below. The payment of monetary compensation is not required if:

(1) The county and the owner of the nonconforming off-premises outdoor advertising enter into a relocation agreement pursuant to subsection (g) of this section.

(2) The county and the owner of the nonconforming off-premises outdoor advertising enter into an agreement pursuant to subsection (k) of this section.

(3) The off-premises outdoor advertising is determined to be a public nuisance or detrimental to the health or safety of the populace.

(4) The removal is required for establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 153A-274, and the county allows the off-premises outdoor advertising to be relocated to a comparable location.

(5) The off-premises outdoor advertising is subject to removal pursuant to statutes, ordinances or regulations generally applicable to the demolition or removal of damaged structures.

(e) Monetary compensation is the fair market value of the off-premises outdoor advertising in place immediately prior to its removal and without consideration of the effect of the ordinance or any diminution in value caused by the ordinance requiring its removal. Monetary compensation shall be determined based on:

(1) The factors listed in G.S. 105-317.1(a); and

(2) The listed property tax value of the property and any documents regarding value submitted to the taxing authority.

(f) If the parties are unable to reach an agreement on monetary compensation to be paid by the county to the owner of the nonconforming off-premises outdoor advertising sign for its removal, and the county elects to proceed with the removal, the county may bring an action in superior court for a determination of the monetary compensation to be paid. In determining monetary compensation, the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the sign, the county shall own the sign.

(g) In lieu of paying monetary compensation, a county may enter into an agreement with the owner of a nonconforming off-premises outdoor advertising sign to relocate and reconstruct the sign. The agreement shall include the following:

(1) Provision for relocation of the sign to a site reasonably comparable to or better than the existing location. In determining whether a location is comparable or better, the following factors shall be taken into consideration:
  a. The size and format of the sign.
  b. The characteristics of the proposed relocation site, including visibility, traffic count, area demographics, zoning, and any uncompensated differential in the sign owner's cost to lease the replacement site.
  c. The timing of the relocation.

(2) Provision for payment by the county of the reasonable costs of relocating and reconstructing the sign including:
  a. The actual cost of removing the sign.
  b. The actual cost of any necessary repairs to the real property for damages caused in the removal of the sign.
  c. The actual cost of installing the sign at the new location.
  d. An amount of money equivalent to the income received from the lease of the sign for a period of up to 30 days if income is lost during the relocation of the sign.

(h) For the purposes of relocating and reconstructing a nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section, a county, consistent with the welfare and safety of the community as a whole, may adopt a resolution or adopt or modify its ordinances to provide for the issuance of a permit or other approval, including conditions as appropriate, or to provide for dimensional, spacing, setback, or use variances as it deems appropriate.

(i) If a county has offered to enter into an agreement to relocate a nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section, and within 120 days after the initial notice by the county the parties have not been able to agree that the site or sites offered by the county for relocation of the sign are reasonably comparable or better than the existing site, the parties shall enter into binding arbitration to resolve their disagreements. Unless a different method of arbitration is agreed upon by the parties, the arbitration shall be conducted by a panel of three arbitrators. Each party shall select one arbitrator and the two arbitrators chosen by the parties shall select the third member of the panel. The American Arbitration Association rules shall apply to the arbitration unless the parties agree otherwise.

(j) If the arbitration results in a determination that the site or sites offered by the county for relocation of the nonconforming sign are not reasonably comparable to or better than the existing site, and the county elects to proceed with the removal of the sign, the parties shall determine the monetary compensation under subsection (e) of this section to be paid to the owner of the sign. If the parties are unable to reach an agreement regarding monetary compensation within 30 days of the receipt of the arbitrators' determination, and the county elects to proceed with the removal of the sign, then the county may bring an action in superior court for a determination of the monetary compensation to be paid by the county to the owner for the removal of the sign. In determining monetary compensation, the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the sign, the county shall own the sign.

(k) Notwithstanding the provisions of this section, a county and an off-premises outdoor advertising sign owner may enter into a voluntary agreement allowing for the removal of the sign after a set period of time in lieu of monetary compensation. A county may adopt an ordinance or resolution providing for a relocation, reconstruction, or removal agreement.

(*l*) A county has up to three years from the effective date of an ordinance enacted under this section to pay monetary compensation to the owner of the off-premises outdoor advertising provided the affected property remains in place until the compensation is paid.

(m) This section does not apply to any ordinance in effect on the effective date of this section. A county may repeal or amend an ordinance in effect on the effective date of this section so long as an amendment to the existing ordinance does not reduce the period of amortization in effect on the effective date of this section.

(n) The provisions of this section shall not be used to interpret, construe, alter, or otherwise modify the exercise of the power of eminent domain by an entity pursuant to Chapter 40A or Chapter 136 of the General Statutes.

(o) Nothing in this section shall limit a county's authority to use amortization as a means of phasing out nonconforming uses other than off-premises outdoor advertising. (2004-152, s. 1.)

§ 153A-144. Limitations on regulating solar collectors.

(a) Except as provided in subsection (c) of this section, no county ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. No person shall be denied permission by a county to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a residential property.

(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:

(1) On the façade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or

(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party. (2007-279, s. 2; 2009-553, s. 2.)

Cross References. — As to deed restrictions, covenants, and other agreements prohibiting solar collectors, see G.S. 22B-20 et seq.

Editor's Note. — Session Laws 2007-279, s. 4, made this section effective October 1, 2007.

Effect of Amendments. — Session Laws 2009-553, s. 2, effective December 1, 2009, substituted "residential property" for "detached single-family residence" in the first and second sentences of subsection (a) and at the end of subsection (b); and added the last sentence in subsection (a).

§ 153A-145: Reserved for future codification purposes.

Article 7.

Taxation.

§ 153A-146. General power to impose taxes.

A county may impose taxes only as specifically authorized by act of the General Assembly. Except when the statute authorizing a tax provides for penalties and interest, the power to impose a tax includes the power to impose reasonable penalties for failure to declare tax liability, if required, and to impose penalties or interest for failure to pay taxes lawfully due within the time prescribed by law or ordinance. The power to impose a tax also includes the power to provide for its administration in a manner not inconsistent with the statute authorizing the tax. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C.S., s. 1297; 1973, c. 822, s. 1.)

Cross References. — As to State and local finance, see N.C. Const., Art. V.

CASE NOTES

Editor's Note. — *Most of the cases cited below were decided under corresponding sections of former law.*

Powers of Counties Derived from Legislature. — A sovereign state possesses the inherent power of taxation, but counties must derive that power, as well as all others, from the legislature. Stam v. State, 302 N.C. 357, 275 S.E.2d 439 (1981).

Acts Beyond Power Granted Void. — Counties must derive the power of taxation from the legislature, and any attempt to exercise the taxing power which is found not to be within the powers granted to the county is ultra vires and void. Stam v. State, 302 N.C. 357, 275 S.E.2d 439 (1981).

Authority of County to Raise Revenues. — While the General Assembly may regulate the amount of and methods for raising county revenues, the system of county government contemplates that such function shall be performed by the county authorities, subject to the limitations prescribed by the Constitution. Parker v. Board of Comm'rs, 104 N.C. 166, 10 S.E. 137 (1889).

Strict Construction of Grant of Power to Levy Taxes. — A grant to a county of the power to levy taxes must be strictly construed. It is an established rule that the authority of municipalities to levy a tax must be made clearly to appear, and that doubts, if any, as to the power sought to be exercised must be resolved against the municipality. Stam v. State, 302 N.C. 357, 275 S.E.2d 439 (1981).

Constitutional requirement that every act levying taxes shall state the objects to which they shall be applied has no application to taxes levied by county for county purposes. Parker v. Board of Comm'rs, 104 N.C. 166, 10 S.E. 137 (1889).

Mandamus to Compel Levy of Tax and Payment of Debt. — A plaintiff, upon a proper prayer for judgment, may have a mandamus to compel the board of commissioners to levy a tax and pay the debt of a county. Winslow v. Commissioners of Perquimans County, 64 N.C. 218 (1870).

Injunction Against Levy of Unconstitutional Tax. — A taxpayer may enjoin county commissioners from making a tax levy to pay interest on railroad bonds issued under an unconstitutional statute, without restoring to the bona fide holders of the bonds the consideration paid therefor. Graves v. Commissioners, 135 N.C. 49, 47 S.E. 134 (1904).

Where it was alleged that board of commissioners had not levied a sufficient tax to defray the ordinary expenses of the county, on account of the levy of a tax to pay for repairing the courthouse, it was held to be no ground for interference by the courts. Long v. Commissioners of Richmond County, 76 N.C. 273 (1877).

OPINIONS OF ATTORNEY GENERAL

County May Not Impose Late Payment Penalty or Administrative Fee Upon Delinquent Property Tax Accounts. — Because the statutes authorizing property taxes provide for interest and/or penalties, a county may not, by ordinance, impose a late payment penalty or administrative fee upon delinquent property tax accounts. See opinion of Attorney General to Lloyd C. Smith, Jr., Pritchett & Burch, PLLC, 2001 N.C. AG LEXIS 6 (3/6/2001).

§ 153A-147. Remedies for collecting taxes other than property taxes.

In addition to any other remedies provided by law, a county may collect any county tax by use of the remedies of levy and sale and attachment and garnishment, under the rules and according to the procedures prescribed by the Machinery Act (Chapter 105, Subchapter II) for the enforcement of tax liability against personal property. However, these remedies become available only on the due date of the tax and not before that time. (1973, c. 822, s. 1.)

§ 153A-148. Continuing taxes.

Except for taxes levied on property under the Machinery Act (Chapter 105, Subchapter II), a county may impose any authorized tax by a permanent ordinance that shall stand from year to year until amended or repealed, and it is not necessary to reimpose the tax in each annual budget ordinance. (1973, c. 822, s. 1.)

Legal Periodicals. — See legislative survey, 21 Campbell L. Rev. 323 (1999).

§ 153A-148.1. Disclosure of certain information prohibited.

(a) Disclosure Prohibited. — Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a county who in the course of service to or employment by the county has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.
(2) Review by the Attorney General or a representative of the Attorney General.
(3) To sort, process, or deliver tax information on behalf of the county, as necessary to administer a tax.
(4) To exchange information with a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes, when the information is needed to fulfill a duty imposed on the authority or on the county.
(5) To exchange information with the Department of Revenue, when the information is needed to fulfill a duty imposed on the Department or on the county.
(6) To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker.

(b) Punishment. — A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1993, c. 485, s. 33; 1994, Ex. Sess., c. 14, s. 66; 1998-139, s. 2; 2008-35, s. 1.4.)

Effect of Amendments. — Session Laws 2008-35, s. 1.4, effective for taxes imposed for taxable years beginning on or after July 1, 2008, added subdivision (a)(6).

§ 153A-149. Property taxes; authorized purposes; rate limitation.

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each county in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the county under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each county may levy property taxes without restriction as to rate or amount for the following purposes:

(1) Courts. — To provide adequate facilities for and the county's share of the cost of operating the General Court of Justice in the county.
(2) Debt Service. — To pay the principal of and interest on all general obligation bonds and notes of the county.
(3) Deficits. — To supply an unforeseen deficiency in the revenue (other than revenues of public enterprises), when revenues actually collected or received fall below revenue estimates made in good faith and in accordance with the Local Government Budget and Fiscal Control Act.
(4) Elections. — To provide for all federal, State, district and county elections.
(5) Jails. — To provide for the operation of a jail and other local confinement facilities.
(6) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.
(7) Schools. — To provide for the county's share of the cost of kindergarten, elementary, secondary, and post-secondary public education.
(8) Social Services. — To provide for public assistance required by Chapters 108A and 111 of the General Statutes.

(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to a combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) appraised value of property subject to taxation. Authorized purposes subject to the rate limitation are:

(1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county assessor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.
(2) Agricultural Extension. — To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.
(3) Air Pollution. — To maintain and administer air pollution control programs.

(4) Airports. — To establish and maintain airports and related aeronautical facilities.

(5) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.

(6) Animal Protection and Control. — To provide animal protection and control programs.

(6a) Arts Programs and Museums. — To provide for arts programs and museums as authorized in G.S. 160A-488.

(6b) Auditoriums, coliseums, and convention and civic centers. — To provide public auditoriums, coliseums, and convention and civic centers.

(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control, and flood and hurricane protection.

(8) Cemeteries. — To provide for cemeteries.

(9) Civil Preparedness. — To provide for civil preparedness programs.

(10) Debts and Judgments. — To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.

(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.

(10b) Economic Development. — To provide for economic development as authorized by G.S. 158-7.1 and G.S. 158-12.

(11) Fire Protection. — To provide fire protection services and fire prevention programs.

(12) Forest Protection. — To provide forest management and protection programs.

(13) Health. — To provide for the county's share of maintaining and administering services offered by or through the local health department.

(14) Historic Preservation. — To undertake historic preservation programs and projects.

(15) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, or to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.

(15a) Housing Rehabilitation. — To provide for housing rehabilitation programs authorized by G.S. 153A-376, including personnel costs related to the planning and administration of these programs. This subdivision applies only to counties with a population of 400,000 or more, according to the most recent decennial federal census.

(15b) Housing. — To undertake housing programs for low- and moderate-income persons as provided in G.S. 153A-378.

(16) Human Relations. — To undertake human relations programs.

(16a) Industrial Development. — To provide for industrial development as authorized by G.S. 158-7.1.

(17) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.

(18) Law Enforcement. — To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.

(19) Libraries. — To establish and maintain public libraries.

(20) Mapping. — To provide for mapping the lands of the county.

(21) Medical Examiner. — To provide for the county medical examiner or coroner.

(22) Mental Health. — To provide for the county's share of the cost of maintaining and administering services offered by or through the area mental health, developmental disabilities, and substance abuse authority.

(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.

(24) Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.

(25) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.

(26) Planning. — To provide for a program of planning and regulation of development in accordance with Article 18 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.

(26a) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and provide for harbor masters.

(27) Public Transportation. — To provide public transportation by rail, motor vehicle, or another means of conveyance other than a ferry, including any facility or equipment needed to provide the public transportation. This subdivision does not authorize a county to provide public roads in the county in violation of G.S. 136-51.

(27a) Railway Corridor Preservation. — To acquire property for railroad corridor preservation as authorized by G.S. 160A-498.

(28) Register of Deeds. — To provide for the operation of the office of the register of deeds of the county.

(28a) Roads. — To provide for the maintenance of county roads as authorized by G.S. 153A-301(d).

(29) Sewage. — To provide sewage collection and treatment services as defined in G.S. 153A-274(2).

(30) Social Services. — To provide for the public welfare through the maintenance and administration of public assistance programs not required by Chapters 108A and 111 of the General Statutes, and by establishing and maintaining a county home.

(31) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.

(31a) Stormwater. — To provide structural and natural stormwater and drainage systems of all types.

(32) Surveyor. — To provide for a county surveyor.

(33) Veterans' Service Officer. — To provide for the county's share of the cost of services offered by or through the county veterans' service officer.

(34) Water. — To provide water supply and distribution systems.

(35) Watershed Improvement. — To undertake watershed improvement projects.

(36) Water Resources. — To participate in federal water resources development projects.

(37) Armories. — To supplement available State or federal funds to be used for the construction (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina National Guard.

(d) With an approving vote of the people, any county may levy property taxes for any purpose for which the county is authorized by law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (c).

The county commissioners may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 10 days after any other referendum or election to be held in the county and already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the county board of elections. The clerk to the board of commissioners shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

(1) Shall ________ County be authorized to levy annually a property tax at a rate not in excess of ________ cents on the one hundred dollars ($100.00) value of property subject to taxation for the purpose of ________?

(2) Shall ________ County be authorized to levy annually a property tax at a rate not in excess of that which will produce $________ for the purpose of ________?

(3) Shall ________ County be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of ________?

If a majority of those participating in the referendum approve the proposition, the board of commissioners may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the board of commissioners. The board of commissioners shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the board.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for supplemental school taxes and except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Counties in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitation set out in subsection (c) at any appropriate level and are not subject to the former voted rate limitation.

(e) With an approving vote of the people, any county may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 30 days after any other referendum or election. The referendum shall be conducted by the county board of elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the property tax rate limitation applicable to ________ County be increased from ________ on the one hundred dollars ($100.00) value of property subject to taxation to ______ on the one hundred dollars ($100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the county.

(f) With respect to any of the categories listed in subsections (b) and (c) of this section, the county may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(g) This section does not authorize any county to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by local acts. (1973, c. 803, s. 1; c. 822, s. 2; c. 963; c. 1446, s. 25; 1975, c. 734, s. 17; 1977, c. 148, s. 5; c. 834, s. 3; 1979, c. 619, s. 4; 1981, c. 66, s. 2; c. 562, s. 11; c. 692, s. 1; 1983, c. 511, ss. 1, 2; 1985, c. 589, s. 57; 1987, c. 45, s. 2; c. 697, s. 2; 1989, c. 600, s. 5; c. 625, s. 25; c. 643, s. 1; 1989 (Reg. Sess., 1990), c. 1005, ss. 3-5; 1991 (Reg. Sess., 1992), c. 764, s. 1; c. 896, s. 1; 1993, c. 378, s. 2; 1997-502, s. 6; 1999-366, s. 3; 2002-159, s. 50(a); 2002-172, s. 2.4(a); 2003-416, s. 2; 2009-281, s. 1.)

Local Modification. — Gaston: 1987 (Reg. Sess., 1988), c. 897, s. 6(c); Guilford: 2007-255, s. 2; Mecklenburg: 1987 (Reg. Sess., 1988), c. 897, s. 6(c); 2007-255, s. 2; Wake: 2007-255, s. 2; city of Greensboro: 2007-255, s. 2; city of Raleigh: 2007-255, s. 2.

Editor's Note. — The above section was enacted as G.S. 153-65 by Session Laws 1973, c. 803, s. 1. As directed by Session Laws 1973, c. 822, s. 2, it has been substituted for G.S. 153A-149, as enacted by Session Laws 1973, c. 822, s. 1.

Subdivision (c)(27a) was originally codified as subdivision (c)(38); it was recodified to facilitate alphabetization.

Part 3A of Article 19 of Chapter 160A, referred to in subdivision (c)(26) of this section, was repealed by Session Laws 1989, c. 706. See now Part 3C.

The introductory language of Session Laws 1997-502, s. 6, read: "G.S. 153A-149(13) reads as rewritten"; however, the amendment has been made to subdivision (c)(13), as the apparently intended subdivision.

Session Laws 1999-366, s. 1, provides: "The General Assembly finds and declares that the purpose of this act is to provide authority for counties in North Carolina to provide funds for residential housing construction, new or rehabilitated, and to provide for the sale or rental of housing to persons and families of low and moderate income. The General Assembly finds and declares that there exists in counties in the State a serious shortage of decent, safe, and sanitary residential housing available at low prices or rentals to persons and families of low and moderate income. This shortage is inimical to the health, safety, welfare, and prosperity of all residents of the State and to the sound growth of North Carolina communities."

Session Laws 2003-416, s. 2, provides that Session Laws 2002-172 is reenacted.

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" in subdivision (c)(37).

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1116 (1981).

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2281 (1997).

CASE NOTES

Editor's Note. *— Most of the cases cited below were decided under corresponding sections of former law.*

Where a statute authorizing the levy of a tax beyond the constitutional limit for a special purpose is intra vires, the taxes collected beyond the requirements of the special purpose may be turned into the general fund and used for general purposes; but where the act authorizes the levy partly for a "special purpose" and partly for general purposes it is ultra vires, and no part of the levy can be collected. Williams v. Commissioners of Craven County, 119 N.C. 520, 26 S.E. 150 (1896).

Levy to Fund Medically Unnecessary Abortions Is Ultra Vires and Void. — Section 153A-255 does not give counties the underlying authority to levy taxes pursuant to subdivision (c)(30) of this section to fund medically unnecessary abortions, since the authority conferred upon counties to provide social services pursuant to G.S. 153A-255 is limited to providing the poor with the basic necessities of life, and a medically unnecessary abortion is not a basic necessity of life; therefore, a county exceeds its statutorily conferred power in levying a tax to fund medically unnecessary abortions, and the tax levy is ultra vires and void. Stam v. State, 302 N.C. 357, 275 S.E.2d 439 (1981).

Appropriation for Dyslexia School Unauthorized. — An appropriation by the Gaston County Board of Commissioners to the Dyslexia School of North Carolina was not authorized by either subdivision (c)(30) of this section or G.S. 153A-255. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

General taxes for county purposes are leviable only once a year. Bradshaw v. Board of Comm'rs, 92 N.C. 278 (1885).

Tax Rate Variable. — There is no constitutional requirement that the tax rate for county purposes shall be the same everywhere. It varies in the different counties, and may vary in different townships, parts of townships, districts, towns, and cities in the same county. Jones v. Commissioners of Stokes County, 143 N.C. 59, 55 S.E. 427 (1906).

Assessment of Property Subject to Taxation. — All of the property, including solvent credits, in the State, shall be assessed and taxed at its value in money. Caldwell Land & Lumber Co. v. Smith, 146 N.C. 199, 59 S.E. 653 (1907).

The legislature has the power to provide for the listing, assessment, and taxing of personal property omitted to be listed by the owner as the law requires. And there is no reason why it may not be taxed for five or more preceding years if it has escaped taxation so long. Kyle v. Mayor & Comm'rs, 75 N.C. 445 (1876); North Carolina R.R. v. Commissioners of Alamance, 82 N.C. 260 (1880); City of Wilmington v. Cronly, 122 N.C. 388, 30 S.E. 9 (1898); Caldwell Land & Lumber Co. v. Smith, 146 N.C. 199, 59 S.E. 653 (1907).

An assessment for the building of a stock law fence is not a tax which requires a referendum vote by the people. Tripp v. Commissioners of Pitt County, 158 N.C. 180, 73 S.E. 896 (1912).

Land of Schools and Railroads Held Exempt from Special Tax. — An act which provided for the construction of a fence to enclose the whole of several districts and that the commissioners should levy a special tax on all the real estate in the district which was taxable by the State and county did not embrace the real estate of schools and railroads, which was not taxable for general purposes. Bradshaw v. Board of Comm'rs, 92 N.C. 278 (1885).

Application of Tax Raised for One Purpose to Another Purpose. — There is no statute nor any rule of law or of public policy which prevents county commissioners from applying a tax raised professedly for one purpose to any other legitimate purpose. There may, perhaps, be an exception where a tax is levied by a special authority from the legislature, or upon the vote of the people, which would not otherwise be lawful. Long v. Commissioners of Richmond County, 76 N.C. 273 (1877).

Funds Impressed with a Trust. — Where taxes are levied and collected to pay coupons on bonds issued by a county, the funds so collected are impressed with a trust for the benefit of the owners of the coupons. Board of Comm'rs v. Tollman, 145 F. 753 (4th Cir. 1906).

Tax Necessary to Maintain Schools for Required Term. — When it becomes necessary, the county commissioners are required to levy a tax sufficient to maintain the county schools for the required term each year. Former constitutional limitation did not apply to defeat such a levy. Collie v. Commissioners of Franklin County, 145 N.C. 170, 59 S.E. 44 (1907), expressly overruling Barksdale v. Commissioners of Sampson County, 93 N.C. 472 (1885), and Board of Educ. v. Board of Comm'rs, 111 N.C. 578, 16 S.E. 621 (1892); Southern Ry. v. Cherokee County, 177 N.C. 86, 97 S.E. 758 (1919).

Tax to Erect and Maintain Courthouse. — Power of limited taxation for the purpose of erecting and maintaining a county courthouse and its exercise is no invasion of the Bill of Rights. Lockhart v. Harrington, 8 N.C. 408 (1821).

Taxpayers cannot enjoin the levy of taxes necessary to pay the principal and interest on bonds issued for repairs to the courthouse. Harrell v. Board of Comm'rs, 206 N.C. 225, 173 S.E. 614 (1934).

Tax Levied According to Procedures in Machinery Act. — The legislature authorized defendant and other counties to levy property taxes, including taxes on plaintiff's system property, according to the procedures in the Machinery Act (Chapter 105, Subchapter II). North Carolina E. Mun. Power v. Wake County, 100 N.C. App. 693, 398 S.E.2d 486 (1990), cert. denied, 329 N.C. 270, 407 S.E.2d 838 (1991).

Resolution Correcting Record as to Purpose of Levy. — Resolutions of the board of county commissioners correcting records as to the purpose of tax levies will, in the absence of evidence to the contrary, be presumed bona fide. Atlantic Coast Line R.R. v. Duplin County, 226 N.C. 719, 40 S.E.2d 371 (1946).

Counties and County Commissioners Do Not Have Sovereign Immunity. — These powers and the many others enumerated in this Chapter show that a county and the county commissioners are not part of the State of North Carolina and they do not enjoy its sovereign immunity. Meares v. Brunswick County, 615 F. Supp. 14 (E.D.N.C. 1985).

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

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Local School Administrative Unit May Levy Taxes at Local Level. — The legislature may by statute, consistently with the Constitution, provide that a local school administrative unit may levy taxes at the local level but such taxing authority must be conferred either by a general law, applicable statewide, or by local act subject to a vote of those persons affected. See opinion of Attorney General to Mr. John B. Dunn, Superintendent, Edenton-Chowan Schools, 60 N.C.A.G. 17 (1990).

County May Not Impose Late Payment Penalty or Administrative Fee Upon Delinquent Property Tax Accounts. — Because the statutes authorizing property taxes provide for interest and/or penalties, a county may not, by ordinance, impose a late payment penalty or administrative fee upon delinquent property tax accounts. See opinion of Attorney General to Lloyd C. Smith, Jr., Pritchett & Burch, PLLC, 2001 N.C. AG LEXIS 6 (3/6/2001).

§ 153A-150. Reserve for reappraisal.

Before the beginning of the fiscal year immediately following the effective date of a reappraisal of real property conducted as required by G.S. 105-286, the county budget officer shall present to the board of commissioners a budget for financing the cost of the next reappraisal. The budget shall estimate the cost of the reappraisal and shall propose a plan for raising the necessary funds in annual installments during the intervening years between reappraisals, with all installments as nearly uniform as practicable. The board shall consider this budget, making any amendments to the budget it deems advisable, and shall adopt a resolution establishing a special reserve fund for the next reappraisal. In the budget ordinance of the first fiscal year of the plan, the board of commissioners shall appropriate to the special reappraisal reserve fund the amount set out in the plan for the first year's installment. When the county budget for each succeeding fiscal year is in preparation, the board shall review the reappraisal budget with the budget officer and shall amend it, if necessary, so that it will reflect the probable cost at that time of the reappraisal and will produce the necessary funds at the end of the intervening period. In the budget ordinance for each succeeding fiscal year, the board shall appropriate to the special reappraisal reserve fund the amount set out in the plan as due in that year.

Moneys appropriated to the special reappraisal reserve fund shall not be available or expended for any purpose other than the reappraisal of real property required by G.S. 105-286, except that the funds may be deposited at interest or invested as permitted by G.S. 159-30. If there is a fund balance in the reserve fund following payment for the required reappraisal, it shall be retained in the fund for use in financing the next required reappraisal.

Within 10 days after the adoption of each annual budget ordinance, the county finance officer shall report to the Department of Revenue, on forms to be supplied by the Department, the terms of the county's reappraisal budget, the current condition of the special reappraisal reserve fund, and the amount appropriated to the reserve fund in the current fiscal year. (1959, c. 704, s. 6; 1971, c. 806, s. 4; c. 931, s. 2; 1973, c. 476, s. 193; c. 822, s. 1; 2008-146, s. 1.3.)

Editor's Note. — Session Laws 2008-146, s. 6, provides: "The Revenue Laws Study Committee must study the following:

"(1) The effect of PART I of this act and determine whether new positions are needed to perform sales assessment ratio studies in additional counties each year and to perform other functions related to this act.

"(2) The definition of income as it applies to the homestead exclusion."

Effect of Amendments. — Session Laws 2008-146, s. 1.3, effective July 1, 2009, deleted "octennial" preceding "reappraisal" in the section heading; deleted "octennial" and "eight-year" throughout; in the first paragraph, substituted "intervening years between reappraisals" for "next fiscal years" in the second sentence, and inserted "intervening" preceding "period" at the end of the next-to-last sentence; and made stylistic changes.

§ 153A-151. Sales tax.

A county may levy a local sales and use tax under the rules and according to the procedures prescribed by the Local Government Sales and Use Tax Act (Chapter 105, Subchapter VIII). (1973, c. 822, s. 1.)

§ 153A-152. Privilege license taxes.

(a) Authority. — A county may levy privilege license taxes on trades, occupations, professions, businesses, and franchises to the extent authorized by Article 2 of Chapter 105 of the General Statutes and any other acts of the General Assembly. A county may levy privilege license taxes to the extent formerly authorized by the following sections of Article 2 of Chapter 105 of the General Statutes before they were repealed:

G.S. 105-50	Pawnbrokers.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-58	Fortune tellers, palmists, etc.
G.S. 105-65	Music machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-89	Automobiles, wholesale supply dealers and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-102.5	General business license.

(b) Telecommunications Restriction. — A county may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a) (4c). (1973, c. 822, s. 1; 1996, 2nd Ex. Sess., c. 14, s. 22; 2001-430, s. 16.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under former G.S. 105-90.*

Constitutionality of Tax on Emigrant Agent. — A former statute imposing a tax "on every emigrant agent or person engaged in procuring laborers to accept employment in another state" was held constitutional. State v. Hunt, 129 N.C. 686, 40 S.E. 216, 85 Am. St. R. 758 (1901).

Valid Exercise of Taxing Power. — A former statute taxing persons engaged in the business of procuring laborers for employment outside the State was held a valid exercise of the legislative power to tax trades and professions and was not a police regulation. State v. Roberson, 136 N.C. 587, 48 S.E. 595 (1904). See also State v. Hunt, 129 N.C. 686, 40 S.E. 216, 85 Am. St. R. 758 (1901); Carr v. Commissioners of Duplin County, 136 N.C. 125, 48 S.E. 597 (1904); Lane v. Commissioners of Rowan County, 139 N.C. 443, 52 S.E. 140 (1905).

Statute Applied to Agents in Business of Hiring Laborers. — A former statute imposing a license tax upon "every emigrant agent or person engaged in procuring laborers for employment out of this State" applied to agents who made it their business to hire laborers in this State to be sent beyond the limits of the State to be employed by others. Carr v. Commissioners of Duplin County, 136 N.C. 125, 48 S.E. 597 (1904).

Employment of Laborers to Work for Hirer. — Public Laws 1903, c. 247, s. 74, imposing a license tax upon "every emigrant agent or person engaged in procuring laborers for employment out of this State" was held not to apply to a person who came into this State and employed laborers to work for him in another state. Carr v. Commissioners of Duplin County, 136 N.C. 125, 48 S.E. 597 (1904).

Officer of foreign corporation coming into this State and hiring hands for em-

ployment by the corporation in another state was not "engaged in the business of hiring hands," etc., and was held not liable for the tax of emigrant agents, under a former statute. Lane v. Commissioners of Rowan County, 139 N.C. 443, 52 S.E. 140 (1905).

Amount of Tax Not Reviewable. — A tax on the business of procuring laborers for employment outside the State being an exercise of the power of the State to levy taxes, the amount is not reviewable by the courts. When the Constitution confers upon the legislature the power to levy taxes, the amount of the tax to be levied is committed to that department of the government and not open to review by the judicial department. The Supreme Court may inquire into the question of power, but not as to the manner of its exercise. State v. Roberson, 136 N.C. 587, 48 S.E. 595 (1904).

Applied in State v. Moore, 113 N.C. 697, 18 S.E. 342 (1893); Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

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Municipality may not levy privilege license tax on employment agency when the only contact is by telephone into the municipality. See opinion of Attorney General to Mr. John H. McMurray, Morgantown City Attorney, 41 N.C.A.G. 82 (1970).

§ 153A-152.1. Privilege license tax on low-level radioactive and hazardous waste facilities.

(a) Counties in which hazardous waste facilities as defined in G.S. 130A-290 or low-level radioactive waste facilities as defined in G.S. 104E-5(9b) are located may levy an annual privilege license tax on persons or firms operating such facilities only in accordance with this section.

(b) The rate or rates of a tax levied under authority of this section shall be in an amount calculated to compensate the county for the additional costs incurred by it from having a hazardous waste facility or a low-level radioactive waste facility located in its jurisdiction to the extent to which compensation for such costs is not otherwise provided, which costs may include the loss of ad valorem property tax revenues from the property on which a facility is located, the cost of providing any additional emergency services, the cost of monitoring air, surface water, groundwater, and other environmental media to the extent other monitoring data is not available, and other costs the county establishes as being associated with the facilities and for which it is not otherwise compensated.

(c) Any person or firm taxed pursuant to this section may appeal the tax rate to the Board, but shall pay the tax when due, subject to a refund when the appeal is resolved by the Board or in the courts. (1981, c. 704, s. 16; 1985, c. 462, s. 11; 1987, c. 850, s. 21; 1989, c. 168, s. 34.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23, repealed Session Laws 1987, c. 850, s. 27(a), which provided that c. 850 should not be construed as a revenue bill within the meaning of N.C. Const., Art. II, § 23.

§ 153A-153. Animal tax.

A county may levy an annual license tax on the privilege of keeping dogs and other pets within the county. (1973, c. 822, s. 1.)

CASE NOTES

Applied in Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980).

§ 153A-154: Repealed by Session Laws 2006-151, s. 11, effective January 1, 2007.

§ 153A-154.1. Uniform penalties for local meals taxes.

(a) Penalties. — Notwithstanding any other provision of law, the civil and criminal penalties that apply to State sales and use taxes under Chapter 105 of the General Statutes apply to local meals taxes. The governing board of a taxing county has the same authority to waive the penalties for a local meals tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(b) Scope. — This section applies to every county authorized by the General Assembly to levy a meals tax. As used in this section, the term "meals tax" means a tax on prepared food and drink. (2001-264, s. 1.)

Editor's Note. — Session Laws 2001-264, s. 3, as amended by Session Laws 2002-72, s. 3, provides: "Any provision of a local act that conflicts with G.S. 153A-154.1 or G.S. 160A-214.1 is repealed. Any local meals tax penalty in addition to or greater than the corresponding penalty provided in G.S. 153A-154.1 or G.S. 160A-214.1 is repealed."

§ 153A-155. Uniform provisions for room occupancy taxes.

(a) Scope. — This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. — A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. — Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the operator's business records kept in the ordinary course of business and collect tax on the allocated price of the taxable accommodation.

The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business.

The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. — The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. — A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. — A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(f1) Use. — The proceeds of a room occupancy tax shall not be used for development or construction of a hotel or another transient lodging facility.

(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson Counties, to Surry County District S, to Watauga County District U, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District. (1997-102, s. 3; 1997-255, s. 2; 1997-342, s. 2; 1997-364, s. 3; 1997-410, s. 6; 1998-14, s. 2; 1999-155, s. 2; 1999-205, s. 2; 1999-286, s. 2; 2000-103, s. 5; 2001-162, s. 2; 2001-305, s. 2; 2001-321, s. 3; 2001-381, s. 10; 2001-434, s. 1; 2001-439, s. 18.2; 2001-468, s. 3; 2001-480, s. 14; 2001-484, s. 2; 2002-138, s. 5; 2004-106, s. 2; 2004-120, s. 3; 2004-170, ss. 36(a), 42(a); 2004-199, s. 60(a); 2005-16, s. 2; 2005-46, s. 1.2; 2005-53, s. 2; 2005-197, s. 6; 2005-233, s. 6.1; 2006-120, s. 8.1; 2006-127, s. 2; 2006-128, s. 6; 2006-129, s. 2; 2006-162, s. 20(a); 2006-167, s. 7(e); 2006-264, s. 81(a); 2007-19, s. 3; 2007-63, s. 3; 2007-223, s. 3; 2007-224, s. 5; 2007-265, s. 2; 2007-315, s. 2; 2007-318, s. 2; 2007-337, s. 3; 2007-340, s. 9; 2007-527, ss. 23, 43; 2008-33, s. 2; 2008-134, s. 12(b); 2008-187, s. 31; 2009-112, s. 4; 2009-157, s. 2; 2009-297, s. 3.)

Tourism Promotion and Development. — Session Laws 2001-162, 2001-305, 2001-321, 2001-365, 2001-381, as amended by 2005-120 and 2005-435, s. 52, as rewritten and recodified by 2007-112, s. 1, 2001-434, 2001-439, 2001-480, as amended by Session Laws 2002-36, and 2001-484 authorize the affected localities (the counties of Anson, Avery, Buncombe, Cabarrus, Carteret, Cumberland, Dare, Durham, Montgomery, Pender, Richmond, Rowan, Stanly, Washington and Vance, the Cities of Durham, Gastonia, Kings Mountain, Lincolnton, Monroe, and North Topsail Beach, the towns of Beech Mountain, Carrboro, Selma, Smithfield, Wilkesboro and Averasboro Township in Harnett County) to levy additional occupancy taxes for tourism promotion and development.

Session Laws 2002-95 authorizes New Hanover County to levy additional occupancy taxes for tourism promotion and development.

Editor's Note. — Session Laws 1997-102, s. 3 enacted this section and made it effective to Madison County only. Session Laws 1997-255, s. 2 made this section applicable to Nash County. Session Laws 1997-342, s. 2 made this section applicable to Randolph County. Session Laws 1997-364, s. 3 made this section applicable to Brunswick and Person Counties. Session

Laws 1997-410, s. 6 made this section applicable to Avery and Scotland Counties. Session Laws 1998-14, s. 2 made this section applicable to Davie County. Session Laws 1999-155, s. 2 made this section applicable to Currituck County. Session Laws 1999-205, s. 2 made this section applicable to Transylvania County. Session Laws 1999-286, s. 2 made this section applicable to Craven County. This section has been codified at the direction of the Revisor of Statutes.

Session Laws 2001-321, s. 2, amended this section by adding "Vance" preceding "Counties" at the end of subsection (g). However, Session Laws 2001-321, s. 3 provided that if House Bill 757 of the 2001 Session became law, then instead of the amendment by s. 2, subsection (g) would be amended by inserting "Vance" preceding "and Washington." House Bill 757 was enacted as Session Laws 2001-305.

Session Laws 2001-480, s. 6(d), effective December 5, 2001, except that any taxes levied under this section become effective March 1, 2002, provides that G.S. 153A-155(a) and G.S. 153A-155(b) apply to Durham County.

Session Laws 2001-480, s. 6(e), provides that Part III of the act [which inserted "Durham" in subsection (g)] is effective only if Durham County has, prior to February 1, 2002, levied all of the taxes authorized by 6(a), 6(b), and 6(c) of the act.

Subsection (f), added by Session Laws 2004-170, s. 42(a), as amended by Session Laws 2004-199, s. 60(a), effective July 1, 2004, is applicable to taxes that accrue on or after that date.

Session Laws 2006-120, s. 10.4, provides: "If House Bill 770, 2005 Regular Session becomes law, then PART VII of this act is repealed and Section 8.1 of this act is repealed." House Bill 770 did not pass.

Session Laws 2007-315, s. 3, provides: "This act is effective when it becomes law [July 30, 2007]. The McDowell County Board of Commissioners has 30 days from the date the act becomes effective to ensure that the membership of the Authority is in compliance with this act."

Session Laws 2008-134, s. 79, as amended by Session Laws 2009-445, s. 25(b), provides: "Sections 16 through 60 of this act become effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law [July 28, 2008]. Section 63 of this act is repealed July 1, 2011."

Effect of Amendments. — Session Laws 2007-318, s. 2, as amended by Session Laws 2008-187, s. 31, effective August 7, 2008, inserted "Chatham" in subsection (g).

Session Laws 2008-33, s. 2, effective June 30, 2008, inserted "Cherokee" in subsection (g).

Session Laws 2008-134, s. 12(b), effective July 28, 2008, rewrote subsection (c).

Session Laws 2009-112, s. 4, effective June 16, 2009, inserted "to Surry County District S" in subsection (g).

Session Laws 2009-157, s. 2, effective June 23, 2009, inserted "Forsyth" in subsection (g).

Session Laws 2009-297, s. 3, effective July 16, 2009, substituted "Washington, and Wilson" for "and Washington" in subsection (g).

§ 153A-156. Gross receipts tax on short-term leases or rentals.

(a) As a substitute for and in replacement of the ad valorem tax, which is excluded by G.S. 105-275(42), a county may levy a gross receipts tax on the gross receipts from the short-term lease or rental of vehicles at retail to the general public. The tax rate shall not exceed one and one-half percent (1.5%) of the gross receipts from such short-term leases or rentals.

(b) If a county enacts the substitute and replacement gross receipts tax pursuant to this section, any entity required to collect the tax shall include a provision in each retail short-term lease or rental agreement noting that the percentage amount enacted by the county of the total lease or rental price, excluding highway use tax, is being charged as a tax on gross receipts. For purposes of this section, the transaction giving rise to the tax shall be deemed to have occurred at the location of the entity from which the customer takes delivery of the vehicle. The tax shall be collected at the time of lease or rental and placed in a segregated account until remitted to the county.

(c) The collection and use of taxes under this section are not subject to highway use tax and are not included in the gross receipts of the entity. The proceeds collected under this section belong to the county and are not subject to creditor liens against the entity.

(d) A tax levied under this section shall be collected by the county but otherwise administered in the same manner as the tax levied under G.S. 105-164.4(a)(2).

(e) The following definitions apply in this section:

(1) Short-term lease or rental. — Defined in G.S. 105-187.1(4).

(2) Vehicle. — Any of the following:

a. A motor vehicle of the passenger type, including a passenger van, minivan, or sport utility vehicle.

b. A motor vehicle of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight and that does not require the operator to possess a commercial drivers license.

c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

(f) The penalties and remedies that apply to local sales and use taxes levied under Subchapter VIII of Chapter 105 of the General Statutes apply to a tax levied under this section. The county board of commissioners may exercise any power the Secretary of Revenue may exercise in collecting local sales and use taxes. (2000-2, s. 2; 2000-140, s. 75(b).)

Editor's Note. — The definitions in subsection (e) have been set out in alphabetical order at the direction of the Revisor of Statutes.

§ 153A-156.1. (For effective date, see note) Heavy equipment gross receipts tax in lieu of property tax.

(a) Definitions. — The following definitions apply in this section:

(1) Heavy equipment. — Earthmoving, construction, or industrial equipment that is mobile, weighs at least 1,500 pounds, and meets any of the descriptions listed in this subdivision. The term includes an attachment for heavy equipment, regardless of the weight of the attachment.

a. It is a self-propelled vehicle that is not designed to be driven on a highway.

b. It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

(2) Short-term lease or rental. — Defined in G.S. 105-187.1.

(b) Tax Authorized. — A county may, by resolution, impose a tax at the rate of one and two-tenths percent (1.2%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to a property tax on the equipment. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under G.S. 105-163.010.

The tax authorized by this section applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2). Gross receipts from the short-term lease or rental of heavy equipment are subject to a tax imposed by a county under this section if the place of business from which the heavy equipment is delivered is located in the county.

(c) Payment. — A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the county finance officer. The tax is payable quarterly and is due by the last day of the month following the end of the quarter. The tax is intended to be added to the amount charged for the short-term lease or rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(d) Enforcement. — The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to a tax imposed under this section. The county finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(e) Effective Date. — A tax imposed under this section becomes effective on the date set in the resolution imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted.

(f) Repeal. — A county may, by resolution, repeal a tax imposed under this section. The repeal is effective on the date set in the resolution. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted. (2008-144, s. 2.)

Editor's Note. — Section Laws 2008-144, s. 5 made this section effective August 2, 2008. The act further provides that a tax imposed under G.S. 153A-156.1 or G.S. 160A-215.2, as enacted by this act, may not become effective before January 1, 2009."

ARTICLE 8.

County Property.

Part 1. Acquisition of Property.

§ 153A-157: Recodified as § 153A-158.1(a) by Session Laws 1995, c. 17, s. 15(a), effective March 23, 1995.

Editor's Note. — This section was recodified by Session Laws 1995, c. 17, s. 15(a) as G.S. 153A-158.1(a).

Session Laws 1989 (Reg. Sess., 1990), c. 885, s. 1, effective July 10, 1990, as amended by Session Laws 1991 (Reg. Sess., 1992), c. 832, s. 1, effective July 2, 1992; c. 848, s. 1, effective July 6, 1992; c. 865, s. 1, effective July 7, 1992; and c. 1001, s. 1, effective July 21, 1992, had been codified as this section at the direction of the Revisor of Statutes.

§ 153A-158. Power to acquire property.

A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. (1868, c. 20, ss. 3, 8; 1879, c. 144, s. 1; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1973, c. 822, s. 1; 1981, c. 919, s. 21; 1995, c. 17, s. 14.)

Cross References. — As to counties in which the consent of the board of commissioners is required before land may be condemned or acquired by a local governmental unit outside the county, see G.S. 153A-15.

Editor's Note. — Session Laws 1999-115, s. 4, provides that s. 3, which repealed local modifications to this section, becomes effective January 1, 2000, and shall not be construed to alter any agreements entered into before that date.

Session Laws 2009-206, s. 2, provides: "Notwithstanding any established expiration date for the application of the 2006 North Carolina State Building Code occurring prior to August 1, 2009, a county may obtain a permit until

August 1, 2009 under the 2006 North Carolina State Building Codes (Building, Energy Conservation, Fire, Fuel Gas, Mechanical, and Plumbing) for the construction of facilities to be used for administrative purposes."

Legal Periodicals. — For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided under corresponding sections of former law.*

General County Authority. — Board of education's resolution to authorize its chairman to approve an interlocal agreement was afforded a presumption of legality and correctness: (1) G.S. 160A-274, G.S. 153A-158, G.S. 115C-36, and G.S. 115C-518 authorized the board, upon such terms and conditions as it deemed wise, to exchange property owned by the board, based upon a determination that the property was no longer suitable and necessary for public school purposes; (2) the board determined that the replacement office space in the Government Center was more suitable for its needs; (3) this determination was adequate to meet the unnecessary or unsuitable requirement of G.S. 115C-518; and (4) plaintiff failed to overcome the presumption of legality afforded public officials; therefore, plaintiff's complaint did not state a cause of action, as required by G.S. 1A-1, N.C. R. Civ. P. 8(a), for which relief could be granted. Reese v. Charlotte-Mecklenburg Bd. of Educ. & Mecklenburg, — N.C. App. —, 676 S.E.2d 481, 2009 N.C. App. LEXIS 532 (2009).

Purchase and Gift of Property Improper. — County exceeded its statutory authority where it purchased land and gave it to the State as an enticement for the building of a State prison. Carter v. Stanly County, 125 N.C. App. 628, 482 S.E.2d 9 (1997), cert. denied, 346 N.C. 276, 487 S.E.2d 540 (1997).

The building and repairing of a courthouse by the county is a part of its necessary expense. Burgin v. Smith, 151 N.C. 561, 66 S.E. 607 (1909); Jackson v. Board of County Comm'rs, 171 N.C. 379, 88 S.E. 521 (1916).

As Is a Jail. — A jail is a necessary county expense, and in the absence of statutory restrictions, the county commissioners may pledge the credit of the county in order to obtain one. Haskett v. Tyrrell County, 152 N.C. 714, 68 S.E. 202 (1910).

Courts cannot substitute their judgment for that of the county officials honestly and fairly exercised. For a court to enjoin a proposed expenditure, there must be allegation and proof that the county officials acted in wanton disregard of public good. Barbour v. Carteret County, 255 N.C. 177, 120 S.E.2d 448 (1961).

Effect of Limit on Expense Imposed by Legislature. — When a special act of the legislature has imposed a limit on the expense of a county to be incurred in improving its courthouse, the commissioners cannot avoid the will of the legislature as therein declared by setting up a general power of contracting debts for necessary expenses, limited only by the constitutional limitation of taxation, and thus under an entire contract made beforehand expend a larger amount for the purpose than that prescribed by the special act. Burgin v. Smith, 151 N.C. 561, 66 S.E. 607 (1909).

Authority to Levy Special Tax. — While the county commissioners are clothed with the necessary power to erect and repair county buildings, they have no power to levy a special tax out of which to pay the interest and create a sinking fund, unless they have the special authority of the General Assembly. Harrell v. Board of Comm'rs, 206 N.C. 225, 173 S.E. 614 (1934), holding that the county had such authority under former §§ 153-1, 153-9(8) and 153-77.

County Bound by Conditions Expressed in Conveyance. — Where a county, owning a site upon which to build its courthouse, is authorized by statute to buy, sell, and exchange real estate surrounding it upon such terms and conditions as it may deem just and proper, and for the best interest of the county, and in pursuance of this authority has acquired a conveyance of lands from adjoining owners upon condition that they shall be used as a public square and kept open for that purpose, etc., regardless of whether such conditions are called conditions subsequent or otherwise they are within the purview of the authority conferred upon the county; and coming within the intent of the parties as expressed in the conveyance, and forming a material part of the consideration for the lands, they are valid and binding upon the county. Guilford County v. Porter, 167 N.C. 366, 83 S.E. 564 (1914).

Commissioners Not Individually Liable for Failure to Take Contractor's Bond. — County commissioners are not individually liable for the failure of their ministerial duty to take the bond required from a contractor for the erection of a county home, such not having been expressly declared; and the remedy is by indictment. Fore v. Feimster, 171 N.C. 551, 88 S.E. 977 (1916).

Cited in Reese v. City of Charlotte, — N.C.

App. —, 676 S.E.2d 493, 2009 N.C. App. LEXIS 506 (2009).

§ 153A-158.1. Acquisition and improvement of school property.

(a) Acquisition by County. — A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) Construction or Improvement by County. — A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) Lease or Sale by Board of Education. — Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) Board of Education May Contract for Construction. — Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) Scope. — This section applies in every county. (1868, c. 20, ss. 3, 8; 1879, c. 144, s. 1; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1973, c. 822, s. 1; 1981, c. 919, s. 21; 1991, cc. 120, 533; 1991, c. 1001, s. 2; 1991 (Reg. Sess., 1992), c. 832, s. 1; c. 848, s. 1; c. 865, s. 1; c. 1001, s. 1; 1993 (Reg. Sess., 1994), c. 611, ss. 1.1, 2; c. 612, ss. 1-3; c. 614, ss. 1-4; c. 622, ss. 1-3; c. 623, ss. 1-3; c. 642, s. 3(a), (c), (d); c. 655, ss. 1-3; 1995, c. 17, ss. 15(a), (b), 16; c. 251, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 651, s. 1; c. 702, s. 1; c. 703, s. 1; c. 705, s. 1; c. 737, s. 1; 1996, 2nd Ex. Sess., c. 11, s. 1; 1997-24, s. 1; 1997-162, s. 1; 1997-190, s. 1; 1997-236, s. 3; 1997-409, s. 1; 1998-33, s. 1; 1998-48, s. 1; 1998-201, s. 1; 1999-65, s. 1; 2001-76, s. 1; 2001-427, s. 7(a); 2003-89, s. 1; 2003-355, s. 1.)

Local Modification. — Ashe: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; Avery: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; Bladen: 1981, c. 134, s. 2; Brunswick: 1981, c. 283; 1993 (Reg. Sess., 1994), c. 612, s. 1.1; Cabarrus: 1985, c. 194, s. 3; Chowan: 1993 (Reg. Sess., 1994), c. 655, s. 1.1; Columbus: 1981, c. 270; Currituck: 1995, c. 363, s. 1; Forsyth: 1993 (Reg. Sess., 1994), c. 642, s. 3(b), (d); Franklin: 1981, c. 941; Guilford: 1995 (Reg. Sess., 1996), c. 750; Harnett: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; c. 623, s. 1.1; Haywood: 1993 (Reg. Sess., 1994), c. 611, s. 1.1; Johnston: 1981, c. 459; Lee: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; c. 623, s. 1.1; Macon: 1993 (Reg. Sess., 1994), c. 611, s. 1.1; Mecklenburg: 1995 (Reg. Sess., 1996), c. 750; Nash: 1993 (Reg. Sess., 1994), c. 642, s. 3(b), (d); Orange: 1993 (Reg. Sess., 1994), c. 642, s. 3(b), (d); Pasquotank: 1993 (Reg. Sess., 1994), c. 655, s. 1.1; Pender: 1981, c. 283; Richmond: 1991, c. 533, s. 1; 1993 (Reg. Sess., 1994), c. 614, s. 2; Sampson: 1981, c. 459; 1991, c. 533, s. 1; 1993 (Reg. Sess., 1994), c. 614; Union: 1995, c. 363, s. 1.

Editor's Note. — At the direction of the Revisor of Statutes, local modifications to G.S. 153A-157 have been enacted as this section.

Subsection (a) of this section is former G.S. 153A-157 as recodified by Session Laws 1995, c. 17, s. 15(a). The historical citation from the former section has been added to this section as recodified.

§ 153A-158.2. Acquisition and improvement of community college property.

(a) Acquisition. — A county may acquire, by any lawful method, any interest in real or personal property for use by a community college within the county. In exercising the power of eminent domain for real property, a county shall use the procedures of Chapter 40A of the General Statutes.

(b) Construction; Disposition. — A county may construct, equip, expand, improve, renovate, repair, or otherwise make available property for use by a community college within the county and may lease, sell, or otherwise dispose of property for use by a community college within the county for any price and on any terms negotiated by the board of county commissioners and the board of trustees of the community college.

(c) Public Hearing. — A county may use its authority under this section to acquire an interest in real or personal property for use by a community college within the county only upon request of the board of trustees of the community college for which property is to be made available. The board of county commissioners shall hold a public hearing prior to final action. A notice of the public hearing shall be published at least once at least 10 days before the date fixed for the hearing. (1999-115, s. 1.)

§§ 153A-159 through 153A-162: Repealed by Session Laws 1981, c. 919, s. 20.

Cross References. — For present provisions as to eminent domain, see Chapter 40A.

§ 153A-163. Acquisition of property at a judicial sale, execution sale, or sale pursuant to a power of sale; disposition of such property.

A county, city, or other unit of local government may purchase real property at a judicial sale, an execution sale, or a sale made pursuant to a power of sale, to secure a debt due the county, city, or other unit. The purchasing government may sell any property so acquired by private sale for not less than the amount of its bid or may sell or exchange the property for any amount according to the procedures prescribed by Chapter 160A, Article 12. (1868, c. 20, s. 8; 1879, c. 144, s. 1; Code, s. 707; Rev., s. 1318; C.S., s. 1297; 1973, c. 822, s. 1.)

§ 153A-164. Joint buildings.

Two or more counties, cities, other units of local government (including local boards of education), or any combination of such governments may jointly acquire or construct public buildings to house offices, departments, bureaus, agencies, or facilities of each government. The governments may acquire any land necessary for a joint building or may use land already held by one of the governments.

In exercising the powers granted by this section, the governments shall proceed according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1965, c. 682, s. 1; 1973, c. 822, s. 1.)

§ 153A-165. Leases.

A county may lease as lessee, with or without option to purchase, any real or personal property for any authorized public purpose. A lease of personal property with an option to purchase is subject to Chapter 143, Article 8. (1973, c. 822, s. 1.)

§§ 153A-166 through 153A-168: Reserved for future codification purposes.

Part 2. Use of County Property.

§ 153A-169. Care and use of county property; sites of county buildings.

The board of commissioners shall supervise the maintenance, repair, and use of all county property. The board may issue orders and adopt by ordinance or resolution regulations concerning the use of county property, may designate and redesignate the location of any county department, office, or agency, and may designate and redesignate the site for any county building, including the courthouse. Before it may redesignate the site of the courthouse, the board of commissioners shall cause notice of its intention to do so to be published once at least four weeks before the meeting at which the redesignation is made. (1868, c. 20, ss. 3, 8; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1925, c. 229; 1927, c. 91, ss. 11, 13; 1957, c. 909, s. 1; 1961, c. 811; 1967, c. 581, s. 1; 1973, c. 822, s. 1.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under corresponding sections of former law.*

Duties Involving Construction of Public Building Inherent in Office of County Commissioner. — County commissioners, in approving the design, the method of construction and the site for a public building and the amount to be paid for the site are performing duties inherent in their offices, expressly conferred by the legislature. Barbour v. Carteret County, 255 N.C. 177, 120 S.E.2d 448 (1961).

In taxpayer suit against county commissioners for entering into a contract that benefitted one of the commissioners, the actions of the commissioners who were not benefitted, regarding expending funds for the renovation of the county courthouse and county health department, were consistent with the course and scope of their office. Gibbs v. Mayo, 162 N.C. App. 549, 591 S.E.2d 905, 2004 N.C. App. LEXIS 252 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 45 (2004).

Repairing a courthouse is a necessary county expense. Burgin v. Smith, 151 N.C. 561, 66 S.E. 607 (1909).

Discretion of Commissioners with Respect to Repair or Erection of Courthouse or Jail. — It is within the sound discretion of the county commissioners to have the courthouse or jail of the county repaired or to erect new ones on the same sites as a necessary county expense, which will not be reviewed in the courts in the absence of mala fides; and should a bill of indictment be drawn by the solicitor, at the request of the judge holding the courts of the county, and a true bill be found by the grand jury thereon, it is open to the commissioners to set up any available defense they may have. Jackson v. Board of County Comm'rs, 171 N.C. 379, 88 S.E. 521 (1916).

As to extent of commissioners' responsibility with respect to a privy, see Threadgill v. Board of Comm'rs, 99 N.C. 352, 6 S.E. 189 (1888).

The site of a county building embraces only the space occupied by the building and such adjacent land as is reasonably required for the convenient use of the building. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

Location of Court House. — The Board of County Commissioners had authority under this section to redesignate the location of the county courthouse, where the new location was outside the boundaries designated by prior special acts of the General Assembly. Bethune v. County of Harnett, 349 N.C. 343, 507 S.E.2d 40 (1998).

§ 153A-170. Regulation of parking on county property.

A county may by ordinance regulate parking of motor vehicles on county-owned property. Such an ordinance may be enforced pursuant to G.S. 153A-123. In addition, the ordinance may provide that vehicles parked in violation thereof may be removed from the property by the county or an agent of the county to a storage area or garage. If a vehicle is so removed, the owner, as a condition of regaining possession of the vehicle, shall be required to pay to the county all reasonable costs incidental to the removal and storage of the vehicle and any fine or penalty due for the violation. (1961, c. 191; 1971, c. 109; 1973, c. 822, s. 1.)

§§ 153A-171 through 153A-175: Reserved for future codification purposes.

Part 3. Disposition of County Property.

§ 153A-176. Disposition of property.

A county may dispose of any real or personal property belonging to it according to the procedures prescribed in Chapter 160A, Article 12. For purposes of this section references in Chapter 160A, Article 12, to the "city," the "council," or a specific city official are deemed to refer, respectively, to the county, the board of commissioners, and the county official who most nearly performs the same duties performed by the specified city official. For purposes of this section, references in G.S. 160A-266(c) to "one or more city officials" are deemed to refer to one or more county officials designated by the board of county commissioners. (1868, c. 20, ss. 3, 8; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1973, c. 822, s. 1; 1983, c. 130, s. 2.)

Local Modification. — Alamance: 1995 (Reg. Sess., 1996), c. 618, s. 2; Bladen: 1993 (Reg. Sess., 1994), c. 721, ss. 1, 2; Durham: 1985 (Reg. Sess., 1986), c. 908; Halifax: 1987, cc. 238, 239; Lee: 1987 (Reg. Sess., 1988), c. 933; Lincoln: 1983 (Reg. Sess., 1984), c. 944; 1989, c. 411, s. 1; McDowell: 1987 (Reg. Sess., 1988), c. 909; Pamlico: 1985, c. 386; Pender: 1989, c. 503, s. 1; 1993, c. 52, s. 1; Polk: 1989, c. 375, s. 1; Rowan: 1987, c. 157; Scotland: 1987, c. 57; Transylvania: 1989, c. 4; Tyrrell: 1987, c. 9.

Editor's Note. — Session Laws 1999-386, s. 4, effective August 4, 1999, provides that, notwithstanding the requirements of G.S. 131E-8, G.S. 131E-13, G.S. 131E-14, G.S. 153A-176, and Article 12 of Chapter 160A of the General Statutes, and any past compliance or failure to comply with those requirements, the prior conveyance by a municipality as defined in G.S. 131E-6(5), or by a hospital authority as defined in G.S. 131E-16(14), of a hospital facility that currently serves as collateral in a transaction involving North Carolina Medical Care Commission bonds issued under Part 10 of Article 3 of Chapter 143B of the General Statutes is hereby validated. Section 5 of the act provides that Section 4 shall not apply to litigation pending on or before the effective date.

CASE NOTES

Editor's Note. *— The cases cited below were decided under corresponding sections of former law.*

Commissioners Act as Fiduciaries or Trustees. — Boards of commissioners, in selling or leasing real property belonging to the county, are acting as fiduciaries or trustees for the taxpayers and citizens of the county, and must exercise their best judgment and skill, as reasonable men, to obtain the best price for the land. Puett v. Gaston County, 19 N.C. App. 231, 198 S.E.2d 440 (1973).

When Commissioners May Not Sell Property. — County commissioners have no power to sell property held for corporate purposes where its alienation would tend to embarrass or prevent the performance of their duties to the public. Vaughn v. Commissioners of Forsyth County, 118 N.C. 636, 24 S.E. 425 (1896).

Power to sell is not a power to mortgage; hence, express authority conferred upon county commissioners to sell real estate of the county at a fair price does not imply power to encumber the same by a mortgage. Threadgill v. Board of Comm'rs, 99 N.C. 352, 6 S.E. 189 (1888).

County commissioners had no authority to convey land on which they proposed to erect courthouse by a mortgage deed to secure the bonds issued to build it, and thereby render the site and buildings liable to sale for satisfaction of the debt. Vaughn v. Commissioners of Forsyth County, 118 N.C. 636, 24 S.E. 425 (1896).

Right of Taxpayer to Bring Action to Restrain Execution of Mortgage. — Though a proposed mortgage of county land by the county commissioners to secure bonds issued to build a courthouse would be void, and equity would enjoin foreclosure thereunder, a taxpayer may bring an action to restrain the execution of the mortgage without waiting until foreclosure is threatened. Vaughn v. Commissioners of Forsyth County, 118 N.C. 636, 24 S.E. 425 (1896).

Applied in National Medical Enters., Inc. v. Sandrock, 72 N.C. App. 245, 324 S.E.2d 268 (1985).

§ 153A-177. Reconveyance of property donated to a local government.

If real or personal property is conveyed without consideration to a county, city, or other unit of local government to be used for a specific purpose set out in the instrument of conveyance and the governing body of the county, city, or other unit of local government determines that the property will not be used for that purpose, the county, city, or other unit of local government may reconvey the property without consideration to the grantor or his heirs, assigns, or nominees. Before it may make a reconveyance, the county, city, or other unit of local government shall publish once a week for two weeks notice of its intention to do so. (1937, c. 441; 1973, c. 822, s. 1.)

§ 153A-178. Disposition of county property for a State psychiatric hospital.

When the Secretary of Health and Human Services selects a county for the location of a new State psychiatric hospital as authorized by law, the county selected for the location of the new State psychiatric hospital is authorized under the general law to acquire real and personal property and convey it to the State under G.S. 160A-274 or other applicable law for use as a psychiatric hospital. The county may acquire the property by eminent domain, and the power under this section is supplementary to any other power the county may have to take property by eminent domain. (2003-314, s. 3.2.)

Editor's Note. — Session Laws 2003-314, s. 3.1, provides: "The Secretary of Health and Human Services shall maintain all existing educational and research programs in psychiatry and psychology conducted at Dorothea Dix Hospital and John Umstead Hospital by the University of North Carolina School of Medicine and by the Psychology Department within the College of Arts and Sciences at the University of North Carolina at Chapel Hill, unless the programs are otherwise modified by the University of North Carolina School of Medicine or the College of Arts and Sciences. The University of North Carolina School of Medicine shall retain authority over all educational and research programs in psychiatry and the University of North Carolina College of Arts and Sciences shall retain authority over all educational and research programs in psychology conducted at these hospitals and at any new State psychiatric hospital. The Secretary shall consult with the University of North Carolina School of Medicine in programmatic, operational, and facility planning of the new psychiatric hospital to ensure appropriate patient treatment and continuation of educational and research programs conducted by the University of North Carolina School of Medicine. In addition, the Secretary shall consult with the University of North Carolina College of Arts and Sciences to ensure appropriate continuation of educational and research programs conducted by the University of North Carolina College of Arts and Sciences."

Session Laws 2003-314, ss. 3.4(a), (a1) and (b), as amended by Session Laws 2004-124, s. 10.26A(a), as amended by 2005-7, s. 1, and as amended by Session Laws 2006-248, s. 52, provides: "(a) Dorothea Dix Hospital Property Study Commission. — If any of the State-owned real property encompassing the Dorothea Dix Hospital campus is no longer needed by Dorothea Dix Hospital and is not transferred to another State agency or agencies before the sale of any or all of the property to a nongovernmental entity, options for this sale shall be considered by the Dorothea Dix Hospital Property Study Commission. The Commission shall make recommendations on the options for sale of the property to the Joint Legislative Commission on Governmental Operations before any sale of any or all parts of the property.

"(a1) The State Property Office, in consultation with the City of Raleigh, shall develop a Master Plan for the Dorothea Dix Campus. The State Property Office shall hire a consultant to assist with the development of the Master Plan. The State Property Office shall examine, among other things, operations for land conservation, mixed-use development, and anticipated State office space needs. The Master Plan shall reflect both State needs and local considerations. The State Property Office shall submit the Master Plan to the Dorothea Dix Property Study Commission no later than September 1, 2005. The Commission shall review the Master Plan and shall make recommendations to the 2006 Session of the 2005 General Assembly.

"In order to enhance communication and feedback regarding the planning process, an oversight committee shall be established to oversee the development of the Master Plan. The oversight committee shall consist of five members: three shall be appointed by the Cochairs of the Dorothea Dix Property Study Commission; one shall be appointed by the Raleigh City Council; and one shall be appointed by the Wake County Board of Commissioners. The oversight committee shall terminate upon the submission of the Master Plan to the Dorothea Dix Property Study Commission.

"(b) Creation and Membership. — The Dorothea Dix Hospital Property Study Commission is created. The Commission shall consist of 11 members, five appointed by the President Pro Tempore of the Senate and five appointed by the Speaker of the House of Representatives. The Secretary of Health and Human Services shall serve as an ex officio member of the Commission."

Session Laws 2003-314, ss. 4.1(a) through (c), provide: "Interpretation of Act. (a) Additional Method. — This act provides an additional and alternative method for the doing of the things authorized by this act and shall be regarded as supplemental and additional to powers conferred by other laws. Except where expressly provided, this act shall not be regarded as in derogation of any powers now existing. The authority granted in this act is in addition to other laws now or hereinafter enacted authorizing the State to issue or incur indebtedness.

"(b) Statutory References. — References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as they may be amended from time to time by the General Assembly.

"(c) Liberal Construction. — This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2003-314, s. 4.1(d), contains a severability clause.

Session Laws 2006-248, s. 1, provides: "This act shall be known as 'The Studies Act of 2006.'"

Session Laws 2006-248, s. 21, provides: "The Dorothea Dix Hospital Property Study Commission shall study and make recommendations regarding the following:

"(1) Balancing complementary public uses of open space, the adaptive re-use of existing facilities, and continued support for mental health services.

"(2) The financial feasibility of the various uses.

"(3) An assessment of financial mechanisms for the implementation and maintenance of the various uses.

"(4) Administrative or governance structures to implement the uses. The Commission shall report its findings and recommendations to the 2007 General Assembly by January 31, 2007."

§§ 153A-179 through 153A-184: Reserved for future codification purposes.

ARTICLE 9.

Special Assessments.

§ 153A-185. Authority to make special assessments.

A county may make special assessments against benefited property within the county for all or part of the costs of:

(1) Constructing, reconstructing, extending, or otherwise building or improving water systems;
(2) Constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;
(3) Acquiring, constructing, reconstructing, extending, renovating, enlarging, maintaining, operating, or otherwise building or improving
  a. Beach erosion control or flood and hurricane protection works; and
  b. Watershed improvement projects, drainage projects and water resources development projects (as those projects are defined in G.S. 153A-301).
(4) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets, as provided in G.S. 153A-205.
(5) Providing street lights and street lighting in a residential subdivision, as provided in G.S. 153A-206.

A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project. (1963, c. 985, s. 1; 1965, c. 714; 1969, c. 474, s. 1; 1973, c. 822, s. 1; 1975, c. 487, s. 1; 1979, c. 619, s. 11; 1983, c. 321, s. 1; 1989 (Reg. Sess., 1990), c. 923, s. 1.)

Local Modification. — (As to Article 9) Avery and Brunswick: 1987 (Reg. Sess., 1988), c. 1046; Lincoln: 1997, c. 169; Mecklenburg: 1983, c. 189.

Cross References. — As to applicability to assessments levied by water and sewer authorities established pursuant to Chapter 162A, Article 1, see G.S. G.S. 162A-6.

CASE NOTES

Beach Erosion. — County complied with G.S. 153A-185 assessment against benefitted properties for an inlet relocation because the project was designed to counter beach erosion, which was a permitted reason for such an assessment. Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

§ 153A-186. Bases for making assessments.

(a) For water or sewer projects, assessments may be made on the basis of:
(1) The frontage abutting on the project, at an equal rate per foot of frontage; or
(2) The street frontage of the lots served, or subject to being served, by the project, at an equal rate per foot of frontage; or
(3) The area of land served, or subject to being served, by the project, at an equal rate per unit of area; or
(4) The valuation of land served, or subject to being served, by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or
(5) The number of lots served, or subject to being served, by the project when the project involves extension of an existing system to a residential or commercial subdivision, at an equal rate per lot; or
(6) A combination of two or more of these bases.

(b) For beach erosion control or flood and hurricane protection works, watershed improvement projects, drainage projects and water resources development projects, assessments may be made on the basis of:
(1) The frontage abutting on the project, at an equal rate per foot of frontage; or

(2) The frontage abutting on a beach or shoreline or watercourse protected or benefited by the project, at an equal rate per foot of frontage; or

(3) The area of land benefited by the project, at an equal rate per unit of area; or

(4) The valuation of land benefited by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or

(5) A combination of two or more of these bases.

(c) Whenever the basis selected for assessment is either area or valuation, the board of commissioners shall provide for the laying out of one or more benefit zones according (i), in water or sewer projects, to the distance of benefited property from the project being undertaken and (ii), in beach erosion control or flood and hurricane protection works, watershed improvement projects, drainage projects and water resources development projects, to the distance from the shoreline or watercourse, the distance from the project, the elevation of the land, or other relevant factors. If more than one benefit zone is established, the board shall establish differing rates of assessment to apply uniformly throughout each benefit zone.

(d) For each project, the board of commissioners shall endeavor to establish an assessment method from among the bases set out in this section that will most accurately assess each lot or parcel of land according to the benefit conferred upon it by the project. The board's decision as to the method of assessment is final and not subject to further review or challenge. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1; 1983, c. 321, ss. 2, 3.)

CASE NOTES

Consideration of Third Parties. — County's assessment for a inlet relocation was not set aside under G.S. 153A-186(d) because a board did not abrogate its responsibility when it took outside suggestions from third parties. Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

Different Methods Permissible. — G.S. 153-186 specifically anticipates that a project may require different methods for different geographical areas involved in a project and that a combination of methods may be used; therefore, an owner's challenge to an assessment imposed for inlet relocation based on this reason was properly denied. Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

What Challenge is Permissible. — Plain language of G.S. 153A-186(d) and G.S. 153A-197 suggests that, while a landowner may appeal a special assessment, he may not challenge the board of commissioners' choice of which method or methods provided for in the statute should be used in calculating the assessment; nothing, however, in G.S. 153A-186(d) precludes a property owner from arguing that the special assessment was for a purpose not authorized by statute, that the board of commissioners improperly abrogated its responsibilities under G.S. 153A-186(d) in choosing a method of calculation, or that the method chosen was not one permitted by the statute. Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

§ 153A-187. Corner lot exemptions.

The board of commissioners may establish schedules of exemptions from assessments for water or sewer projects for corner lots when water or sewer lines are installed along both sides of the lots. A schedule of exemptions shall be based on categories of land use (residential, commercial, industrial, and agricultural) and shall be uniform for each category. A schedule may not allow exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater. (1963, c. 985, s. 1; 1973, c. 822, s. 1.)

Local Modification. — Forsyth: 1999-89, s. 2; city of Winston-Salem: 1999-89, s. 2.

§ 153A-188. Lands exempt from assessment.

Except as provided in this Article, no land within a county is exempt from special assessments except land belonging to the United States that is exempt under the provisions of federal statutes and, in the case of water or sewer projects, land within any floodway delineated by a local government pursuant to Chapter 143, Article 21, Part 6. In addition, in the case of water or sewer projects, land owned, leased, or controlled by a railroad company is exempt from assessments by a county to the same extent that it would be exempt from assessments by a city under G.S. 160A-222. (1963, c. 958, s. 1; 1973, c. 822, s. 1.)

Local Modification. — Brunswick: 1987, c. 712.

§ 153A-189. State participation in improvement projects.

If a county proposes to undertake a project that would benefit land owned by the State of North Carolina or a board, agency, commission, or institution of the State and to finance all or a part of the project by special assessments, the board of commissioners may request the Council of State to authorize the State to pay its ratable part of the cost of the project, and the Council of State may authorize these payments. The Council of State may authorize the Secretary of Administration to approve or disapprove requests from counties for payment pursuant to this section, but a county may appeal to the Council of State if the Secretary disapproves a request. The Council of State may direct that any payment authorized pursuant to this section be made from the Contingency and Emergency Fund of the State of North Carolina or from any other available funds. Except as State payments are authorized pursuant to this section, state-owned property is exempt from assessment under this Article. (1973, c. 822, s. 1; 1975, c. 879, s. 46.)

§ 153A-190. Preliminary resolution; contents.

Whenever the board of commissioners decides to finance all or part of a proposed project by special assessments, it shall first adopt a preliminary assessment resolution containing the following:

(1) A statement of intent to undertake the project;
(2) A general description of the nature and location of the project;
(3) A statement as to the proposed basis for making assessments, which shall include a general description of the boundaries of the area benefited if the basis of assessment is either area or valuation;
(4) A statement as to the percentage of the cost of the work that is to be specially assessed;
(5) A statement as to which, if any, assessments shall be held in abeyance and for how long;
(6) A statement as to the proposed terms of payment of the assessment; and
(7) An order setting a time and place for a public hearing on all matters covered by the preliminary assessment resolution. The hearing shall be not earlier than three weeks and not later than 10 weeks from the day on which the preliminary resolution is adopted. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

CASE NOTES

Duties of County Commissioners When Financing Project by Special Assessments. — Pursuant to this section, when all or any portion of a public enterprise is to be financed by assessments, the county commissioners are required to adopt a preliminary assessment resolution, which must contain information about the proposed project, a statement as to the percentage of the cost of the project that will be assessed, and an order setting a date for public hearing. The preliminary assessment resolution must be sent by first-class mail to each property owner in the project at least ten days prior to the public hearing. In return, the county receives a specific lien; the delinquency of the assessed obligation authorizes a foreclosure of property without any exemptions allowed or the payment of prior recorded liens except local, state, and federal taxes. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

§ 153A-191. Notice of preliminary resolution.

At least 10 days before the date set for the public hearing, the board of commissioners shall publish a notice that a preliminary assessment resolution has been adopted and that a public hearing on it will be held at a specified time and place. The notice shall describe generally the nature and location of the improvement. In addition, at least 10 days before the date set for the hearing, the board shall cause a copy of the preliminary assessment resolution to be mailed by first-class mail to each owner, as shown on the county tax records, of property subject to assessment if the project is undertaken. The person designated to mail these resolutions shall file with the board a certificate stating that they were mailed by first-class mail and on what date. In the absence of fraud, the certificate is conclusive as to compliance with the mailing requirements of this section. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

CASE NOTES

Duties of County Commissioners When Financing Project by Special Assessments. — Pursuant to G.S. 153A-190, when all or any portion of a public enterprise is to be financed by assessments, the county commissioners are required to adopt a preliminary assessment resolution, which must contain information about the proposed project, a statement as to the percentage of the cost of the project that will be assessed, and an order setting a date for public hearing. The preliminary assessment resolution must be sent by first-class mail to each property owner in the project at least ten days prior to the public hearing. In return, the county receives a specific lien; the delinquency of the assessed obligation authorizes a foreclosure of property without any exemptions allowed or the payment of prior recorded liens except local, state, and federal taxes. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

County's Election of Procedural Requirements Determines Remedies and Owners' Protections. — If no special assessment liens under G.S. 153A-200 exist on the property, the process invoked and completed, rather than the words used, is of paramount importance. If the requirements of this Article are met, the County then has certain remedies otherwise not available to it. However, if the County does not elect to acquire these statutory benefits by following the procedural requirements which would culminate in a lien on the property, the plaintiffs do not receive the statutory protections of notice and a hearing as set out in this section. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

§ 153A-192. Hearing on preliminary resolution; assessment resolution.

At the public hearing, the board of commissioners shall hear all interested persons who appear with respect to any matter covered by the preliminary assessment resolution. At or after the hearing, the board may adopt a final assessment resolution directing that the project or portions thereof be undertaken. The final assessment resolution shall describe the project in general terms (which may be by reference to projects described in the preliminary resolution) and shall set forth the following:

(1) The basis on which the special assessments will be made, together with a general description of the boundaries of the areas benefited if the basis of assessment is either area or valuation;
(2) The percentage of the cost of the work that is to be specially assessed; and
(3) The terms of payment, including the conditions, if any, under which assessments are to be held in abeyance.

The percentage of cost to be assessed may not be different from the percentage proposed in the preliminary assessment resolution, nor may the project authorized be greater in scope than the project described in that resolution. If the board decides that a different percentage of the cost should be assessed than that proposed in the preliminary assessment resolution, or that the project should be greater in scope than that described in that resolution, it shall adopt and advertise a new preliminary assessment resolution as provided in this Article. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

§ 153A-193. Determination of costs.

When a project is complete, the board of commissioners shall determine the project's total cost. In determining total cost, the board may include construction costs, the cost of necessary legal services, the amount of interest paid during construction, the cost of rights-of-way, and the cost of publishing and mailing notices and resolutions. The board's determination of the total cost of a project is conclusive. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

§ 153A-193.1. Discounts authorized.

The board of commissioners is authorized to establish a schedule of discounts to be applied to assessments paid before the expiration of 30 days from the date that notice is published of confirmation of the assessment roll pursuant to G.S. 153A-196. Such a schedule of discounts may be established even though it was not included among the terms of payment as specified in the preliminary assessment resolution or final assessment resolution. The amount of any discount may not exceed thirty percent (30%). (1983, c. 381, s. 1.)

§ 153A-194. Preliminary assessment roll; publication.

When the total cost of a project has been determined, the board of commissioners shall cause a preliminary assessment roll to be prepared. The roll shall contain a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount assessed against each, the terms of payment, including the schedule of discounts, if such a schedule is to be established and the name of the owner of each lot, parcel, or tract as far as this can be ascertained from the county tax records. A map of the project on which is shown each lot, parcel, or tract assessed, the basis of its assessment, the amount assessed against it, and the name of its owner as far as this can be ascertained from the county tax records is a sufficient assessment roll.

After the preliminary assessment roll has been completed, the board shall cause the roll to be filed in the clerk's office, where it shall be available for public inspection, and shall set the time and place for a public hearing on the roll. At least 10 days before the date set for the hearing, the board shall publish a notice that the preliminary assessment roll has been completed. The notice shall describe the project in general terms, note that the roll in the clerk's office is available for inspection, and state the time and place for the hearing on the roll. In addition, at least 10 days before the date set for the hearing, the board shall cause a notice of the hearing to be mailed by first-class mail to each owner of property listed on the roll. The mailed notice shall state the time and place of the hearing, note that the roll in the clerk's office is available for inspection, and state the amount as shown on the roll of the assessment against the property of the owner. The person designated to mail these notices shall file with the board a certificate stating that they were mailed by first-class mail and on what date. In the absence of fraud, the certificate is conclusive as to compliance with the mailing requirements of this section. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1; 1983, c. 381, s. 2.)

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

§ 153A-195. Hearing on preliminary assessment roll; revision; confirmation; lien.

At the public hearing the board of commissioners shall hear all interested persons who appear with respect to the preliminary assessment roll. At or after the hearing, the board shall annul, modify, or confirm the assessments, in whole or in part, either by confirming the preliminary assessments against any lot, parcel, or tract described in the preliminary assessment roll or by cancelling, increasing, or reducing the assessments as may be proper in compliance with the basis of assessment. If any property is found to be omitted from the preliminary assessment roll, the board may place it on the roll and make the proper assessment. When the board confirms assessments for a project, the clerk shall enter in the minutes of the board the date, hour, and minute of confirmation. From the time of confirmation, each assessment is a lien on the property assessed of the same nature and to the same extent as the lien for county or city property taxes, under the priorities set out in G.S. 153A-200. After the assessment roll is confirmed, the board shall cause a copy of it to be delivered to the county tax collector for collection in the same manner (except as provided in this Article) as property taxes. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

Cross References. — As to meaning of term "county tax collector," see G.S. G.S. 162A-6.

CASE NOTES

Assessment Not Confirmed. — Trial court properly granted summary judgment to the property sellers in their action against the closing attorney for the breach of an escrow agreement regarding the payment of a sewer assessment; the attorney had no authority to pay the bill arising from the assessment, as the assessment was not confirmed within 16 months of the closing as required by the agreement. Marcuson v. Clifton, 154 N.C. App. 202, 571 S.E.2d 599, 2002 N.C. App. LEXIS 1405 (2002).

Cited in McNeill v. Harnett County, 97 N.C. App. 41, 387 S.E.2d 206 (1990).

§ 153A-196. Publication of notice of confirmation of assessment roll.

No earlier than 20 days from the date the assessment roll is confirmed, the county tax collector shall publish once a notice that the roll has been confirmed. The notice shall also state that assessments may be paid without interest at any time before the expiration of 30 days from the date that the notice is published and that if they are not paid within this time, all installments thereof shall bear interest as determined by the board of commissioners. The notice shall also state the schedule of discounts, if one has been established, to be applied to assessments paid before the expiration date for payment of assessments without interest. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1; 1983, c. 381, s. 3.)

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

Cross References. — As to meaning of term "county tax collector," see G.S. G.S. 162A-6.

§ 153A-197. Appeal to the General Court of Justice.

If the owner of, or any person having an interest in, a lot, parcel, or tract of land against which an assessment is made is dissatisfied with the amount of the assessment, he may, within 10 days after the day the assessment roll is confirmed, file a notice of appeal to the appropriate division of the General Court of Justice. He shall then have 20 days after the day the roll is confirmed to serve on the board of commissioners or the clerk a statement of facts upon which the appeal is based. The appeal shall be tried like other actions at law. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

CASE NOTES

Scope of Appeal. — Plain language of G.S. 153A-186(d) and G.S. 153A-197 suggests that, while a landowner may appeal a special assessment, he may not challenge the board of commissioners' choice of which method or methods provided for in the statute should be used in calculating the assessment; nothing, however, in G.S. 153A-186(d) precludes a property owner from arguing that the special assessment was for a purpose not authorized by statute, that the board of commissioners improperly abrogated its responsibilities under G.S. 153A-186(d) in choosing a method of calculation, or that the method chosen was not one permitted by the statute. Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

§ 153A-198. Reassessment.

When in its judgment an irregularity, omission, error, or lack of jurisdiction has occurred in any proceeding related to a special assessment made by it, the board of commissioners may set aside the assessment and make a reassessment. In that case, the board may include in the total project cost all additional interest paid, or to be paid, as a result of the delay in confirming the assessment. A reassessment proceeding shall, as far as practicable, follow the comparable procedures of an original assessment proceeding. A reassessment has the same force as if it originally had been made properly. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-199. Payment of assessments in full or by installments.

Within 30 days after the day that notice of confirmation of the assessment roll is published, each owner of assessed property shall pay his assessment in full, unless the board of commissioners has provided that assessments may be paid in annual installments. If payment by installments is permitted, any portion of an assessment not paid within the 30-day period shall be paid in annual installments. The board shall in the assessment resolution determine whether payment may be made by annual installments and set the number of installments, which may not be more than 10. With respect to payment by installment, the board may provide

(1) That the first installment with interest is due on the date when property taxes are due, and one installment with interest is due on the same date in each successive year until the assessment is paid in full, or

(2) That the first installment with interest is due 60 days after the date that the assessment roll is confirmed, and one installment with interest is due on that same day in each successive year until the assessment is paid in full. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984; Cumberland: 2008-109.

§ 153A-200. Enforcement of assessments; interest; foreclosure; limitations.

(a) Any portion of an assessment that is not paid within 30 days after the day that notice of confirmation of the assessment roll is published shall, until paid, bear interest at a rate to be fixed in the assessment resolution. The maximum rate at which interest may be set is eight percent (8%) per annum.

(b) If an installment of an assessment is not paid on or before the due date, all of the installments remaining unpaid immediately become due, unless the board of commissioners waives acceleration. The board may waive acceleration and permit the property owner to pay all installments in arrears together with interest due thereon and the cost to the county of attempting to obtain payment. If this is done, any remaining installments shall be reinstated so that they fall due as if there had been no default. The board may waive acceleration and reinstate further installments at any time before foreclosure proceedings have been instituted.

(c) A county may foreclose assessment liens under any procedure provided by law for the foreclosure of property tax liens, except that (i) lien sales and lien sale certificates are not required and (ii) foreclosure may be begun at any time after 30 days after the due date. The county is not entitled to a deficiency judgment in an action to foreclose an assessment lien. The lien of special assessments is inferior to all prior and subsequent liens for State, local, and federal taxes, and superior to all other liens.

(d) No county may maintain an action or proceeding to foreclose any special assessment lien unless the action or proceeding is begun within 10 years from the date that the assessment or the earliest installment thereof included in the action or proceeding became due. Acceleration of installments under subsection (b) of this section does not have the effect of shortening the time within which foreclosure may be begun; in that event the statute of limitations continues to run as to each installment as if acceleration had not occurred. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

Local Modification. — Rockingham: 1985 (Reg. Sess., 1986), c. 817.

CASE NOTES

Foreclosure of Assessment Liens. — Pursuant to G.S. 153A-190, when all or any portion of a public enterprise is to be financed by assessments, the county commissioners are required to adopt a preliminary assessment resolution, which must contain information about the proposed project, a statement as to the percentage of the cost of the project that will be assessed, and an order setting a date for public hearing. The preliminary assessment resolution must be sent by first-class mail to each property owner in the project at least ten days prior to the public hearing. In return, the county receives a specific lien; the delinquency of the assessed obligation authorizes a foreclosure of property without any exemptions allowed or the payment of prior recorded liens except local, state, and federal taxes. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Special Assessment Proceeding. — Forced sale of land under a general lien is subjected to exemptions and prior recorded liens. It is, therefore, the special assessment proceeding itself which creates the lien for the assessment. If the county commissioners elect not to pursue the procedure which would establish the lien, then the special proceeding is not necessary. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

County's Election of Procedural Requirements Determines Remedies and Owners' Protections. — If no special assessment liens under this section exist on the property, the process invoked and completed, rather than the words used, is of paramount importance. If the requirements of this Article are met, the County then has certain remedies otherwise not available to it. However, if the County does not elect to acquire these statutory benefits by following the procedural requirements which would culminate in a lien on the property, the plaintiffs do not receive the statutory protections of notice and a hearing as set out in G.S. 153A-191. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Cited in McNeill v. Harnett County, 97 N.C. App. 41, 387 S.E.2d 206 (1990).

§ 153A-201. Authority to hold assessments in abeyance.

The assessment resolution may provide that assessments made pursuant to this Article shall be held in abeyance without interest for any benefited property assessed. Water or sewer assessments may be held in abeyance until improvements on the assessed property are connected to the water or sewer system for which the assessment was made, or until a date certain not more than 10 years from the date of confirmation of the assessment roll, whichever event occurs first. Beach erosion control or flood and hurricane protection assessments may be held in abeyance for not more than 10 years from the date of confirmation of the assessment roll. When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

If assessments are to be held in abeyance, the assessment resolution shall classify the property assessed according to general land use, location with respect to the water or sewer system (for water or sewer assessments), or other relevant factors. The resolution shall also provide that the period of abeyance shall be the same for all assessed property in the same class.

Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-202. Assessments on property held by tenancy for life or years; contribution.

(a) Assessments upon real property in the possession or enjoyment of a tenant for life or a tenant for a term of years shall be paid pro rata by the tenant and the remaindermen after the life estate or by the tenant and the owner in fee after the expiration of the tenancy for years according to their respective interests in the land as calculated pursuant to G.S. 37-13.

(b) If a person having an interest in land held by tenancy for life or years pays more than his pro rata share of an assessment against the property, he may maintain an action in the nature of a suit for contribution against any delinquent party to recover from that party his pro rata share of the assessment, with interest thereon from the date of the payment; and in addition, he is subrogated to the right of the county to a lien on the property for the delinquent party's share of the assessment. (1963, c. 985, c. 1; 1965, c. 714; 1973, c. 822, s. 1.)

Editor's Note. — Section 37-13, referred to in this section, was repealed by Session Laws 1973, c. 729, s. 3. See now G.S. 37-36.

§ 153A-203. Lien in favor of a cotenant or joint owner paying special assessments.

Any one of several tenants in common or joint tenants (other than copartners) may pay the whole or any part of a special assessment made against property held in common or jointly. Any amount so paid that exceeds his share of the assessment and that was not paid through agreement with or on behalf of the other joint owners is a lien in his favor upon the shares of the other joint owners. This lien may be enforced in a proceeding for actual partition, a proceeding for partition and sale, or by any other appropriate judicial proceeding. This lien is not effective against an innocent purchaser for value until notice of the lien is filed in the office of the clerk of superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in that clerk's office. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-204. Apportionment of assessments.

If a special assessment has been made against property that has been or is about to be subdivided, the board of commissioners may, with the consent of the owner of the property, (i) apportion the assessment among the lots or tracts within the subdivision, or (ii) release certain lots or tracts from the assessment if, in the board's opinion, the released lots or tracts are not benefited by the project, or (iii) both. Upon an apportionment each of the lots or tracts in the subdivision is released from the lien of the original assessment, and the portion of the original assessment assessed against each lot or tract has, as to that lot or tract, the same force as the original assessment. At the time the board makes an apportionment under this section, the clerk shall enter on the minutes of the board the date, hour, and minute of apportionment and a statement to the effect that the apportionment is made with the consent of the owners of the property affected, which entry is conclusive in the absence of fraud. The apportionment is effective at the time shown in the minute book. Apportionments may include past due installments with interest, as well as installments not then due; and any installment not then due shall fall due at the same date as it would have under the original assessment. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-204.1. Maintenance assessments.

(a) In order to pay for the costs of maintaining and operating a project, the board of commissioners may annually or at less frequent intervals levy maintenance and operating assessments for any project purpose set forth in G.S. 153A-185(3) on the same basis as the original assessment. The amount of these assessments shall be determined by the board of commissioners on the basis of the board's estimate of the cost of maintaining and operating a project during the ensuing budget period, and the board's decision as to the amount of the assessment is conclusive. In determining the total cost to be included in the assessment the board may include estimated costs of maintaining and operating the project, of necessary legal services, of interest payments, of rights-of-way, and of publishing and mailing notices and resolutions. References to "total costs" in provisions of this Article that apply to maintenance and operating assessments shall be construed to mean "total estimated costs." Within the meaning of this section a "budget period" may be one year or such other budget period as the board determines.

(b) All of the provisions of this Article shall apply to maintenance and operating assessments, except for G.S. 153A-190 through G.S. 153A-193. (1983, c. 321, s. 4.)

§ 153A-205. Improvements to subdivision and residential streets.

(a) A county may finance the local share of the cost of improvements made under the supervision of the Department of Transportation to subdivision and residential streets that are a part of the State maintained system located in the county and outside of a city and shall levy and collect pursuant to the procedures of Article 9 of Chapter 153A of the General Statutes special assessments against benefited property to recoup that portion of the costs financed by the county. The local share is that share required by policies of the Secondary Roads Council, and may be paid by the county from funds not otherwise limited as to use by law. Land owned, leased, or controlled by a railroad company is exempt from such assessments to the same extent that it would be exempt from street assessments of a city under G.S. 160A-222. No project may be commenced under this section unless it has been approved by the Department of Transportation.

(b) A county may finance the local share of the cost of improvements made under the supervision of the Department of Transportation to subdivision and residential streets located in the county and outside of a city in order to bring those streets up to the standards of the Secondary Roads Council so that they may become a part of the State-maintained system and shall levy and collect pursuant to the procedures of Article 9 of Chapter 153A of the General Statutes special assessments against benefited property to recoup that portion of the costs financed by the county. The local share is that share required by policies of the Secondary Roads Council, and may be paid by the county from funds not otherwise limited as to use by law. Land owned, leased, or controlled by a railroad company is exempt from such assessments to the same extent that it would be exempt from street assessments of a city under G.S. 160A-222. No project may be commenced under this section unless it has been approved by the Department of Transportation.

(c) Before a county may finance all or a portion of the cost of improvements to a subdivision or residential street, it must receive a petition for the improvements signed by at least seventy-five percent (75%) of the owners of property to be assessed, who must represent at least seventy-five percent (75%) of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. The petition shall state that portion of the cost of the improvement to be assessed, which shall be the local share required by policies of the Secondary Roads Council. A county may treat as a unit and consider as one street two or more connecting State-maintained subdivision or residential streets in a petition filed under this subsection calling for the improvement of subdivision or residential streets subject to property owner sharing in the cost of improvement under policies of the Department of Transportation.

Property owned by the United States shall not be included in determining the lineal feet of frontage on the improvement, nor shall the United States be included in determining the number of owners of property abutting the improvement. Property owned by the State of North Carolina shall be included in determining frontage and the number of owners only if the State has consented to assessment as provided in G.S. 153A-189. Property owned, leased, or controlled by railroad companies shall be included in determining frontage and the number of owners to the extent the property is subject to assessment under G.S. 160A-222. Property owned, leased, or controlled by railroad companies that is not subject to assessment shall not be included in determining frontage or the number of owners.

No right of action or defense asserting the invalidity of street assessments on grounds that the county did not comply with this subsection in securing a valid petition may be asserted except in an action or proceeding begun within 90 days after the day of publication of the notice of adoption of the preliminary assessment resolution.

(d) This section is intended to provide a means of assisting in financing improvements to subdivision and residential streets that are on the State highway system or that will, as a result of the improvements, become a part of the system. By financing improvements under this section, a county does not thereby acquire or assume any responsibility for the street or streets involved, and a county has no liability arising from the construction of such an improvement or the maintenance of such a street. Nothing in this section shall be construed to alter the conditions and procedures under which State system streets or other public streets are transferred to municipal street systems pursuant to G.S. 136-66.1 and 136-66.2 upon annexation by, or incorporation of, a municipality. (1975, c. 487, s. 2; c. 716, s. 7; 1981, c. 768.)

Local Modification. — Hyde: 1991 (Reg. Sess., 1992), c. 824.

Cross References. — As to liability of county for emergency medical services for prisoners working pursuant to G.S. 162-58, see G.S. 162-61.

§ 153A-206. Street light assessments.

(a) Authorization. A county may annually levy special assessments against benefited property in a residential subdivision within the county and not within a city for the costs of providing street lights and street lighting pursuant to the procedures provided in this Article. The provisions of this Article, other than G.S. 153A-186, G.S. 153A-187 and G.S. 153A-190 through G.S. 153A-193, apply to street light assessments under this section.

(b) Basis of Assessment. The estimated costs of providing street lights and street lighting shall be apportioned among all benefited property on the basis of the number of lots served, or subject to being served, by the street lights, at an equal rate per lot.

(c) Amount of Assessment. The county shall determine the amount of the assessments on the basis of an estimate of the cost of constructing or operating the street lights during the ensuing year, and the board of commissioners' determination of the amount of the assessment is conclusive. In determining the total cost to be included in the assessment, the board may also include estimated costs of necessary legal services, projected utility rate increases, and the costs to the county of administering and collecting the assessment.

(d) Procedure. The county may approve the levy of street light assessments under this section upon petition of at least two-thirds of the owners of the lots within the subdivision. The request or petition shall include an estimate from the appropriate utility of the charge for providing street lights and street lighting within the subdivision for one year. Upon approval of the petition, the petitioning owner or owners shall pay to the tax collector the total estimated assessment amount for the ensuing year as determined by the county. This payment shall be set aside by the county tax office in escrow as security for payment of the assessments.

(e) Collection and Administration. The county shall levy the street light assessments on an annual basis and shall pay the costs of providing street lights and street lighting to the appropriate utility on a periodic basis. The assessment amount shall be adjusted on an annual basis in order to maintain in the escrow account an amount equal to the estimated cost of providing street lighting plus related expenses for the ensuing year. (1989 (Reg. Sess., 1990), c. 923, s. 2.)

§§ 153A-207 through 153A-210: Reserved for future codification purposes.

ARTICLE 9A.

Special Assessments for Critical Infrastructure Needs.

(Expires July 1, 2013)

§ 153A-210.1. (Expires July 1, 2013) Purpose.

This Article enables counties that face increased demands for infrastructure improvements as a result of rapid growth and development to issue revenue bonds payable from special assessments imposed under this Article on benefited property. This Article supplements the authority counties have in Article 9 of this Chapter. The provisions of Article 9 of this Chapter apply to this Article, to the extent they do not conflict with this Article. (2008-165, s. 2.)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5 provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

§ 153A-210.2. (Expires July 1, 2013) Assessments.

(a) Projects. — The board of commissioners of a county may make special assessments as provided in this Article against benefited property within the county for the purpose of financing the capital costs of projects for which project development financing debt instruments may be issued under G.S. 159-103 or for the purpose of financing the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property.

(b) Costs. — The board of commissioners must determine a project's total estimated cost. In addition to the costs allowed under G.S. 153A-193, the costs may include any expenses allowed under G.S. 159-84. A preliminary assessment roll may be prepared before the costs are incurred based on the estimated cost of the project.

(c) Method. — The board of commissioners must establish an assessment method that will most accurately assess each lot or parcel of land according to the benefits conferred upon it by the project for which the assessment is made. In addition to the bases upon which assessments may be made under G.S. 153A-186, the board may select any other method designed to allocate the costs in accordance with benefits conferred. (2008-165, s. 2; 2008-187, s. 47.5(a); 2009-525, s. 1(a).)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5 provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

Session Laws 2008-187, s. 47.5(a), makes the amendment of this section by that act contingent upon House Bill 1770, 2007 Regular Session, becoming law. HB 1770 was enacted as Session Laws 2008-165.

Effect of Amendments. — Session Laws 2008-187, s. 47.5(a), effective August 7, 2008. rewrote the last sentence in (b).

Session Laws 2009-525, s. 1(a), effective August 26, 2009, rewrote subsection (a).

§ 153A-210.3. (Expires July 1, 2013) Petition required.

(a) Petition. — The board of commissioners may not impose a special assessment under this Article unless it receives a petition for the project to be financed by the assessment signed by at least a majority of the owners of real property to be assessed who must represent at least sixty-six percent (66%) of the assessed value of all real property to be assessed. The petition must include the following:

(1) A statement of the project proposed to be financed in whole or in part by the imposition of an assessment under this Article.
(2) An estimate of the cost of the project.
(3) An estimate of the portion of the cost of the project to be assessed.

(b) Petition Withdrawn. — The board of commissioners must wait at least 10 days after the public hearing on the preliminary assessment resolution before adopting a final assessment resolution. A petition submitted under subsection (a) of this section may be withdrawn if notice of petition withdrawal is given in writing to the board signed by at least a majority of the owners who signed the petition submitted under subsection (a) of this section representing at least fifty percent (50%) of the assessed value of all real property to be assessed. The board may not adopt a final assessment resolution if it receives a timely notice of petition withdrawal.

(c) Validity of Assessment. — No right of action or defense asserting the invalidity of an assessment on grounds that the county did not comply with this section may be asserted except in an action or proceeding begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution. (2008-165, s. 2.)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

§ 153A-210.4. (Expires July 1, 2013) Financing a project for which an assessment is imposed.

(a) Financing Sources. — A board of commissioners may provide for the payment of the cost of a project for which an assessment may be imposed under this Article from one or more of the financing sources listed in this subsection. The assessment resolution must include the estimated cost of the project and the amount of the cost to be derived from each respective financing source.

(1) Revenue bonds issued under G.S. 153A-210.6.
(2) Project development financing debt instruments issued under the North Carolina Project Development Financing Act, Article 6 of Chapter 159 of the General Statutes.

(3) General obligation bonds issued under the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes.

(4) General revenues.

(b) Assessments Pledged. — An assessment imposed under this Article may be pledged to secure revenue bonds under G.S. 153A-210.6 or as additional security for a project development financing debt instrument under G.S. 159-111. If an assessment imposed under this Article is pledged to secure financing, the board of commissioners must covenant to enforce the payment of the assessments. (2008-165, s. 2; 2009-525, s. 1(b).)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

Effect of Amendments. — Session Laws 2009-525, s. 1(b), effective August 26, 2009, rewrote the section.

§ 153A-210.5. (Expires July 1, 2013) Payment of assessments by installments.

An assessment imposed under this Article is payable in annual installments. The board of commissioners must set the number of annual installments, which may not be more than 30. The installments are due on the date that property taxes are due. (2008-165, s. 2.)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

§ 153A-210.6. (Expires July 1, 2013) Revenue bonds.

(a) Authorization. — A board of commissioners that imposes an assessment under this Article may issue revenue bonds under Article 5 of Chapter 159 of the General Statutes to finance the project for which the assessment is imposed and use the proceeds of the assessment imposed as revenues pertaining to the project.

(b) Modifications. — This Article specifically modifies the authority of a county to issue revenue bonds under Article 5 of Chapter 159 of the General Statutes by extending the authority in that Article to include a project for which an assessment may be imposed under this Article. In applying the provisions of Article 5, the following definitions apply:

(1) Revenue bond project. — Defined in G.S. 159-81(3). The term includes projects for which an assessment is imposed under this Article.

(2) Revenues. — Defined in G.S. 159-81(4). The term includes assessments imposed under this Article to finance a project allowed under this Article. (2008-165, s. 2.)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

§ 153A-210.7. (Expires July 1, 2013) Project implementation.

A county may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof to implement the project financed in whole or in part by the imposition of an assessment imposed under this Article. If no more than twenty-five percent (25%) of the estimated cost of a project is to be funded from the proceeds of general obligation bonds or general revenue, a private agency that enters into a contract with a county for the implementation of all or part of the project is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. In the event any contract relating to construction a substantial portion of which is to be performed on publicly owned property is excluded from the provisions of Article 8 of Chapter 143, the county or any trustee or fiduciary responsible for disbursing funds shall obtain certification acceptable to the county in the amount due for work done or materials supplied for which payment will be paid from such disbursement. If the county or any trustee or fiduciary responsible for disbursing funds receives notice of a claim from any person who would be entitled to a mechanic's or materialman's lien but for the fact that the claim relates to work performed on or supplies provided to publicly owned property, then either no disbursement of funds may be made until the county, trustee, or fiduciary receives satisfactory proof of resolution of the claim or funds in the amount of the claim shall be set aside for payment thereof upon resolution of the claim. (2009-525, s. 1(c).)

Article Has an Expiration Date. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Editor's Note. — Session Laws 2009-525, s. 4, made this section effective August 26, 2009.

ARTICLE 10.

Law Enforcement and Confinement Facilities.

Part 1. Law Enforcement.

§ 153A-211. Training and development programs for law enforcement.

A county may plan and execute training and development programs for law-enforcement agencies, and for that purpose may:

(1) Contract with other counties, cities, and the State and federal governments and their agencies;
(2) Accept, receive, and disburse funds, grants, and services;
(3) Pursuant to the procedures and provisions of Chapter 160A, Article 20, Part 1, create joint agencies to act for and on behalf of the participating counties and cities;
(4) Apply for, receive, administer, and expend federal grant funds;
(5) Appropriate funds not otherwise limited as to use by law. (1969, c. 1145, s. 2; 1973, c. 822, s. 1.)

Local Modification. — Onslow: 1985 (Reg. Sess., 1986), c. 895.

§ 153A-212. Cooperation in law-enforcement matters.

A county may cooperate with the State and other local governments in law-enforcement matters, as permitted by G.S. 160A-283 (joint auxiliary police), by G.S. 160A-288 (emergency aid), G.S. 160A-288.1 (assistance by State law-enforcement officers), and by Chapter 160A, Article 20, Part 1. (1973, c. 822, s. 1; 1979, c. 639, s. 2.)

§ 153A-212.1. Resources to protect the public.

Subject to the requirements of G.S. 7A-41, 7A-44.1, 7A-64, 7A-102, 7A-133, and 7A-498.7, a county may appropriate funds under contract with the State for the provision of services for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving threats to public safety. Nothing in this section shall be construed to obligate the General Assembly to make any appropriation to implement the provisions of this section. Further, nothing in this section shall be construed to obligate the Administrative Office of the Courts or the Office of Indigent Defense Services to maintain positions or services initially provided for under this section. (1999-237, s. 17.17(b); 2000-67, s. 15.4(e); 2001-424, s. 22.11(e).)

§ 153A-212.2. Neighborhood crime watch programs.

A county may establish neighborhood crime watch programs within the county to encourage residents and business owners to promote citizen involvement in securing homes, businesses, and personal property against criminal activity and to report suspicious activities to law enforcement officials. (2006-181, s. 1.)

Editor's Note. — Session Laws 2006-181, s. 4, made this section effective August 1, 2006.

§§ 153A-213 through 153A-215: Reserved for future codification purposes.

Part 2. Local Confinement Facilities.

§ 153A-216. Legislative policy.

The policy of the General Assembly with respect to local confinement facilities is:

(1) Local confinement facilities should provide secure custody of persons confined therein in order to protect the community and should be operated so as to protect the health and welfare of prisoners and provide for their humane treatment.

(2) Minimum statewide standards should be provided to guide and assist local governments in planning, constructing, and maintaining confinement facilities and in developing programs that provide for humane treatment of prisoners and contribute to the rehabilitation of offenders.

(3) The State should provide services to local governments to help improve the quality of administration and local confinement facilities. These services should include inspection, consultation, technical assistance, and other appropriate services.

(4) Adequate qualifications and training of the personnel of local confinement facilities are essential to improving the quality of these facili-

ties. The State shall establish entry level employment standards for jailers and supervisory and administrative personnel of local confinement facilities to include training as a condition of employment in a local confinement facility pursuant to the provisions of Chapter 17C and Chapter 17E and the rules promulgated thereunder. (1967, c. 581, s. 2; 1973, c. 822, s. 1; 1983, c. 745, s. 4.)

Legal Periodicals. — For note as to sheriff's liability for prisoner suicide, in light of Helmly v. Bebber, 77 N.C. App. 275, 335 S.E.2d 182 (1985), see 64 N.C.L. Rev. 1520 (1986).

CASE NOTES

The enforcement of minimum standards at local jails is a discretionary duty. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988), aff'd sub nom. Reid v. Kayye, 878 F.2d 1430 (4th Cir.), 885 F.2d 129 (4th Cir. 1989).

State Officials Held Not Vicariously Liable for Conditions at County Jail. — In an action by inmates of a county jail against state officials of the Department of Human Resources alleging the existence of unconstitutional conditions at the jail, the state officials could not be held vicariously liable under 42 U.S.C.A. § 1983, where plaintiffs did not demonstrate that actions taken by the officials under color of state law in any way caused constitutionally deficient conditions at the county jail. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988), aff'd sub nom. Reid v. Kayye, 878 F.2d 1430 (4th Cir.), 885 F.2d 129 (4th Cir. 1989).

Cited in Knight v. Vernon, 23 F. Supp. 2d 634 (M.D.N.C. 1998); Multiple Claimants v. N.C. HHS, Div. of Facility Servs., 361 N.C. 372, 646 S.E.2d 356, 2007 N.C. LEXIS 599 (2007).

§ 153A-217. Definitions.

Unless otherwise clearly required by the context, the words and phrases defined in this section have the meanings indicated when used in this Part:

(1) "Commission" means the Social Services Commission.

(2) "Secretary" means the Secretary of Health and Human Services.

(3) "Department" means the Department of Health and Human Services.

(4) "Governing body" means the governing body of a county or city or the policy-making body for a district or regional confinement facility.

(5) "Local confinement facility" includes a county or city jail, a local lockup, a regional or district jail, a juvenile detention facility, a detention facility for adults operated by a local government, and any other facility operated by a local government for confinement of persons awaiting trial or serving sentences except that it shall not include a county satellite jail/work release unit governed by Part 3 of Article 10 of Chapter 153A.

(6) "Prisoner" includes any person, adult or juvenile, confined or detained in a confinement facility.

(7) "Unit," "unit of local government," or "local government" means a county or city. (1967, c. 581, s. 2; 1969, c. 981, s. 1; 1973, c. 476, s. 138; c. 822, s. 1; 1987, c. 207, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 4(cc).)

CASE NOTES

Definition of "Local Confinement Facility" Applicable to G.S. 90-95(e)(9). — Temporary holding cell was considered to be a local confinement facility for purposes of a conviction for possession of a controlled substance on the premises of a local confinement facility under G.S. 90-95(e)(9). State v. Dent, 174 N.C. App. 459, 621 S.E.2d 274, 2005 N.C. App. LEXIS 2491 (2005).

Defendant, who was brought to the sheriff's department for booking, was clearly on the premises of a local confinement facility. State v. Moncree, 188 N.C. App. 221, 655 S.E.2d 464, 2008 N.C. App. LEXIS 94 (2008).

Cited in State v. Ellis, 168 N.C. App. 651, 608 S.E.2d 803, 2005 N.C. App. LEXIS 449 (2005).

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"Local Confinement Facility" Definition Applicable to § 15A-1352(a). — Although by its terms, the definition of "local confinement facility" in subsection (5) applies only to Chapter 153A, Article 10, Pt. 1, as this definition is the only definition of "local confinement facility" appearing in the General Statutes, it may be assumed that this was the meaning intended by the General Assembly when it adopted G.S. 15A-1352(a). See Opinion of Attorney General to Mr. Bruce Colvin, Assistant County Attorney, Forsyth County, 55 N.C.A.G. 21 (1985).

§ 153A-218. County confinement facilities.

A county may establish, acquire, erect, repair, maintain, and operate local confinement facilities and may for these purposes appropriate funds not otherwise limited as to use by law. A juvenile detention facility may be located in the same facility as a county jail provided that the juvenile detention facility meets the requirements of this Article and G.S. 147-33.40. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; 1915, c. 140; C.S., s. 1297; 1973, c. 822, s. 1; 1998-202, s. 4(dd).)

Editor's Note. — The section of Chapter 147 referred to above was repealed by Session Laws 2000-137, s. 1(a). As to juvenile facilities, see now G.S. 143B-525 et seq.

Legal Periodicals. — For note, "North Carolina County Jail Inmates' Right of Access to Courts," see 66 N.C.L. Rev. 583 (1988).

CASE NOTES

Editor's Note. — *Most of the cases cited below were decided under corresponding sections of former law.*

Requirements for Persons Confined in Prison. — The least that is required is that persons confined in any public prison shall have a clean place, comfortable bedding, wholesome food and drink, and necessary attendance. Lewis v. City of Raleigh, 77 N.C. 229 (1877).

County and Board of Commissioners were liable under 42 U.S.C. § 1983 for past and continuing deprivations of constitutional rights of county prisoners and were subject to equitable remedies against them. Parnell v. Waldrep, 538 F. Supp. 1203 (W.D.N.C. 1982).

County Responsible for Its Own Confinement Facilities. — This section makes clear that the primary responsibility for county confinement facilities rests upon the county itself. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988), aff'd sub nom. Reid v. Kayye, 878 F.2d 1430 (4th Cir.), 885 F.2d 129 (4th Cir. 1989).

For case holding that an action could not be maintained against a county for damages sustained by a person while imprisoned in the county jail by reason of the failure of the commissioners to provide adequate means for his health and protection, see Manuel v. Board of Comm'rs of Cumberland County, 98 N.C. 9, 3 S.E. 829 (1887).

State Officials Held Not Liable for Conditions of a County Jail. — In an action by inmates of a county jail against state officials of the Department of Human Resources alleging the existence of unconstitutional conditions at the jail, the state officials could not be held vicariously liable under 42 U.S.C.A. § 1983, where plaintiffs did not demonstrate that actions taken by the officials under color of state law in any way caused constitutionally deficient conditions at the county jail. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988), aff'd sub nom. Reid v. Kayye, 878 F.2d 1430 (4th Cir.), 885 F.2d 129 (4th Cir. 1989).

Liability for Failure to Make Regulations for Safety of Prisoners. — The duty to make proper rules and regulations imposes a discretionary duty on the board of commissioners exercisable only in its corporate capacity, and the commissioners are not liable as individuals for failure to make regulations for the safety of prisoners unless they corruptly or with malice fail to make proper rules and regulations. Moye v. McLawhorn, 208 N.C. 812, 182 S.E. 493 (1935).

Liability for Nuisance in Erection and Maintenance of Jail. — A county is not liable for a nuisance to a citizen in the erection of a jail in the immediate vicinity of his residence, nor for suffering it to become so filthy and disorderly as to be a nuisance to him and his family. The doctrine is that while such corporate agencies must provide the means and employ the men to perform such duties, they are not personally and by their own labor to perform such menial services; the default to make them liable must be in neglecting to exercise their authority in the use of labor and money for that purpose, and so it must be charged to make a cause of action against them. Threadgill v. Board of Comm'rs, 99 N.C. 352, 6 S.E. 189 (1888).

§ 153A-219. District confinement facilities.

(a) Two or more units of local government may enter into and carry out an agreement to establish, finance, and operate a district confinement facility. The units may construct such a facility or may designate an existing facility as a district confinement facility. In addition, two or more units of local government may enter into and carry out agreements under which one unit may use the local confinement facility owned and operated by another. In exercising the powers granted by this section, the units shall proceed according to the procedures and provisions of Chapter 160A, Article 20, Part 1.

(b) If a district confinement facility is established, the units involved shall provide for a jail administrator for the facility. The administrator need not be the sheriff or any other official of a participating unit. The administrator and the other custodial personnel of a district confinement facility have the authority of law-enforcement officers for the purposes of receiving, maintaining custody of, and transporting prisoners.

(c) If a district confinement facility is established, or if one unit contracts to use the local confinement facility of another, the law-enforcement officers of the contracting units and the custodial personnel of the facility may transport prisoners to and from the facility.

(d) The Department shall provide technical and other assistance to units wishing to exercise any of the powers granted by this section. (1933, c. 201; 1967, c. 581, s. 2; 1969, c. 743; 1971, c. 341, s. 1; 1973, c. 822, s. 1.)

Local Modification. — Camden, Pasquotank and Perquimans: 1991, c. 371; Albemarle District Jail in Elizabeth City: 1991, c. 371.

§ 153A-220. Jail and detention services.

The Commission has policy responsibility for providing and coordinating State services to local government with respect to local confinement facilities. The Department shall:

(1) Consult with and provide technical assistance to units of local government with respect to local confinement facilities.
(2) Develop minimum standards for the construction and operation of local confinement facilities.
(3) Visit and inspect local confinement facilities; advise the sheriff, jailer, governing board, and other appropriate officials as to deficiencies and recommend improvements; and submit written reports on the inspections to appropriate local officials.
(4) Review and approve plans for the construction and major modification of local confinement facilities.
(5) Repealed by Session Laws 1983, c. 745, s. 5.
(6) Perform any other duties that may be necessary to carry out the State's responsibilities concerning local confinement facilities. (1967, c. 581, s. 2; 1973, c. 476, s. 138; c. 822, s. 1; 1983, c. 745, s. 5.)

Cross References. — As to juvenile detention services, see G.S. 134A-36 et seq.

CASE NOTES

Negligence Claim Against State Jail Inspection Agency Not Barred By Public Duty Doctrine. — Public duty doctrine did not apply to bar a negligence suit brought by multiple plaintiffs against the North Carolina Department of Health and Human Services (DHHS), after four inmates were killed and one inmate was seriously injured as a result of a jailhouse fire. Plaintiffs' complaint, which alleged that the inspector for DHHS was negligent in his inspection of the jail and that DHHS failed to properly train the inspector to perform his duties as an inspector of county jails, was not barred under the public duty doctrine because DHHS' duty to inspect was for the purpose of protecting the inmates and not for protection of the public generally or, even if the public duty doctrine did apply, plaintiffs fell within the special relationship exception to that doctrine of custodian/prisoner, therefore, the motion to dismiss filed by DHHS was properly denied. Multiple Claimants v. N.C. HHS, Div. of Facility & Detention Servs., 176 N.C. App. 278, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006), modified and aff'd, 361 N.C. 372, 646 S.E.2d 356 (2007) as to special relationships.

Special relationship exception to the public duty doctrine applied to the inmates' negligence claims arising from a fire in a county jail where the relevant statutes and regulations, G.S. 153A-220(3) and G.S. 153A-222, 10A N.C. Admin. Code 14J.1302(c), and 14J.1303 (June 2006), showed that the North Carolina Department of Health and Human Services had a duty to inspect local jails to ensure that they met the minimum fire safety standards. Multiple Claimants v. N.C. HHS, Div. of Facility Servs., 361 N.C. 372, 646 S.E.2d 356, 2007 N.C. LEXIS 599 (2007).

§ 153A-221. Minimum standards.

(a) The Secretary shall develop and publish minimum standards for the operation of local confinement facilities and may from time to time develop and publish amendments to the standards. The standards shall be developed with a view to providing secure custody of prisoners and to protecting their health and welfare and providing for their humane treatment. The standards shall provide for:

(1) Secure and safe physical facilities;
(2) Jail design;
(3) Adequacy of space per prisoner;
(4) Heat, light, and ventilation;
(5) Supervision of prisoners;
(6) Personal hygiene and comfort of prisoners;
(7) Medical care for prisoners, including mental health, mental retardation, and substance abuse services;
(8) Sanitation;
(9) Food allowances, food preparation, and food handling;
(10) Any other provisions that may be necessary for the safekeeping, privacy, care, protection, and welfare of prisoners.

(b) In developing the standards and any amendments thereto, the Secretary shall consult with organizations representing local government and local law enforcement, including the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Sheriffs' Association, and the North Carolina Police Executives' Association. The Secretary shall also consult with interested State departments and agencies, including the Department of Correction, the Department of Health and Human Services, the Department of Insurance, and the North Carolina Criminal Justice Education and Training Standards Commission, and the North Carolina Sheriffs' Education and Training Standards Commission.

(c) Before the standards or any amendments thereto may become effective, they must be approved by the Commission and the Governor. Upon becoming effective, they have the force and effect of law.

(d) Notwithstanding any law or rule to the contrary, each dormitory in a county detention facility may house up to 56 inmates as long as the dormitory provides all of the following:

(1) A minimum floor space of 70 square feet per inmate, including both the sleeping and dayroom areas.
(2) One shower per eight inmates, one toilet per eight inmates, one sink with a security mirror per eight inmates, and one water fountain.
(3) A telephone jack or other telephone arrangement provided within the dormitory.
(4) Space designed to allow a variety of activities.
(5) Sufficient seating and tables for all inmates.
(6) A way for officers to observe the entire area from the entrance.

This subsection applies only to those counties that have a population in excess of 600,000, according to the most recent decennial federal census. (1967, c. 581, s. 2; 1973, c. 476, ss. 128, 133, 138; c. 822, s. 1; 1983, c. 745, s. 6; c. 768, s. 20; 1991, c. 237, s. 1; 1997-443, s. 11A.118(a); 2008-194, s. 10(a), (b).)

Cross References. — As to detention of juveniles in holdover facilities meeting the minimum standards of this section where no juvenile detention home is available, see now G.S. 7B-505, 7B-1905.

Use of Closed Prison Facilities. — Session Laws 2009-451, s. 19.4(a) and (b), provides: "In conjunction with the closing of prison facilities, including small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located, with the elected State and local officials, and with State and federal agencies about the possibility of converting that unit to other use. The Department may also consult with any private for-profit or nonprofit firm about the possibility of converting the unit to other use. In developing a proposal for future use of each unit, the Department shall give priority to converting the unit to other criminal justice use. Consistent with existing law and the future needs of the Department of Correction, the State may provide for the transfer or the lease of any of these units to counties, municipalities, State agencies, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from one security custody level to another, where that conversion would be cost-effective. A prison unit under lease to a county pursuant to the provisions of this section for use as a jail is exempt for the period of the lease from any of the minimum standards adopted by the Secretary of Health and Human Services pursuant to G.S. 153A-221 for the housing of adult prisoners that would subject the unit to greater standards than those required of a unit of the State prison system.

"Prior to any transfer or lease of these units, the Department of Correction shall report on the terms of the proposed transfer or lease to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The Department of Correction also shall provide annual summary reports to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the conversion of these units to other use and on all leases or transfers entered into pursuant to this section.

"The Department of Correction shall study the feasibility of establishing probation revocation centers at closed prison facilities. The Department shall consult with counties to explore cost-sharing of these facilities. The Department shall report its findings to the Chairs of the Appropriations Subcommittees on Justice and Public Safety by February 1, 2010."

For prior similar provisions, see Session Laws 2003-284, s. 16.5, Session Laws 2005-276, s. 17.5, and Session Laws 2007-323, s. 17.7.

Editor's Note. — Session Laws 1999-237, s. 18.11 provides that the Department of Corrections shall consult with State and local government officials and may consult with private for-profit or nonprofit firms regarding the transfer, lease, or conversion to other use of prison facilities closed or consolidated under the Government Performance Audit Committee.

Session Laws 2008-194, s. 10(a), (b), effective August 8, 2008, has been codified as subsection (d) of this section at the direction of the Revisor of Statutes.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Legal Periodicals. — For note, "North Carolina County Jail Inmates' Right of Access to Courts," see 66 N.C.L. Rev. 583 (1988).

CASE NOTES

Negligence Claim Against State Jail Inspection Agency Not Barred By Public Duty Doctrine. — Public duty doctrine did not apply to bar a negligence suit brought by multiple plaintiffs against the North Carolina Department of Health and Human Services (DHHS), after four inmates were killed and one inmate was seriously injured as a result of a jailhouse fire. Plaintiffs' complaint, which alleged that the inspector for DHHS was negligent in his inspection of the jail and that DHHS failed to properly train the inspector to perform his duties as an inspector of county jails, was not barred under the public duty doctrine because DHHS' duty to inspect was for the purpose of protecting the inmates and not for protection of the public generally or, even if the public duty doctrine did apply, plaintiffs fell within the special relationship exception to that doctrine of custodian/prisoner, therefore, the motion to dismiss filed by DHHS was properly denied. Multiple Claimants v. N.C. HHS, Div. of Facility & Detention Servs., 176 N.C. App. 278, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006), modified and aff'd, 361 N.C. 372, 646 S.E.2d 356 (2007) as to special relationships.

Prison Health Clinician Was Agent of Sheriff. — Because a sheriff had a nondelegable duty to provide medical care to inmates, defendant, who was employed by prison health services as a mental health clinician, was an agent of the sheriff as a matter of law; in a prosecution for sexual activity by a custodian, the trial court did not err in barring in limine the introduction of a contract, which according to defendant showed that he was an independent contractor and not an agent or employee of the sheriff's office, because as a matter of law defendant was acting as an agent of the sheriff when the crimes were allegedly committed. State v. Wilson, 183 N.C. App. 100, 643 S.E.2d 620, 2007 N.C. App. LEXIS 844 (2007), aff'd, 362 N.C. 162, 655 S.E.2d 359 (2008), State v. Wilson, 183 N.C. App. 100, 643 S.E.2d 620, 2007 N.C. App. LEXIS 844 (2007).

Applied in State ex rel. Williams v. Adams, 288 N.C. 501, 219 S.E.2d 198 (1975).

Cited in Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988); Reid v. Kayye, 885 F.2d 129 (4th Cir. 1989); Multiple Claimants v. N.C. HHS, Div. of Facility Servs., 361 N.C. 372, 646 S.E.2d 356, 2007 N.C. LEXIS 599 (2007).

§ 153A-221.1. Standards and inspections.

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training.

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child. (1973, c. 1230, s. 2; c. 1262, s. 10; 1975, c. 426, s. 2; 1983, c. 768, s. 21; 1997-443, s. 11A.118(a); 1998-202, s. 13(nn); 1999-423, s. 12; 2000-137, s. 4(hh).)

§ 153A-222. Inspections of local confinement facilities.

Department personnel shall visit and inspect each local confinement facility at least semiannually. The purpose of the inspections is to investigate the conditions of confinement, the treatment of prisoners, the maintenance of entry level employment standards for jailers and supervisory and administrative personnel of local confinement facilities as provided for in G.S. 153A-216(4), and to determine whether the facilities meet the minimum standards published pursuant to G.S. 153A-221. The inspector shall make a written report of each inspection and submit it within 30 days after the day the inspection is completed to the governing body and other local officials responsible for the facility. The report shall specify each way in which the facility does not meet the minimum standards. The governing body shall consider the report at its first regular meeting after receipt of the report and shall promptly initiate any action necessary to bring the facility into conformity with the standards. Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department of Health and Human Services who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been inmates of the facility being inspected. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided the patient, resident or client has not made written objection to such disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the inmate or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section the patient, resident or client must be advised in writing that he has the right to object in writing to such release of information or review of his records and that by an objection in writing he may prohibit the inspection or release of his records. (1947, c. 915; 1967, c. 581, s. 2; 1973, c. 822, s. 1; 1981, c. 586, s. 6; 1983, c. 745, s. 7; 1997-443, s. 11A.118(a).)

Cross References. — As to detention of juveniles in holdover facilities inspected pursuant to G.S. 131D-11 through 131D-13 and this section where no juvenile detention home is available, see now G.S. 7B-505, 7B-1905.

CASE NOTES

Negligence Claim Against State Jail Inspection Agency Not Barred By Public Duty Doctrine. — Public duty doctrine did not apply to bar a negligence suit brought by multiple plaintiffs against the North Carolina Department of Health and Human Services (DHHS), after four inmates were killed and one inmate was seriously injured as a result of a jailhouse fire. Plaintiffs' complaint, which alleged that the inspector for DHHS was negligent in his inspection of the jail and that DHHS failed to properly train the inspector to perform his duties as an inspector of county jails, was not barred under the public duty doctrine because DHHS' duty to inspect was for the purpose of protecting the inmates and not for protection of the public generally or, even if the public duty doctrine did apply, plaintiffs fell within the special relationship exception to that doctrine of custodian/prisoner, therefore, the motion to dismiss filed by DHHS was properly denied. Multiple Claimants v. N.C. HHS, Div. of Facility & Detention Servs., 176 N.C. App. 278, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006), modified and aff'd, 361 N.C. 372, 646 S.E.2d 356 (2007) as to special relationships.

Special relationship exception to the public duty doctrine applied to the inmates' negligence claims arising from a fire in a county jail where the relevant statutes and regulations, G.S. 153A-220(3) and G.S. 153A-222, 10A N.C. Admin. Code 14J.1302(c), and 14J.1303 (June 2006), showed that the North Carolina Department of Health and Human Services had a duty to inspect local jails to ensure that they met the minimum fire safety standards. Multiple Claimants v. N.C. HHS, Div. of Facility Servs., 361 N.C. 372, 646 S.E.2d 356, 2007 N.C. LEXIS 599 (2007).

Cited in Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988); Reid v. Kayye, 885 F.2d 129 (4th Cir. 1989).

OPINIONS OF ATTORNEY GENERAL

Posting of Sign Concerning Right to Object to Release of Information Is Insufficient Notice. — See opinion of Attorney General to Mr. I.O. Wilkerson, Jr., Director, Division of Facility Services, 51 N.C.A.G. 17 (1981).

§ 153A-223. Enforcement of minimum standards.

If an inspection conducted pursuant to G.S. 153A-222 discloses that the jailers and supervisory and administrative personnel of a local confinement facility do not meet the entry level employment standards established pursuant to Chapter 17C or Chapter 17E or that a local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the Secretary may order corrective action or close the facility, as provided in this section:

(1) The Secretary shall give notice of his determination to the governing body and each other local official responsible for the facility. The Secretary shall also send a copy of this notice, along with a copy of the inspector's report, to the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the facility is located. Upon receipt of the Secretary's notice, the governing body shall call a public hearing to consider the report. The hearing shall be held within 20 days after the day the Secretary's notice is received. The inspector shall appear at this hearing to advise and consult with the governing body concerning any corrective action necessary to bring the facility into conformity with the standards.

(2) The governing body shall, within 30 days after the day the Secretary's notice is received, request a contested case hearing, initiate appropriate corrective action or close the facility. The corrective action must be completed within a reasonable time.

(3) A contested case hearing, if requested, shall be conducted pursuant to G.S. 150B, Article 3. The issues shall be: (i) whether the facility meets the minimum standards; (ii) whether the conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined therein; and (iii) the appropriate corrective action to be taken and a reasonable time to complete that action.

(4) If the governing body does not, within 30 days after the day the Secretary's notice is received, or within 30 days after service of the final agency decision if a contested case hearing is held, either initiate corrective action or close the facility, or does not complete the action

within a reasonable time, the Secretary may order that the facility be closed.

(5) The governing body may appeal an order of the Secretary to the senior resident superior court judge. The governing body shall initiate the appeal by giving by registered mail to the judge and to the Secretary notice of its intention to appeal. The notice must be given within 15 days after the day the Secretary's order is received. If notice is not given within the 15-day period, the right to appeal is terminated.

(6) The senior resident superior court judge shall hear the appeal. He shall cause notice of the date, time, and place of the hearing to be given to each interested party, including the Secretary, the governing body, and each other local official involved. The Secretary, if a contested case hearing has been held, shall file the official record, as defined in G.S. 150B-37, with the senior resident superior court judge and shall serve a copy on each person who has been given notice of the hearing. The judge shall conduct the hearing without a jury. He shall consider the official record, if any, and may accept evidence from the Secretary, the governing body, and each other local official which he finds appropriate. The issue before the court shall be whether the facility continues to jeopardize the safe custody, safety, health, or welfare of persons confined therein. The court may affirm, modify, or reverse the Secretary's order. (1947, c. 915; 1967, c. 581, s. 2; 1973, c. 476, s. 138; c. 822, s. 1; 1981, c. 614, ss. 20, 21; 1983, c. 745, s. 8; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 123.)

CASE NOTES

The use of the word "may" in this section is not accidental. It is consistent with the clearly defined statutory role of the Department and its Secretary. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988), aff'd sub nom. Reid v. Kayye, 878 F.2d 1430 (4th Cir.), 885 F.2d 129 (4th Cir. 1989).

The enforcement of minimum standards at local jails is a discretionary duty. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988), aff'd sub nom. Reid v. Kayye, 878 F.2d 1430 (4th Cir.), 885 F.2d 129 (4th Cir. 1989).

Secretary's affirmative duties are limited by the discretionary language in this section. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988), aff'd sub nom. Reid v. Kayye, 878 F.2d 1430 (4th Cir.), 885 F.2d 129 (4th Cir. 1989).

Negligence Claim Against State Jail Inspection Agency Not Barred By Public Duty Doctrine. — Public duty doctrine did not apply to bar a negligence suit brought by multiple plaintiffs against the North Carolina Department of Health and Human Services (DHHS), after four inmates were killed and one inmate was seriously injured as a result of a jailhouse fire. Plaintiffs' complaint, which alleged that the inspector for DHHS was negligent in his inspection of the jail and that DHHS failed to properly train the inspector to perform his duties as an inspector of county jails, was not barred under the public duty doctrine because DHHS' duty to inspect was for the purpose of protecting the inmates and not for protection of the public generally or, even if the public duty doctrine did apply, plaintiffs fell within the special relationship exception to that doctrine of custodian/prisoner, therefore, the motion to dismiss filed by DHHS was properly denied. Multiple Claimants v. N.C. HHS, Div. of Facility & Detention Servs., 176 N.C. App. 278, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006), modified and aff'd, 361 N.C. 372, 646 S.E.2d 356 (2007) as to special relationships.

Discretion of Secretary. — Use of the word "may" in this section is purposeful. Department of Human Resources officials are not vested with the mandatory duty to remedy substandard jail conditions, since there is no evidence that the General Assembly intends the Secretary to have anything more than the discretionary power to act when and if he chooses to use that discretion. Reid v. Kayye, 885 F.2d 129 (4th Cir. 1989).

County and its Board of Commissioners were liable under 42 U.S.C. § 1983 for past and continuing deprivations of constitutional rights of county prisoners and were subject to equitable remedies against them. Parnell v. Waldrep, 538 F. Supp. 1203 (W.D.N.C. 1982).

State Officials Held Not Liable for Conditions at a County Jail. — In an action by inmates of a county jail against state officials of the Department of Human Resources alleging the existence of unconstitutional conditions at the jail, the state officials could not be held vicariously liable under 42 U.S.C.A. § 1983, where plaintiffs did not demonstrate that actions taken by the officials under color of state law in any way caused constitutionally deficient conditions at the county jail. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988), aff'd sub nom. Reid v. Kayye, 878 F.2d 1430 (4th Cir.), 885 F.2d 129 (4th Cir. 1989).

§ 153A-224. Supervision of local confinement facilities.

(a) No person may be confined in a local confinement facility unless custodial personnel are present and available to provide continuous supervision in order that custody will be secure and that, in event of emergency, such as fire, illness, assaults by other prisoners, or otherwise, the prisoners can be protected. These personnel shall supervise prisoners closely enough to maintain safe custody and control and to be at all times informed of the prisoners' general health and emergency medical needs.

(b) In a medical emergency, the custodial personnel shall secure emergency medical care from a licensed physician according to the unit's plan for medical care. If a physician designated in the plan is not available, the personnel shall secure medical services from any licensed physician who is available. The unit operating the facility shall pay the cost of emergency medical services unless the inmate has third-party insurance, in which case the third-party insurer shall be the initial payor and the medical provider shall bill the third-party insurer. The county shall only be liable for costs not reimbursed by the third-party insurer, in which event the county may recover from the inmate the cost of the non-reimbursed medical services.

(c) If a person violates any provision of this section, he is guilty of a Class 1 misdemeanor. (1967, c. 581, s. 2; 1973, c. 822, s. 1; 1993, c. 510, s. 1; c. 539, s. 1061; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to liability of county for emergency medical services for prisoners working pursuant to G.S. 162-58, see G.S. 162-61.

Legal Periodicals. — For note as to sheriff's liability for prisoner suicide, in light of Helmly v. Bebber, 77 N.C. App. 275, 335 S.E.2d 182 (1985), see 64 N.C.L. Rev. 1520 (1986).

CASE NOTES

Subdivision (b) of this section and § 153A-225 require that a county provide emergency medical services to prisoners incarcerated in the county's jail and pay for such services. University of N.C. v. Hill, 96 N.C. App. 673, 386 S.E.2d 755, aff'd, 327 N.C. 465, 396 S.E.2d 323 (1990).

City Not Liable for Cost of Treatment Where Persons Arrested Were Confined in County Jail. — A city was not liable to a hospital for the cost of treating a habitual inebriate who was injured when he fell while being assisted by city police officers, where there was no express agreement to pay for such services. Nor was there an implied promise to pay, pursuant to a statutory duty, since persons arrested by city police officers, if confined, were confined in the county jail. Under subsection (b) of this section, the cost of emergency medical services rendered to persons confined in local confinement facilities is imposed on the local governmental unit operating the facility. Craven County Hosp. Corp. v. Lenoir County, 75 N.C. App. 453, 331 S.E.2d 690, cert. denied, 314 N.C. 663, 336 S.E.2d 620 (1985).

Payment of Expenses Under Insurance Policy. — Since medical payments made by county were mandated by statute, paying jail inmate's medical expenses was not voluntary, and therefore, payment under insurance policy was not barred for this reason. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

County's Claim Not Barred by Policy Exclusion. — Although insurance company argued that since county had a contract with hospital to provide medical care for prison inmates, policy exclusion barred coverage of payments made under that contract, since the county's liability for inmate's medical expenses was due not to its contract with the hospital, but rather to the statutory requirement that county prisons implement a plan for providing medical care to inmates, the county's claim was not barred by this policy exclusion. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

Claims Not Barred by Policy Exclusion. — In a wrongful death action arising from an incident at a county jail, although the sheriff claimed that sovereign immunity entitled him to summary judgment as a matter of law to the extent plaintiffs — the decedent's mother and the administrator of his estate, sought to recover damages in excess of the sheriff's official bond under G.S. 162-8 and G.S. 58-76-5, plaintiffs' claims were not barred by exclusions in the county's liability insurance under G.S. 153A-435; although the policy excluded coverage for claims arising from criminal behavior and plaintiffs claimed the sheriff was negligent by violating G.S. 153A-224 — a Class 1 misdemeanor, other grounds were alleged for the sheriff's negligence. Myers v. Bryant, 188 N.C. App. 585, 655 S.E.2d 882, 2008 N.C. App. LEXIS 215 (2008).

Breach of Duty to Provide Safety and Medical Care to Inmate. — Summary judgment was denied to defendant sheriff and officers, where plaintiff suffered a severe brain injury while in their custody, and there was sufficient evidence of deliberate and reckless indifference to his medical needs under State and federal law. Layman v. Alexander, 343 F. Supp. 2d 483, 2004 U.S. Dist. LEXIS 23464 (W.D.N.C. 2004).

Cited in Slade v. Vernon, 110 N.C. App. 422, 429 S.E.2d 744 (1993); Knight v. Vernon, 23 F. Supp. 2d 634 (M.D.N.C. 1998); Knight v. Vernon, 214 F.3d 544, 2000 U.S. App. LEXIS 12098 (4th Cir. 2000).

§ 153A-225. Medical care of prisoners.

(a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;

(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;

(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health director after consultation with the area mental health, developmental disabilities, and substance abuse authority, if it is adequate to protect the health and welfare of the prisoners. Upon a determination that the plan is adequate to protect the health and welfare of the prisoners, the plan must be adopted by the governing body.

As a part of its plan, each unit may establish fees of not more than ten dollars ($10.00) per incident for the provision of nonemergency medical care to prisoners. In establishing fees pursuant to this section, each unit shall establish a procedure for waiving fees for indigent prisoners.

(b) If a prisoner in a local confinement facility dies, the medical examiner and the coroner shall be notified immediately. Within five days after the day of the death, the administrator of the facility shall make a written report to the local or district health director and to the Secretary of Health and Human Services. The report shall be made on forms developed and distributed by the Department of Health and Human Services.

(b1) Whenever a local confinement facility transfers a prisoner from that facility to another local confinement facility, the transferring facility shall provide the receiving facility with any health information or medical records the transferring facility has in its possession pertaining to the transferred prisoner.

(c) If a person violates any provision of this section (including the requirements regarding G.S. 130-97 and 130-121), he is guilty of a Class 1 misdemeanor. (1967, c. 581, s. 2; 1973, c. 476, ss. 128, 138; c. 822, s. 1; 1973, c. 1140, s. 3; 1989, c. 727, s. 204; 1991, c. 237, s. 2; 1993, c. 539, s. 1062; 1994, Ex. Sess.,

c. 24, s. 14(c); 1995, c. 385, s. 1; 1997-443, s. 11A.112; 2003-392, s. 1; 2004-199, s. 46(a).)

Editor's Note. — Sections 130-97 and 130-121, referred to in subsection (c) of this section, were repealed by Session Laws 1983, c. 891, s. 1.

CASE NOTES

This section and § 153A-224(b) require that a county provide emergency medical services to prisoners incarcerated in the county's jail and pay for such services. University of N.C. v. Hill, 96 N.C. App. 673, 386 S.E.2d 755, aff'd, 327 N.C. 465, 396 S.E.2d 323 (1990).

Liability of County for Emergency Medical Services. — Where a sheriff in an emergency requested a physician to render services to a prisoner in his custody who had been badly wounded resisting arrest, and there was evidence tending to show that under the circumstances he could not have obtained in time an order from the board of county commissioners assuming responsibility on behalf of the county to pay for such services, the objection of the commissioners that under such circumstances the county would not pay for the services and that liability would only attach as to those prisoners delivered at the county jail was untenable. Spicer v. Williamson, 191 N.C. 487, 132 S.E. 291 (1926), decided under former law.

Payment of Expenses Under Insurance Policy. — Since medical payments made by county were mandated by statute, paying jail inmate's medical expenses was not voluntary, and therefore, payment under insurance policy was not barred for this reason. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

County's Claim Not Barred by Policy Exclusion. — Although insurance company argued that since county had a contract with hospital to provide medical care for prison inmates, policy exclusion barred coverage of payments made under that contract, since the county's liability for inmate's medical expenses was due not to its contract with the hospital, but rather to the statutory requirement that county prisons implement a plan for providing medical care to inmates, the county's claim was not barred by this policy exclusion. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

Applied in State ex rel. Williams v. Adams, 288 N.C. 501, 219 S.E.2d 198 (1975).

§ 153A-225.1. Duty of custodial personnel when prisoners are unconscious or semiconscious.

(a) Whenever a custodial officer of a local confinement facility takes custody of a prisoner who is unconscious, semiconscious, or otherwise apparently suffering from some disabling condition and unable to provide information on the causes of the condition, the officer should make a reasonable effort to determine if the prisoner is wearing a bracelet or necklace containing the Medic Alert Foundation's emergency alert symbol to indicate that the prisoner suffers from diabetes, epilepsy, a cardiac condition or any other form of illness which would cause a loss of consciousness. If such a symbol is found indicating that the prisoner suffers from one of those conditions, the officer must make a reasonable effort to have appropriate medical care provided.

(b) Failure of a custodial officer of a local confinement facility to make a reasonable effort to discover an emergency alert symbol as required by this section does not by itself establish negligence of the officer but may be considered along with other evidence to determine if the officer took reasonable precautions to ascertain the emergency medical needs of the prisoner in his custody.

(c) A prisoner who is provided medical care under the provisions of this section is liable for the reasonable costs of that care unless he is indigent.

(d) Repealed by Session Laws 1975, c. 818, s. 2. (1975, c. 306, s. 2; c. 818, s. 2.)

§ 153A-226. Sanitation and food.

(a) The Commission for Public Health shall adopt rules governing the sanitation of local confinement facilities, including the kitchens and other places where food is prepared for prisoners. The rules shall address, but not be limited to, the cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other facilities; adequacy of lighting, water, lavatory facilities, bedding, food protection facilities, treatment of eating and drinking utensils, and waste disposal; methods of food preparation, handling, storage, and serving; and any other item necessary to the health of the prisoners or the public.

(b) The Commission for Public Health shall prepare a score sheet to be used by local health departments in inspecting local confinement facilities. The local health departments shall inspect local confinement facilities as often as may be required by the Commission for Public Health. If an inspector of the Department finds conditions that reflect hazards or deficiencies in the sanitation or food service of a local confinement facility, he shall immediately notify the local health department. The health department shall promptly inspect the facility. After making its inspection, the local health department shall forward a copy of its report to the Department of Health and Human Services and to the unit operating the facility, on forms prepared by the Department of Environment and Natural Resources. The report shall indicate whether the facility and its kitchen or other place for preparing food is approved or disapproved for public health purposes. If the facility is disapproved, the situation shall be rectified according to the procedures of G.S. 153A-223. (1967, c. 581, s. 2; 1973, c. 476, s. 128; c. 822, s. 1; 1989, c. 727, s. 205; 1993, c. 262, s. 5; 1997-443, ss. 11A.113, 11A.118(a); 2007-182, s. 2.)

§ 153A-227: Repealed by Session Laws 1983, c. 745, s. 9.

§ 153A-228. Separation of sexes.

Male and female prisoners shall be confined in separate facilities or in separate quarters in local confinement facilities. (1967, c. 581, s. 2; 1973, c. 822, s. 1.)

§ 153A-229. Jailers' report of jailed defendants.

The person having administrative control of a local confinement facility must furnish to the clerk of superior court a report listing such information reasonably at his disposal as is necessary to enable said clerk of superior court to comply with the provisions of G.S. 7A-109.1. (1973, c. 1286, s. 23; 1981, c. 522.)

Part 3. Satellite Jail/Work Release Units.

§ 153A-230. Legislative policy.

The policy of the General Assembly with respect to satellite jail/work release units is:

(1) To encourage counties to accept responsibility for incarcerated misdemeanants thereby relieving the State prison system of its misdemeanant population;

(2) To assist counties in providing suitable facilities for certain misdemeanants who receive active sentences;

(3) To allow more misdemeanants who are employed at the time of sentencing to retain their jobs by eliminating the time involved in processing persons through the State system;
(4) To enable misdemeanants to pay for their upkeep while serving time, to pay restitution, to continue to support their dependents, and to remain near the communities and families to which they will return after serving their time;
(5) To provide more appropriate, cost effective housing for certain minimum custody misdemeanants and to utilize vacant buildings where possible and suitable for renovation;
(6) To provide a rehabilitative atmosphere for non-violent misdemeanants who otherwise would face a substantial threat of imprisonment; and
(7) To encourage the use of alternative to incarceration programs. (1987, c. 207, s. 1.)

Editor's Note. — Session Laws 1987, c. 207, s. 4 made this Part effective July 1, 1987, but provided that the act should not be construed to obligate the General Assembly to make any appropriation to implement its provisions, nor should it be construed to obligate the State to make any grant for which no funds have been appropriated by the General Assembly.

Legal Periodicals. — For note, "North Carolina County Jail Inmates' Right of Access to Courts," see 66 N.C.L. Rev. 583 (1988).

§ 153A-230.1. Definitions.

Unless otherwise clearly required by the context, the words and phrases defined in this section have the meanings indicated when used in this Part:
(1) "Office" means the Office of State Budget and Management.
(2) "Satellite Jail/Work Release Unit" means a building or designated portion of a building primarily designed, staffed, and used for the housing of misdemeanants participating in a work release program. These units shall house misdemeanants only, except that, if he so chooses, the Sheriff may accept responsibility from the Department of Correction for the housing of felons who do not present security risks, who have achieved work release status, and who will be employed on work release, or for felons committed directly to his custody pursuant to G.S. 15A-1352(b). These units shall be operated on a full time basis, i.e., seven days/nights a week. (1987, c. 207, s. 1; 1987, (Reg. Sess., 1988), c. 1106, s. 1; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

CASE NOTES

Cited in State v. Ellis, 168 N.C. App. 651, 608 S.E.2d 803, 2005 N.C. App. LEXIS 449 (2005); State v. Dent, 174 N.C. App. 459, 621 S.E.2d 274, 2005 N.C. App. LEXIS 2491 (2005).

§ 153A-230.2. Creation of Satellite Jail/Work Release Unit Fund.

(a) There is created in the Office of State Budget and Management the County Satellite Jail/Work Release Unit Fund to provide State grant funds for counties or groups of counties for construction of satellite jail/work release units for certain misdemeanants who receive active sentences. A county or group of counties may apply to the Office for a grant under this section. The application shall be in a form established by the Office. The Office shall:
(1) Develop application and grant criteria based on the basic requirements listed in this Part,

(2) Provide all Boards of County Commissioners and Sheriffs with the criteria and appropriate application forms, technical assistance, if requested, and a proposed written agreement,

(3) Review all applications,

(4) Select grantees and award grants,

(5) Award no more than seven hundred fifty thousand dollars ($750,000) for any one county or group of counties except that if a group of counties agrees to jointly operate one unit for males and one unit for females, the maximum amount may be awarded for each unit,

(6) Take into consideration the potential number of misdemeanants and the percentage of the county's or counties' misdemeanant population to be diverted from the State prison system,

(7) Take into consideration the utilization of existing buildings suitable for renovation where appropriate,

(8) Take into consideration the timeliness with which a county proposes to complete and occupy the unit,

(9) Take into consideration the appropriateness and cost effectiveness of the proposal,

(10) Take into consideration the plan with which the county intends to coordinate the unit with other community service programs such as intensive supervision, community penalties, and community service.

When considering the items listed in subdivisions (6) through (10), the Office shall determine the appropriate weight to be given each item.

(b) A county or group of counties is eligible for a grant under this section if it agrees to abide by the basic requirements for satellite jail/work release units established in G.S. 153A-230.3. In order to receive a grant under this section, there must be a written agreement to abide by the basic requirements for satellite jail/work release units set forth in G.S. 153A-230.3. The written agreement shall be signed by the Chairman of the Board of County Commissioners, with approval of the Board of County Commissioners and after consultation with the Sheriff, and a representative of the Office of State Budget and Management. If a group of counties applies for the grant, then the agreement must be signed by the Chairman of the Board of County Commissioners of each county. Any variation from, including termination of, the original signed agreement must be approved by both the Office of State Budget and Management and by a vote of the Board of County Commissioners of the county or counties.

When the county or group of counties receives a grant under this section, the county or group of counties accepts ownership of the satellite jail/work release unit and full financial responsibility for maintaining and operating the unit, and for the upkeep of its occupants who comply with the eligibility criteria in G.S. 153A-230.3(a)(1). The county shall receive from the Department of Correction the amount paid to local confinement facilities under G.S. 148-32.1 for prisoners which are in the unit, but do not meet the eligibility of requirements under G.S. 153A-230.3(a)(1). (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, ss. 2, 3; 1989, c. 761, s. 2; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2009-372, s. 7.)

Editor's Note. — Session Laws 2009-372, s. 19 is a severability clause.

Effect of Amendments. — Session Laws 2009-372, s. 7, effective December 1, 2009, and applicable to offenses committed on or after that date, substituted "supervision" for "probation" in subdivision (a)(10).

§ 153A-230.3. Basic requirements for satellite jail/work release units.

(a) Eligibility for Unit. — The following rules shall govern which misdemeanants are housed in a satellite jail/work release unit:

(1) Any convicted misdemeanant who:

a. Receives an active sentence in the county or group of counties operating the unit,

b. Is employed in the area or can otherwise earn his keep by working at the unit on maintenance and other jobs related to upkeep and operation of the unit or by assignment to community service work, and

c. Consents to placement in the unit under these conditions,

shall not be sent to the State prison system except by written findings of the sentencing judge that the misdemeanant is violent or otherwise a threat to the public and therefore unsuitable for confinement in the unit.

(2) The County shall offer work release programs to both male and female misdemeanants, through local facilities for both, or through a contractual agreement with another entity for either, provided that such arrangement is in reasonable proximity to the misdemeanant's workplace.

(3) The sentencing judge shall make a finding of fact as to whether the misdemeanant is qualified for occupancy in the unit pursuant to G.S. 15A-1352(a). If the sentencing judge determines that the misdemeanant is qualified for occupancy in the unit and the misdemeanant meets the requirements of subdivision (1), then the custodian of the local confinement facility may transfer the misdemeanant to the unit. If at any time either prior to or after placement of an inmate into the unit the Sheriff determines that there is an indication of violence, unsuitable behavior, or other threat to the public that could make the prisoner unsuitable for the unit, the Sheriff may place the prisoner in the county jail.

(4) The Sheriff may accept work release misdemeanants from other counties provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening.

(5) The Sheriff may accept work release misdemeanants or felons from the Department of Correction provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening.

(a1) Non-eligible for unit. — If the sentencing judge finds that the misdemeanant does not meet the eligibility criteria set forth in G.S. 135A-230.3(a)(1)b, but is otherwise eligible for placement in the unit, then the Sheriff may transfer the misdemeanant from the local confinement facility to the unit if the misdemeanant meets the eligibility criteria at a later date. The Sheriff may also transfer prisoners who were placed in the unit pursuant to G.S. 148-32.1(b) to the local confinement facility when space becomes available.

(b) Operation of Satellite Jail/Work Release Unit. — A county or group of counties operating a satellite jail/work release unit shall comply with the following requirements concerning operation of the unit:

(1) The county shall make every effort to ensure that at least eighty percent (80%) of the unit occupants shall be employed and on work release, and that the remainder shall earn their keep by working at the unit on maintenance and other jobs related to the upkeep and

operation of the unit or by assignment to community service work, and that alcohol and drug rehabilitation be available through community resources.

(2) The county shall require the occupants to give their earnings, less standard payroll deduction required by law and premiums for group health insurance coverage, to the Sheriff. The county may charge a per day charge from those occupants who are employed or otherwise able to pay from other resources available to the occupants. The per day charge shall be calculated based on the following formula: The charge shall be either the amount that the Department of Correction deducts from a prisoner's work-release earnings to pay for the cost of the prisoner's keep or fifty percent (50%) of the occupant's net weekly income, whichever is greater, but in no event may the per day charge exceed an amount that is twice the amount that the Department of Correction pays each local confinement facility for the cost of providing food, clothing, personal items, supervision, and necessary ordinary medical expenses. The per day charge may be adjusted on an individual basis where restitution and/or child support has been ordered, or where the occupant's salary or resources are insufficient to pay the charge.

The county also shall accumulate a reasonable sum from the earnings of the occupant to be returned to him when he is released from the unit. The county also shall follow the guidelines established for the Department of Correction in G.S. 148-33.1(f) for determining the amount and order of disbursements from the occupant's earnings.

(3) Any and all proceeds from daily fees shall belong to the county's General Fund to aid in offsetting the operation and maintenance of the satellite unit.

(4) The unit shall be operated on a full-time basis, i.e., seven days/nights a week, but weekend leave may be granted by the Sheriff. In granting weekend leave, the Sheriff shall follow the policies and procedures of the Department of Correction for granting weekend leave for Level 3 minimum custody inmates.

(5) Earned time shall be applied to these county prisoners in the same manner as prescribed in G.S. 15A-1340.20 and G.S. 148-13 for State prisoners.

(6) The Sheriff shall maintain complete and accurate records on each inmate. These records shall contain the same information as required for State prisoners that are housed in county local confinement facilities. (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, ss. 4, 5; 1989, c. 761, ss. 4, 7; 1993 (Reg. Sess., 1994), c. 767, s. 3.)

Editor's Note. — The reference in subsection (a1) of this section to G.S. 135A-230.3 was probably intended to refer to this section.

§ 153A-230.4. Standards.

The county satellite jail/work release units for misdemeanants shall not be subject to the standards promulgated for local confinement facilities pursuant to G.S. 153A-221. The Secretary of Health and Human Services shall develop and enforce standards for satellite/work release units. The Secretary shall take into consideration that they are to house only screened misdemeanants most of whom are on work release and therefore occupy the premises only in their off-work hours. After consultation with the North Carolina Sheriff's Association, the North Carolina Association of County Commissioners, and the Joint Legislative Commission on Governmental Operations, the Secretary of Health and Human Services shall promulgate standards suitable for these units by January 1, 1988, and shall include these units in the Department's monitoring and inspection responsibilities. Further, the North Carolina Sheriffs' Education and Training Standards Commission shall include appropriate training for Sheriffs and other county law enforcement personnel in regard to the operation, management and guidelines for county work release centers pursuant to its authority under G.S. 17E-4. (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, s. 6; 1997-443, s. 11A.118(a).)

§ 153A-230.5. Satellite jails/work release units built with non-State funds.

(a) If a county is operating a satellite jail/work release unit prior to the enactment of this act, the county may apply to the Office of State Budget and Management for grant funds to recover any verifiable construction or renovation costs for those units and for improvement funds except that the total for reimbursement and improvement shall not exceed seven hundred fifty thousand dollars ($750,000). Any county accepting such a grant or any other State monies for county satellite jails must agree to all of the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3.

(b) If a county operates a non-State funded satellite jail/work release unit that does not comply with the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3, then the satellite jail shall be subject to the standards, rules, and regulations to be promulgated by the Secretary of Health and Human Services pursuant to Part 2 of Article 10 of Chapter 153A. If a county is reimbursed for the cost of a prisoner's keep from an inmate's work release earnings in an amount equal to or greater than that paid by the Department of Correction to local confinement facilities under G.S. 148-32.1, the county may not receive additional payments from the department for the cost of a prisoner's keep. However, if reimbursement to the county for the cost of a prisoner's keep is less than the amount allowed under G.S. 148-32.1, the county may receive from the Department of Correction the difference in the amount received from work release earnings and the amount paid by the department to local confinement facilities. The department may promulgate rules regarding such payment arrangements. (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, s. 7; 1989, c. 761, s. 5; 1997-443, s. 11A.118(a); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

Editor's Note. — The phrase "this act" in subsection (a) refers to Session Laws 1987, c. 207, which became effective July 1, 1987.

§§ 153A-231, 153A-232: Reserved for future codification purposes.

ARTICLE 11.

Fire Protection.

§ 153A-233. Fire-fighting and prevention services.

A county may establish, organize, equip, support, and maintain a fire department; may prescribe the duties of the fire department; may provide financial assistance to incorporated volunteer fire departments; may contract for fire-fighting or prevention services with one or more counties, cities, or other units of local government or with an agency of the State government, or with one or more incorporated volunteer fire departments; and may for these purposes appropriate funds not otherwise limited as to use by law. The county may also designate fire districts or parts of existing districts and prescribe the boundaries thereof for insurance grading purposes. (1945, c. 244; 1973, c. 822, s. 1; 1977, c. 158.)

Local Modification. — Graham: 1985, c. 272; (As to Article 11) Halifax: 1993, c. 316, s. 1; Macon: 1985, c. 272; (As to Article 11) Richmond: 1995 (Reg. Sess., 1996), c. 657, s. 1.

§ 153A-234. Fire marshal.

A county may appoint a fire marshal and employ persons as his assistants. A county may also impose any duty that might be imposed on a fire marshal on any other officer or employee of the county. The board of commissioners shall set the duties of the fire marshal, which may include but are not limited to:

(1) Advising the board on improvements in the fire-fighting or fire prevention activities under the county's supervision or control.

(2) Coordinating fire-fighting and training activities under the county's supervision or control.

(3) Coordinating fire prevention activities under the county's supervision or control.

(4) Assisting incorporated volunteer fire departments in developing and improving their fire-fighting or fire prevention capabilities.

(5) Making fire prevention inspections, including the periodic inspections and reports of school buildings required by Chapter 115 and the inspections of child care facilities required by Chapter 110. A fire marshal shall not make electrical inspections unless he is qualified to do so under G.S. 153A-351. (1959, c. 290; 1969, c. 1064, s. 2; 1973, c. 822, s. 1; 1997-506, s. 62.)

Editor's Note. — Chapter 115, referred to in subdivision (5), was repealed by Session Laws 1981, c. 423, s. 1, and replaced by Chapter 115C.

§ 153A-235: Repealed by Session Laws 1989, c. 681, s. 14, effective July 1, 1991.

Editor's Note. — Session Laws 1989, c. 681, s. 14 repealed this section upon adoption of fire protection code provisions by the North Carolina Building Code Council. Such provisions were adopted July 1, 1991.

§ 153A-236. Honoring deceased or retiring firefighters.

A fire department established by a county pursuant to this Article may, in the discretion of the board of commissioners, award to a retiring firefighter or a surviving relative of a deceased firefighter, upon request, the fire helmet of the deceased or retiring firefighter, at a price determined in a manner authorized by the board. The price may be less than the fair market value of the helmet. (2003-145, s. 1.)

Cross References. — Municipality honoring deceased or retiring firefighters, see G.S. 160A-294.1.

§ 153A-237: Reserved for future codification purposes.

ARTICLE 12.

Roads and Bridges.

§ 153A-238. Public road defined for counties.

(a) In this Article "public road" or "road" means any road, street, highway, thoroughfare, or other way of passage that has been irrevocably dedicated to the public or in which the public has acquired rights by prescription, without regard to whether it is open for travel, except that in G.S. 153A-239.1, the word "road" means both private roads and public roads.

(b) Repealed by Session Laws 1993, c. 62, s. 1. (1979, 2nd Sess., c. 1319, s. 1; 1981, c. 568; 1983, cc. 98, 299; 1987 (Reg. Sess., 1988), cc. 900, 906; 1989, c. 335, s. 1; 1989 (Reg. Sess., 1990), cc. 836, 854, 911; 1991, c. 9, s. 1; 1991 (Reg. Sess., 1992), c. 778, s. 1; c. 849, ss. 1, 2.1; c. 936, s. 1; 1993, c. 62, s. 1.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1319, s. 1, as amended by Session Laws 1981, c. 568; 1983, cc. 98 and 299; 1987 (Reg. Sess., 1988), cc. 900 and 906; 1989, c. 335, s. 1; and 1989 (Reg. Sess., 1990), c. 836, was codified as this section at the direction of the Revisor of Statutes.

§ 153A-239: Repealed by Session Laws 1993, c. 62, s. 2, effective May 24, 1993.

Editor's Note. — Section 153A-238 formerly excepted certain counties from the application of this section. Session Laws 1993, c. 62, repealed this section and made G.S. 153A-238 statewide in application.

§ 153A-239.1. Naming roads and assigning street numbers in unincorporated areas for counties.

(a) A county may by ordinance name or rename any road within the county and not within a city, and may pursuant to a procedure established by ordinance assign or reassign street numbers for use on such a road. In naming or renaming a road, a county may not:

(1) Change the name, if any, given to the road by the Board of Transportation, unless the Board of Transportation agrees;
(2) Change the number assigned to the road by the Board of Transportation, but may give the road a name in addition to its number; or
(3) Give the road a name that is deceptively similar to the name of any other public road in the vicinity.

A county shall not name or rename a road or adopt an ordinance to establish a procedure to assign or reassign street numbers on a road until it has held a public hearing on the matter. At least 10 days before the day of the hearing to name or rename a road, the board of commissioners shall cause notice of the time, place and subject matter of the hearing to be prominently posted at the county courthouse, in at least two public places in the township or townships where the road is located, and shall publish a notice of such hearing in a newspaper of general circulation published in the county. At least 10 days before the day of the hearing to adopt an ordinance to establish a procedure to assign or reassign street numbers on a road, the board of commissioners shall publish a notice of such hearing in a newspaper of general circulation in the county. After naming or renaming a road, or assigning or reassigning street numbers on a road, a county shall cause notice of its action to be given to the local postmaster with jurisdiction over the road, to the Board of Transportation, and to any city within five miles of the road. Names may be initially assigned to new roads by recordation of an approved subdivision plat without following the procedure established by this section.

(b) Repealed by Session Laws 1993, c. 62, s. 3. (1979, 2nd Sess., c. 1319, s. 2; 1981, c. 568; 1983, cc. 98, 299; 1987 (Reg. Sess., 1988), cc. 900, 906; 1989, c. 335, s. 1; 1989 (Reg. Sess., 1990), cc. 836, 854, 911; 1991, c. 9, s. 2; 1991 (Reg. Sess., 1992), c. 778, s. 2; c. 849, ss. 2, 2.2; c. 936, s. 2; 1993, c. 62, s. 3; 2001-145, s. 1.)

Local Modification. — Cleveland: 1989, c. 156.

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1319, s. 2, as amended by Session Laws 1981, c. 568; 1983, cc. 98 and 299; 1987 (Reg. Sess., 1988), cc. 900 and 906; 1989, c. 335, s. 1; and 1989 (Reg. Sess., 1990), cc. 836, 854 and 911 has been codified as this section at the direction of the Revisor of Statutes.

CASE NOTES

Cited in State v. Mark, 154 N.C. App. 341, 571 S.E.2d 867, 2002 N.C. App. LEXIS 1447 (2002).

§ 153A-240: Repealed by Session Laws 1993, c. 62, s. 4, effective May 24, 1993.

Editor's Note. — Section 153A-239.1 formerly excepted certain counties from the application of this section. Session Laws 1993, c. 62, repealed this section and made G.S. 153A-239.1 statewide in application.

§ 153A-241. Closing public roads or easements.

A county may permanently close any public road or any easement within the county and not within a city, except public roads or easements for public roads under the control and supervision of the Department of Transportation. The board of commissioners shall first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question. The board shall cause a notice of the public hearing reasonably calculated to give full and fair disclosure of the proposed closing to be published once a week for three successive weeks before the hearing, a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement. At the hearing the board shall hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights. If, after the hearing, the board of commissioners is satisfied that closing the public road or easement is not contrary to the public interest and (in the case of a road) that no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the board may adopt an order closing the road or easement. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county.

Any person aggrieved by the closing of a public road or an easement may appeal the board of commissioners' order to the appropriate division of the General Court of Justice within 30 days after the day the order is adopted. The court shall hear the matter de novo and has jurisdiction to try the issues arising and to order the road or easement closed upon proper findings of fact by the trier of fact.

No cause of action founded upon the invalidity of a proceeding taken in closing a public road or an easement may be asserted except in an action or proceeding begun within 30 days after the day the order is adopted.

Upon the closing of a public road or an easement pursuant to this section, all right, title, and interest in the right-of-way is vested in those persons owning lots or parcels of land adjacent to the road or easement, and the title of each adjoining landowner, for the width of his abutting land, extends to the center line of the public road or easement. However, the right, title or interest vested in an adjoining landowner by this paragraph remains subject to any public utility use or facility located on, over, or under the road or easement immediately before its closing, until the landowner or any successor thereto pays to the utility involved the reasonable cost of removing and relocating the facility. (1949, c. 1208, ss. 1-3; 1957, c. 65, s. 11; 1965, cc. 665, 801; 1971, c. 595; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34; 1995, c. 374, s. 1.)

Local Modification. — Durham: 1993, c. 76, s. 1; Guilford: 1979, c. 282; 1981, c. 59.

Legal Periodicals. — For note discussing the disposition of property within the boundaries of a dedicated street when use of the street is discontinued, see 45 N.C.L. Rev. 564 (1967).

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under corresponding sections of former law.*

Owners of property on a street which is to be partially closed have an interest in the hearing on the request to close the street. In re City of Washington, 15 N.C. App. 505, 190 S.E.2d 309, cert. denied, 282 N.C. 151, 191 S.E.2d 601 (1972).

Legislative Intent as to Giving Notice. — The true legislative intent is that if a municipality wishes to close a street, or a part thereof, the notices required must be given. Such an intent if fair and just, because it affords all interested parties an opportunity to be heard. In re City of Washington, 15 N.C. App. 505, 190 S.E.2d 309, cert. denied, 282 N.C. 151, 191 S.E.2d 601 (1972).

Notice to Adjoining Property Owners Not to Be Limited to Those with Special Interest. — The statute requires notice by registered mail to the owners of property adjoining the street to be closed who did not join in the request for closing the street. The words of the statute are clear and unequivocal. There is nothing to indicate that only those with a "special interest" must be notified by registered mail. In re City of Washington, 15 N.C. App. 505, 190 S.E.2d 309, cert. denied, 282 N.C. 151, 191 S.E.2d 601 (1972).

Restrictions on County's Power to Close a Way of Passage. — From this section and former G.S. 153A-239, it was clear that a county did not have the power to close a way of passage which had not been dedicated to the public or in which the public had not acquired rights by prescription. In re Easement of Right of Way, 90 N.C. App. 303, 368 S.E.2d 639 (1988).

The closing of a street must not deprive a property owner of reasonable ingress or egress. Wofford v. North Carolina State Hwy. Comm'n, 263 N.C. 677, 140 S.E.2d 376, cert. denied, 382 U.S. 822, 86 S. Ct. 50, 15 L. Ed. 2d 67 (1965).

An individual may restrain the wrongful obstruction of a public way, of whatever origin, if he will suffer injury thereby as distinct from the inconvenience to the public generally, and he may recover such special damages as he has sustained by reason of the obstruction. Wofford v. North Carolina State Hwy. Comm'n, 263 N.C. 677, 140 S.E.2d 376, cert. denied, 382 U.S. 822, 86 S. Ct. 50, 15 L. Ed. 2d 67 (1965).

Burden of proof. — Pursuant to a hearing statutorily mandated by G.S. 153A-241, the burden of proof remained on a property owners association to show that a county board correctly found that closing roads in a subdivision was not contrary to the public interest, because the association shouldered the initial burden when the board first convened to determine the issue. Ocean Hill Joint Venture v. Currituck County Bd. of Comm'rs, 178 N.C. App. 182, 630 S.E.2d 714, 2006 N.C. App. LEXIS 1309 (2006).

Applied in Whitehead Community Club v. Hoppers, 43 N.C. App. 671, 260 S.E.2d 94 (1979).

OPINIONS OF ATTORNEY GENERAL

This section does not apply to closing a portion of a street in a subdivision that has been offered for dedication but never accepted by a public authority nor opened for public use. Subdivision streets are not open to the public as a matter of right until they have been accepted on behalf of the public in a manner recognized by law. County authorities can only proceed under this section to close a road after an offer of dedication has been accepted and public rights have attached. See opinion of Attorney General to William P. Mayo, County Attorney, Beaufort County, 49 N.C.A.G. 188 (1980).

§ 153A-242. Regulation or prohibition of fishing from bridges.

A county may by ordinance regulate or prohibit fishing from any bridge within the county and not within a city. In addition, the governing board of a city may by resolution permit a county to regulate or prohibit fishing from any bridge within the city. The city may by resolution withdraw its permission to the county ordinance. If it does so, the city shall give written notice to the county of its withdrawal of permission; 30 days after the date the county receives this notice the county ordinance ceases to be applicable within the city. An ordinance adopted pursuant to this section shall provide for signs to be posted on each bridge affected, summarizing the regulation or prohibition pertaining to that bridge.

No person may fish from the drawspan of a regularly attended bridge, and no county may permit any person to do so.

The authority granted by this section is subject to the authority of the Department of Transportation to prohibit fishing from any bridge on the State highway system. (1971, c. 690, ss. 1, 6; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34.)

§ 153A-243. Authorizing bridges over navigable waters.

A county may grant to persons who between them own or occupy real property on both sides of a body of navigable water lying wholly within the county the right to construct and maintain across the body of water a bridge connecting the property. The board of commissioners shall first adopt a resolution declaring its intent to grant the right and calling a public hearing on the question. The board shall cause the resolution to be published once a week for four successive weeks before the hearing. At the hearing the board shall hear all interested persons who appear with respect to whether the grant would be in the public interest. If, after the hearing, the board finds that the grant is not contrary to the public interest, it may adopt an order granting the right to construct the bridge. The board may place reasonable terms and conditions, including time limitations, on the grant.

A person aggrieved by a grant may appeal the board of commissioners' order to the appropriate division of the General Court of Justice within 30 days after the day it is adopted. The court shall hear the matter de novo and has jurisdiction to try the issues arising and to grant the right to construct the bridge.

Before construction may be commenced on any bridge authorized pursuant to this section, the bridge's location and plans must be submitted to and approved by the Chief of Engineers of the United States Army and the Secretary of the Army. (Pub. Loc. 1191, c. 227; C.S., s. 1297; 1973, c. 822, s. 1.)

§ 153A-244. Railroad revitalization programs.

Any county is authorized to participate in State and federal railroad revitalization programs necessary to insure continued or improved rail service to the county, as are authorized in Article 2D of Chapter 136 of the General Statutes. County participation includes the authority to enter into contracts with the North Carolina Department of Transportation to provide for the nonfederal matching funds for railroad revitalization programs. Such funds may be comprised of State funds distributed to the counties under the provisions of G.S. 136-44.38 and of county funds. County governments are also authorized to levy local property tax for railroad revitalization programs subject to G.S. 153A-149(d). County funds for any project may not exceed ten percent (10%) of total project costs. (1979, c. 658, s. 4.)

Legal Periodicals. — For note as to sheriff's liability for prisoner suicide, in light of Helmly v. Bebber, 77 N.C. App. 275, 335 S.E.2d 182 (1985), see 64 N.C.L. Rev. 1520 (1986).

§ 153A-245. Regulation of golf carts on streets, roads, and highways.

(a) Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a county may, by ordinance, regulate the operation of golf carts, as defined in G.S. 20-4.01(12a), on any public street, road, or highway where the speed limit is 35 miles per hour or less within the county that is located in any unincorporated areas of the county or on any property owned or leased by the county.

(b) By ordinance, a county may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts. No person less than 16 years of age may operate a golf cart on a public street, road, or highway. (2009-459, s. 1.)

Editor's Note. — Session Laws 2009-459, s. 11, made this section effective October 1, 2009.

Session Laws 2009-459, s. 11, provides in part: "A county may adopt an ordinance under G.S. 153A-245, and a city may adopt an ordinance under G.S. 160A-300.6 when this act becomes law, but the ordinances may not become effective prior to October 1, 2009. The repeal herein of any act does not affect the rights or liabilities of a local government that arose during the time the act was in effect, or under an ordinance adopted under such an act. If any county or city had adopted an ordinance under any act repealed by this act, and the ordinance would be permitted under G.S. 153A-245 or G.S. 160A-300.6 as enacted by this act, that ordinance shall remain in effect until amended or repealed by that county or city."

§ 153A-246: Reserved for future codification purposes.

Article 13.

Health and Social Services.

Part 1. Health Services.

§ 153A-247. Provision for public health and mental health.

A county may provide for and regulate the public health pursuant to Chapter 130A of the General Statutes and any other law authorizing local public health activities and may provide mental health[,] mental retardation, and substance abuse programs pursuant to Chapter 122C of the General Statutes. (1973, c. 822, s. 1; 1985, c. 589, s. 58.)

County Medicaid Cost Share. — Session Laws 2003-284, ss. 10.22(a) and (b), provide: "Effective July 1, 2000, the county share of the cost of Medicaid services currently and previously provided by area mental health authorities shall be increased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010.

"Effective July 1, 2000, the county share of the cost of Medicaid Personal Care Services paid to adult care homes shall be decreased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010."

A comma, which was apparently inadvertently omitted from the 1985 amendatory act, has been placed in brackets preceding "mental retardation."

Session Laws 2005-276, ss. 10.13(a) and (b), provide: "Effective July 1, 2000, the county share of the cost of Medicaid services currently and previously provided by area mental health authorities shall be increased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010.

"Effective July 1, 2000, the county share of the cost of Medicaid Personal Care Services paid to adult care homes shall be decreased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010."

Editor's Note. — Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

CASE NOTES

Boards of county commissioners can establish public hospitals for their several counties in cases of necessity and make rules, regulations and bylaws for preventing the spread of contagious and infectious diseases and for taking care of those afflicted thereby, the same not being inconsistent with the laws of the State. Prichard v. Board of Comm'rs, 126 N.C. 908, 36 S.E. 353 (1900), decided under former law.

A board of county commissioners cannot burn a residence to prevent the spread of contagious and infectious diseases. A proper disinfection would be the extent of their powers in respect to property thus tainted or infected. Prichard v. Board of Comm'rs, 126 N.C. 908, 36 S.E. 353 (1900), decided under former law.

§ 153A-248. Health-related appropriations.

(a) A county may appropriate revenues not otherwise limited as to use by law:

(1) To a licensed facility for the mentally retarded, whether publicly or privately owned, to assist in maintaining and developing facilities and treatment, if the board of commissioners determines that the care offered by the facility is available to residents of the county. The facility need not be located within the county.

(2) To a sheltered workshop or other private, nonprofit, charitable organization offering work or training activities to the physically or mentally handicapped, and may otherwise assist such an organization.

(3) To an orthopedic hospital, whether publicly or privately owned, to assist in maintaining and developing facilities and treatment, if the board of commissioners determines that the care offered by the hospital is available to residents of the county. The hospital need not be located within the county.

(4) To a training center or other private, nonprofit, charitable organization offering education, treatment, rehabilitation, or developmental programs to the physically or mentally handicapped, and may otherwise assist such organizations; provided, however, such action shall be with the concurrence of the county board of education; and provided,

further, that within 30 days after receipt of the request for concurrence, the county board of education shall notify the board of county commissioners whether it concurs, and should it fail to so notify the board of county commissioners within such period, it shall be deemed to have concurred.

(b) The ordinance making the appropriation shall state specifically what the appropriation is to be used for, and the board of commissioners shall require that the recipient account for the appropriation at the close of the fiscal year. (1967, cc. 464, 1074; 1969, c. 802; 1973, c. 822, s. 1; 1977, c. 474; 1979, c. 1074, s. 2.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Subdivision (a)(2) Is Inapplicable to Learning-Disabled Children. — While the general terms of subdivision (a)(2) of this section could conceivably be construed to address the problem of inadequate educational opportunities for learning-disabled children in the school system, it is evident that the specific remedies prescribed in former G.S. 115-315.7, et seq., 115-377, and 115-384 were controlling. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

And subdivision (a)(2) cannot be reasonably interpreted to encompass schools for dyslexic children. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

Hence an appropriation by Gaston County to the Dyslexia School of North Carolina was not authorized by subdivision (a)(2) of this section. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

§ 153A-249. Hospital services.

A county may provide and support hospital services pursuant to Chapters 122C, 131 and 131E of the General Statutes. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C.S., s. 1297; 1923, c. 81; 1973, c. 822, s. 1; 1985, c. 589, s. 59.)

Editor's Note. — Chapter 131, referred to in this section, was repealed by Session Laws 1983, c. 775, s. 1. As to health care facilities and services, see now Chapter 131E.

CASE NOTES

County commissioners are not liable for failure to establish hospitals. Bell v. Commissioners of Johnston County, 127 N.C. 85, 37 S.E. 136 (1900), decided under former law.

Funds paid to memorial hospital by city and county under contract did not make the hospital a State agency subject to federal jurisdiction. Eaton v. Board of Managers, 261 F.2d 521 (4th Cir. 1958), cert. denied, 359 U.S. 984, 79 S. Ct. 941, 3 L. Ed. 2d 934 (1959) decided under former law.

Applied in National Medical Enters., Inc. v. Sandrock, 72 N.C. App. 245, 324 S.E.2d 268 (1985).

OPINIONS OF ATTORNEY GENERAL

As to duty of county to pay for hospitalization of prisoner in county jail, see Opinion of Attorney General to Mr. Charles W. Ogletree, Tyrrell County Attorney, 40 N.C.A.G. 352 (1970).

§ 153A-250. Ambulance services.

(a) A county may by ordinance franchise ambulance services provided in the county to the public at large, whether the service is based inside or outside the county. The ordinance may:

(1) Grant franchises to ambulance operators on terms set by the board of commissioners;
(2) Make it unlawful to provide ambulance services or to operate an ambulance in the county without such a franchise;
(3) Limit the number of ambulances that may be operated within the county;
(4) Limit the number of ambulances that may be operated by each franchised operator;
(5) Determine the areas of the county that may be served by each franchised operator;
(6) Establish and from time to time revise a schedule of rates, fees, and charges that may be charged by franchised operators;
(7) Set minimum limits of liability insurance for each franchised operator;
(8) Establish other necessary regulations consistent with and supplementary to any statute or any Department of Health and Human Services regulation relating to ambulance services.

Before it may adopt an ordinance pursuant to this subsection, the board of commissioners must first hold a public hearing on the need for ambulance services. The board shall cause notice of the hearing to be published once a week for two successive weeks before the hearing. After the hearing the board may adopt an ordinance if it finds that to do so is necessary to assure the provision of adequate and continuing ambulance service and to preserve, protect, and promote the public health, safety, and welfare.

If a person, firm, or corporation is providing ambulance services in a county or any portion thereof on the effective date of an ordinance adopted pursuant to this subsection, the person, firm, or corporation is entitled to a franchise to continue to serve that part of the county in which the service is being provided. The board of commissioners shall determine whether the person, firm, or corporation so entitled to a franchise is in compliance with Chapter 131E, Article 7; and if that is the case, the board shall grant the franchise.

(b) In lieu of or in addition to adopting an ordinance pursuant to subsection (a) of this section, a county may operate or contract for ambulance services in all or a portion of the county. A county may appropriate for ambulance services any revenues not otherwise limited as to use by law, and may establish and from time to time revise schedules of rates, fees, charges, and penalties for the ambulance services. A county may operate its ambulance services as a line department or may create an ambulance commission and vest in it authority to operate the ambulance services.

(c) A city may adopt an ordinance pursuant to and under the procedures of subsection (a) of this section and may operate or contract for ambulance services pursuant to subsection (b) of this section if (i) the county in which the city is located has adopted a resolution authorizing the city to do so or (ii) the county has not, within 180 days after being requested by the city to do so, provided for ambulance services within the city pursuant to this section. Any action taken by a city pursuant to this subsection shall apply only within the corporate limits of the city.

If a city is exercising a power granted by this subsection, the county in which the city is located may thereafter take action to provide for ambulance service within the city, either under subsection (a) or subsection (b) of this section, only after having given to the city 180 days' notice of the county's intention to take action. At the end of the 180 days, the city's authority under this subsection is preempted by the county.

(d) A county or a city may contract with a franchised ambulance operator or with another county or city for ambulance service to be provided upon the call of a department or agency of the county or city. A county may contract with a franchised ambulance operator for transportation of indigents or persons certified by the county department of social services to be public assistance recipients.

(e) Each county or city operating ambulance services is subject to the provisions of Chapter 131E, Article 7 ("Regulation of Emergency Medical Services"). (1967, c. 343, s. 5; 1969, c. 147; 1973, c. 476, s. 128; c. 822, s. 1; 1997-443, s. 11A.118(a); 2002-159, s. 51.)

Cross References. — As to the providing of emergency medical, rescue and ambulance service by rural fire protection districts, see G.S. 69-25.4.

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided under corresponding sections of former law.*

Constitutionality of Liability Insurance Provision. — Subdivision a6 of former G.S. 153-9(58), which was identical to subdivision (a)(7) of this section, was not void as being in contravention of constitutional prohibitions against monopolies and exclusive emoluments, since it did not provide that liability insurance should be the exclusive method of indemnifying persons or property against loss due to negligent operation of the ambulance service. Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

Regulation of ambulance service is a valid and legitimate exercise of the police power. Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

But Authority of County Cannot Exceed That Given by Enabling Act. — The authority of the county to regulate ambulance service, whether it be by franchise, permit, certificate of public convenience or necessity, license or whatever name is given, can only come from and cannot exceed that given by the enabling act. Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

For case holding county ordinance regulating ambulance service unconstitutional, see Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

County-operated ambulance service was entitled to governmental immunity, even though it charged a fee to help defray operating costs. McIver v. Smith, 134 N.C. App. 583, 518 S.E.2d 522 (1999).

Contract with Funeral Home for Ambulance Services. — In the absence of a vote or of authority expressly granted by the legislature, a county may not legally contract with a funeral home for ambulance services, and its attempt to do so prior to the enactment of an enabling statute was ultra vires. Moody v. Transylvania County, 271 N.C. 384, 156 S.E.2d 716 (1967).

The grandfather clause in this section is not self-executing. Nursing Registry, Inc. v. Eastern N.C. Regional Emergency Medical Servs. Consortium, Inc., 959 F. Supp. 298 (E.D.N.C. 1997).

Application Required. — In order to notify the board of commissioners that one is currently providing ambulance services, and in order to give the board an opportunity to affirmatively grant a franchise to continue doing business, it is necessary that an ambulance company actually submit an application that can be granted. Nursing Registry, Inc. v. Eastern N.C. Regional Emergency Medical Servs. Consortium, Inc., 959 F. Supp. 298 (E.D.N.C. 1997).

OPINIONS OF ATTORNEY GENERAL

Provision of Ambulance Service Within Discretion of Board of Commissioners. — Former G.S. 153-9(58) did not authorize the holding of a "straw vote" election, or any type of referendum to determine whether ambulance services should be provided or continued. Whether ambulance service should be provided or continued is a matter within the discretion of the board of county commissioners. See opinion of Attorney General to Mr. E. Ray Etheridge, Camden County Attorney, 40 N.C.A.G. 74 (1969).

County May, in Certain Cases, Provide Free Ambulance Service. — See opinion of Attorney General to Mr. Joe O. Brewer, 43 N.C.A.G. 157 (1973).

§§ 153A-251 through 153A-254: Reserved for future codification purposes.

Part 2. Social Service Provisions.

§ 153A-255. Authority to provide social service programs.

Each county shall provide social service programs pursuant to Chapter 108A and Chapter 111 and may otherwise undertake, sponsor, organize, engage in, and support other social service programs intended to further the health, welfare, education, employment, safety, comfort, and convenience of its citizens. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C.S., s. 1297; 1973, c. 822, s. 1; 1981, c. 562, s. 12; 1997-443, s. 12.13.)

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1116 (1981).

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under corresponding sections of former law.*

Appropriation for Dyslexia School Not Authorized. — An appropriation by the Gaston County Board of Commissioners to the Dyslexia School of North Carolina was not authorized by either G.S. 153A-149(c)(30) or this section. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

Tax Levy to Fund Medically Unnecessary Abortions Ultra Vires and Void. — This section does not give counties the underlying authority to levy taxes pursuant to G.S. 153A-149(c)(30) to fund medically unnecessary abortions, since the authority conferred upon counties to provide social services pursuant to this section is limited to providing the poor with the basic necessities of life, and a medically unnecessary abortion is not a basic necessity of life; therefore, a county exceeds its statutorily conferred power in levying a tax to fund medically unnecessary abortions, and the tax levy is ultra vires and void. Stam v. State, 302 N.C. 357, 275 S.E.2d 439 (1981).

Ascertainment of Indigents Entitled to Support. — It is the exclusive right of the legislature to determine and declare by whom and how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board of Educ. v. Commissioners of Bladen, 113 N.C. 379, 18 S.E. 661 (1893).

The legislature may delegate authority to county officials to provide and care for one class of the indigent or unfortunate inhabitants of the State, and to disburse a part of the fund devoted to the support of the poor, by appropriating it more directly to another class, whose wants, in the opinion of the lawmakers, can be best supplied through public agencies of a different kind. Board of Educ. v. Commissioners of Bladen, 113 N.C. 379, 18 S.E. 661 (1893).

No Recovery from County for Officiously Providing for Pauper. — Although a person may be a proper subject of county charge, anyone who officiously provides for such person cannot recover the amount of his outlay from the county. Copple v. Commissioners of Davie County, 138 N.C. 127, 50 S.E. 574 (1905).

Express Contract or Express Request for Service Necessary to Bind County. — In order to make a binding pecuniary obligation on the county, there must be an express contract to that effect, or the service must be done at the express request of the proper county officer or agent. Copple v. Commissioners of Davie County, 138 N.C. 127, 50 S.E. 574 (1905).

Thirty-Year Contract Upheld. — Where the General Assembly authorized a county to enter into a contract with a public hospital for the care of its indigent sick for a period of 30 years, and the board of commissioners of the county, in the exercise of the discretion vested in the board by the statute, agreed to contract for that period, the contract would not be held invalid because of its duration. Martin v. Board of Comm'rs, 208 N.C. 354, 180 S.E. 777 (1935).

For case holding contracts for the loan of money made by the late county courts for the support of paupers ultra vires, and therefore void, see Daniel v. Board of Comm'rs, 74 N.C. 494 (1876).

OPINIONS OF ATTORNEY GENERAL

County-owned pharmacy which is operated with the approval of the county commissioners for the purpose of dispensing drugs to needy persons may be a participant in the State Board of Social Services' (now Department of Human Resources') drug program under which the board (department) makes payments to pharmacies for drugs dispensed to welfare recipients. See opinion of Attorney General to Mr. Emmett L. Sellers, Director, Division of Medical Services, State Department of Social Services, 40 N.C.A.G. 704 (1969).

§ 153A-256. County home.

A county may establish, erect, acquire, lease as lessor or lessee, equip, support, operate, and maintain a county home for aged and infirm persons and may appropriate funds for these purposes.

The superintendent of each county home shall make an annual report on its operation to the board of commissioners of the county operating the home and to the Department of Health and Human Services. The report shall contain any information that the board of commissioners and the Department of Health and Human Services, respectively, require, and the Department may provide forms for this report. (1876-7, c. 277, s. 3; Code, ss. 3541, 3543; 1891, c. 138; Rev., ss. 1328, 1329; 1919, c. 72; C.S., ss. 1336, 1337, 1338; 1961, c. 139, s. 1; 1973, c. 476, s. 138; c. 822, s. 1; 1997-443, s. 11A.118(a).)

CASE NOTES

Three-year statute of limitations applies to an action brought by a county against an inmate of a county home to secure reimbursement or indemnity for sums expended for her upkeep in the home. Guilford County v. Hampton, 224 N.C. 817, 32 S.E.2d 606 (1945), decided under former law.

§ 153A-257. Legal residence for social service purposes.

(a) Legal residence in a county determines which county is responsible (i) for financial support of a needy person who meets the eligibility requirements for a public assistance or medical care program offered by the county or (ii) for other social services required by the person.

Legal residence in a county is determined as follows:

(1) Except as modified below, a person has legal residence in the county in which he resides.

(2) If a person is in a hospital, mental institution, nursing home, boarding home, confinement facility, or similar institution or facility, he does not, solely because of that fact, have legal residence in the county in which the institution or facility is located.

(3) A minor has the legal residence of the parent or other relative with whom he resides. If the minor does not reside with a parent or relative and is not in a foster home, hospital, mental institution, nursing home, boarding home, educational institution, confinement facility, or similar institution or facility, he has the legal residence of the person with whom he resides. Any other minor has the legal residence of his mother, or if her residence is not known then the legal residence of his father; if his mother's or father's residence is not known, the minor is a legal resident of the county in which he is found.

(b) A legal residence continues until a new one is acquired, either within or outside this State. When a new legal residence is acquired, all former legal residences terminate.

(c) This section is intended to replace the law defining "legal settlement." Therefore any general law or local act that refers to "legal settlement" is deemed to refer to this section and the rules contained herein.

(d) If two or more county departments of social services disagree regarding the legal residence of a minor in a child abuse, neglect, or dependency case, any one of the county departments of social services may refer the issue to the Department of Health and Human Services, Division of Social Services, for resolution. The Director of the Division of Social Services or the Director's designee shall review the pertinent background facts of the case and shall determine which county department of social services shall be responsible for providing protective services and financial support for the minor in question. (1777, c. 117, s. 16, P.R.; R.C., c. 86, s. 12; Code, s. 3544; Rev., s. 1333; C.S., s. 1342; 1931, c. 120; 1943, c. 753, s. 2; 1959, c. 272; 1973, c. 822, s. 1; 2003-304, s. 7.)

CASE NOTES

Editor's Note. *— Most of the cases cited below were decided under corresponding sections of former law.*

Each County Charged with Support of Its Poor. — It is the manifest purpose of the law in regard to pauper settlements to charge each county with the support of its own poor. Commissioners of County of Burke v. Commissioners of County of Buncombe, 101 N.C. 520, 8 S.E. 176 (1888).

Liability of County Dependent on Residence or Settlement. — The liability of a county for the support of a pauper does not depend upon the law of domicile or citizenship, but upon that of residence or settlement. Commissioners of County of Burke v. Commissioners of County of Buncombe, 101 N.C. 520, 8 S.E. 176 (1888).

The legal settlement of the pauper determines the liability. Board of Comm'rs of McDowell County v. Board of Comm'rs of Forsyth County, 121 N.C. 295, 28 S.E. 412 (1897).

Although in most cases the county of domicile and the county of settlement are the same, yet they are sometimes different, and in such case the county of settlement is chargeable with the maintenance of an illegitimate child. State v. Elam, 61 N.C. 460 (1868).

Liability for Illegitimate Child Fixed by Mother's Settlement. — The liability of the county for the maintenance of an illegitimate child is fixed not by its birth but by the settlement of its mother at the time of its birth. State v. Elam, 61 N.C. 460 (1868).

An illegitimate child, who has not gained a new settlement by a year's residence in some other county, is, for the purpose of being apprenticed, subject to the jurisdiction of the court of that county in which its mother was settled at the time of its birth. Ferrell v. Boykin, 61 N.C. 9 (1866).

Settlement Not Ipso Facto Obtained by Birth. — Neither legitimate nor illegitimate children shall gain a settlement by birth in the county in which they may be born, if neither of their parents had any settlement therein. State v. Elam, 61 N.C. 460 (1868).

What County Liable When Mother of Illegitimate Child Is Without Settlement. — An illegitimate child, born in this State of a mother who had not resided in it for 12 months, as required by the statute then in effect, was chargeable for maintenance upon the county in which it was born. Since the statute did not contemplate the case of foreign paupers, the question of settlement was left as at common law. State ex rel. Merritt v. McQuaig, 63 N.C. 550 (1869).

A legal settlement continues until a new one is acquired. Board of Comm'rs of McDowell County v. Board of Comm'rs of Forsyth County, 121 N.C. 295, 28 S.E. 412 (1897).

Recovery for Medical Services Furnished Pauper Injured in Another County. — Where a pauper, temporarily absent from the county where he had a "legal settlement," was so disabled as to require immediate medical services and was furnished by the authorities of another county with such attention and board, the latter was entitled to recover the expenses thereof from the county where the pauper had his settlement. Board of Comm'rs of McDowell County v. Board of Comm'rs of Forsyth County, 121 N.C. 295, 28 S.E. 412 (1897).

Cited in In re Phillips, 99 N.C. App. 159, 392 S.E.2d 407 (1990).

OPINIONS OF ATTORNEY GENERAL

As to legal settlement of mental incompetent for welfare payment purposes, see opinion of Attorney General to Mr. Joseph P.B. McCauley, Director, Gaston County Department of Social Services, 40 N.C.A.G. 678 (1970), issued under former law.

Nursing Home Residence Not Sufficient for "Legal Settlement". — See opinion of Attorney General to Mr. Joe Freeman Britt, Robeson County Attorney, 41 N.C.A.G. 197 (1971), issued under former law.

Daughter reaching majority and confined in institution retained settlement in county from which she came although her parent moved to another county while she was confined. See opinion of Attorney General to Mrs. Bing Lau, Social Worker, Murdoch Center, 41 N.C.A.G. 472 (1971), issued under former law.

§ 153A-258: Reserved for future codification purposes.

Part 3. Health and Social Services Contracts.

§ 153A-259. Counties authorized to contract with other entities for health and social services.

A county is authorized to contract with any governmental agency, person, association, or corporation for the provision of health or social services provided that the expenditure of funds pursuant to such contracts shall be for the purpose for which the funds were appropriated and is not otherwise prohibited by law. (1979, 2nd Sess., c. 1094, s. 2.)

Editor's Note. — The preamble to Session Laws 1979, 2nd Sess., c. 1094, cited as the reason for the enactment of the act the case of Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979), requiring statutory authority for third-party contracts.

§ 153A-260: Reserved for future codification purposes.

ARTICLE 14.

Libraries.

§ 153A-261. Declaration of State policy.

The General Assembly recognizes that the availability of adequate, modern library services and facilities is in the general interest of the people of North Carolina and a proper concern of the State and of local governments. Therefore it is the policy of the State of North Carolina to promote the establishment and development of public library services throughout the State. (1973, c. 822, s. 1.)

CASE NOTES

Operation of a public library meets the test of "governmental function." Seibold v. Kinston-Lenoir County Pub. Library, 264 N.C. 360, 141 S.E.2d 519 (1965), decided under former law.

§ 153A-262. Library materials defined.

For purposes of this Article, the phrase "library materials" includes, without limitation, books, plates, pictures, engravings, maps, magazines, pamphlets, newspapers, manuscripts, films, transparencies, microforms, recordings, or other specimens, works of literature, or objects of art, historical significance, or curiosity. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3; 1973, c. 822, s. 1.)

§ 153A-263. Public library systems authorized.

A county or city may:

(1) Establish, operate, and support public library systems;

(2) Set apart lands and buildings for a public library system;

(3) Acquire real property for a public library system by gift, grant, purchase, lease, exercise of the power of eminent domain, or any other lawful method. If a library board of trustees is appointed, a county or city shall, before acquiring real property by purchase, lease, or exercise of the power of eminent domain, seek the recommendations of the board of trustees regarding the proposed acquisition;

(4) Provide, acquire, construct, equip, operate, and maintain buildings and other structures for a public library system;

(5) Acquire library materials by purchase, exchange, bequest, gift, or any other lawful method;

(6) Appropriate funds to carry out the provisions of this Article;

(7) Accept any gift, grant, lease, loan, exchange, bequest, or devise of real or personal property for a public library system. Devises, bequests, grants, and gifts may be accepted and held subject to any term or condition that may be imposed by the grantor or trustor, except that no county or city may accept or administer any term or condition that requires it to discriminate among its citizens on the basis of race, sex, or religion. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3; 1973, c. 822, s. 1.)

CASE NOTES

Cited in Miller v. Northwest Region Library Bd., 348 F. Supp. 2d 563, 2004 U.S. Dist. LEXIS 25403 (M.D.N.C. 2004).

§ 153A-264. Free library services.

If a county or city, pursuant to this Article, operates or makes contributions to the support of a library, any resident of the county or city, as the case may be, is entitled to the free use of the library. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3; 1973, c. 822, s. 1.)

§ 153A-265. Library board of trustees.

The governing body of a county or city may appoint a library board of trustees. The governing body shall determine the number of members of the board of trustees (which may not be more than 12), the length of their terms, the manner of filling vacancies, and the amount, if any, of their compensation and allowances. The governing body may remove a trustee at any time for incapacity, unfitness, misconduct, or neglect of duty. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 1; 1973, c. 822, s. 1.)

Local Modification. — Burke: 1977, 2nd Sess., c. 1168; 1981 (Reg. Sess., 1982), c. 1141.

CASE NOTES

Cited in Miller v. Northwest Region Library Bd., 348 F. Supp. 2d 563, 2004 U.S. Dist. LEXIS 25403 (M.D.N.C. 2004).

§ 153A-266. Powers and duties of trustees.

If a board of trustees is appointed, it shall elect a chairman and may elect other officers. The governing body may delegate to the board of trustees any of the following powers:

(1) To formulate and adopt programs, policies, and regulations for the government of the library;

(2) To make recommendations to the governing body concerning the construction and improvement of buildings and other structures for the library system;

(3) To supervise and care for the facilities of the library system;

(4) To appoint a chief librarian or director of library services and, with his advice, to appoint other employees of the library system. If some other body or official is to appoint the chief librarian or director of library services, to advise that body or official concerning that appointment;

(5) To establish, a schedule of fines and charges for late return of, failure to return, damage to, and loss of library materials, and to take other measures to protect and regulate the use of such materials;

(6) To participate in preparing the annual budget of the library system;

(7) To extend the privileges and use of the library system to nonresidents of the county or city establishing or supporting the system, on any terms or conditions the board may prescribe.

(8) To otherwise advise the board of commissioners on library matters.

The board of trustees shall make an annual report on the operations of the library to the governing body of the county or city and shall make an annual report to the Department of Cultural Resources as required by G.S. 125-5. If no board of trustees is established, the governing body shall make the annual report to the Department. (1953, c. 721; 1963, c. 945; 1969, c. 488; 1971, c. 698, s. 3; 1973, c. 476, s. 84; c. 822, s. 1.)

CASE NOTES

Cited in Miller v. Northwest Region Library Bd., 348 F. Supp. 2d 563, 2004 U.S. Dist. LEXIS 25403 (M.D.N.C. 2004).

§ 153A-267. Qualifications of chief librarian; library employees.

(a) To be eligible for appointment and service as chief administrative officer of a library system (whether designated chief librarian, director of library services, or some other title), a person must have a professional librarian certificate issued by the Secretary of Cultural Resources, pursuant to G.S. 125-9, under regulations for certification of public librarian as established by the North Carolina Public Librarian Certification Commission pursuant to the provisions of G.S. 143B-67.

(b) The employees of a county or city library system are, for all purposes, employees of the county or city, as the case may be. (1953, c. 721; 1963, c. 945; 1969, c. 488; 1971, c. 698, s. 3; 1973, c. 476, s. 53; c. 822, s. 1; 1975, c. 516.)

§ 153A-268. Financing library systems.

A county or city may appropriate for library purposes any funds not otherwise limited as to use by law. (1973, c. 822, s. 1.)

§ 153A-269. Title to library property.

The title to all property acquired by a county or city for library purposes shall be in the name of the county or city. If property is given, granted, devised, bequeathed, or otherwise conveyed to the board of trustees of a county or city library system, it shall be deemed to have been conveyed to the county or city and shall be held in the name of the county or city. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3; 1973, c. 822, s. 1.)

§ 153A-270. Joint libraries; contracts for library services.

Two or more counties or cities or counties and cities may establish a joint library system or contract for library services, according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3; 1973, c. 822, s. 1.)

CASE NOTES

Cited in Miller v. Northwest Region Library Bd., 348 F. Supp. 2d 563, 2004 U.S. Dist. LEXIS 25403 (M.D.N.C. 2004).

§ 153A-271. Library systems operated under local acts brought under this Article.

If a county or city operates a library system pursuant to a local act, the governing body of the county or city may by ordinance provide that the library system is to be operated pursuant to this Article. (1973, c. 822, s. 1.)

§ 153A-272. Designation of library employees to register voters.

The governing body of each public library with four or more employees shall designate at least one employee of the library to be appointed by the county board of elections to register voters pursuant to G.S. 163-80(a)(6). With the approval of the board of elections, additional employees may also be designated for this purpose by the governing body. (1983, c. 588, s. 1.)

Editor's Note. — G.S. 163-80, referred to above, has been repealed.

§ 153A-273: Reserved for future codification purposes.

ARTICLE 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-274. Public enterprise defined.

As used in this Article, "public enterprise" includes:

(1) Water supply and distribution systems.
(2) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(3) Solid waste collection and disposal systems and facilities.
(4) Airports.
(5) Off-street parking facilities.
(6) Public transportation systems.
(7) Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types. (1965, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1971, c. 568; 1973, c. 822, s. 1; c. 1214; 1977, c. 514, s. 1; 1979, c. 619, s. 1; 1989, c. 643, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 13; 2000-70, s. 1.)

Local Modification. — Bladen: 1985, c. 433, s. 1; 1989 (Reg. Sess., 1990), c. 839; Columbus: 1991 (Reg. Sess., 1992), c. 844; Duplin: 1991 (Reg. Sess., 1992), c. 844; Franklin: 1991 (Reg. Sess., 1992), c. 864; Hertford: 1991 (Reg. Sess., 1992), c. 844; Martin: 1991 (Reg. Sess., 1992), c. 844; Northampton: 1991 (Reg. Sess., 1992), c. 864; Sampson: 1985, c. 433, s. 1; 1991, c. 13; Stanly: 1985, c. 433, s. 1.

Funds for Local Government Water and Sewer Improvement Grants. — Information on funds for local government water and sewer improvement grants and the allocation of those funds can be found in the Editor's note at G.S. 160A-311 describing Session Laws 2007-323, s. 13.13(a) through (p).

Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc., for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

CASE NOTES

A public enterprise includes sewage collection and disposal systems of all types. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Greater in Scope Than a Building. — A public enterprise denotes a complex systematic activity or undertaking — something greater in scope than a building. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

The word "building," as used in § 153A-347, does not encompass a "public enterprise," as used in this section and G.S. 160A-311. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

Operation of a Water and/or Sewer System for and on Behalf of Another Unit of Local Government. — Pursuant to an interlocal cooperative agreement and pursuant to authority granted in this Article, a county may, among other things, operate a water and/or sewer system for and on behalf of another unit of local government, such as a water and sewer district, and in conjunction therewith may exercise those rights, powers, and functions granted to water and sewer districts as found in G.S. 162A-88 and those rights, powers, and functions granted to counties in this Article. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Sewer district and Harnett County entered into a contract on July 23, 1984, wherein it was agreed that the sewer district's sewer system, which had been completed that year, would be operated by Harnett County through its Department of Public Utilities. Such units of local government may contract with each other to execute undertakings such as public enterprises, which would include a sewer system. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Cited in McIver v. Smith, 134 N.C. App. 583, 518 S.E.2d 522 (1999).

§ 153A-275. Authority to operate public enterprises.

(a) A county may acquire, lease as lessor or lessee, construct, establish, enlarge, improve, extend, maintain, own, operate, and contract for the operation of public enterprises in order to furnish services to the county and its citizens. A county may acquire, construct, establish, enlarge, improve, maintain, own, and operate outside its borders any public enterprise.

(b) A county may adopt adequate and reasonable rules to protect and regulate a public enterprise belonging to or operated by it. The rules shall be adopted by ordinance, shall apply to the public enterprise system both within and outside the county, and may be enforced with the remedies available under any provision of law. (1955, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1967, c. 462; 1971, c. 568; 1973, c. 822, s. 1; 1991 (Reg. Sess., 1992), c. 836, s. 2.)

CASE NOTES

Constitutionality of Former Statute. — Former G.S. 153-9(46), was constitutional, violating neither G.S. 5 nor G.S. 17 of Art. I of the Constitution of 1868. Ramsey v. Rollins, 246 N.C. 647, 100 S.E.2d 55 (1957).

The limitation upon the counties contained in Art. VII, § 7 of the Constitution of 1868, requiring that bonds for the construction of water and sewer systems be approved by the voters in such county, did not impair the constitutionality of the grant of the power to construct such systems in any respect. Ramsey v. Rollins, 246 N.C. 647, 100 S.E.2d 55 (1957).

Public Enterprises Outside County's Boundaries. — By the broad language which the legislature has used in G.S. 160A-312 and this section, it has evidenced its intent to give cities and counties comprehensive authority to own and operate public enterprises outside their boundaries with respect to the service of themselves and their citizens. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280 (1987).

No Blanket Subjection to Host Jurisdiction's Zoning Regulations. — The Legislature has not seen fit to curtail the broad grant of authority it has given cities and counties in G.S. 160A-312 and this section, respectively, by blanketly subjecting public enterprises to a host jurisdiction's zoning regulations. Rather, when in its judgment it has deemed it necessary to restrict one political subdivision's ability to establish a particular type of public enterprise in another political subdivision the legislature has enacted a statute to accomplish that specific goal. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

A county is authorized to operate a public enterprise in order to furnish services to its citizens. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Water and sewer districts may contract with counties to carry out their purposes. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Cited in Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987).

OPINIONS OF ATTORNEY GENERAL

As to authority for county to appropriate nontax funds for water and sewer system, see opinion of Attorney General to Mr. M. Alexander Biggs, Special Counsel, Nash

County Board of Commissioners, 40 N.C.A.G. 92 (1970).

§ 153A-276. Financing public enterprises.

Subject to the restrictions, limitations, procedures, and regulations otherwise provided by law, a county may finance the cost of a public enterprise by levying taxes, borrowing money, and appropriating any other revenues, and by accepting and administering gifts and grants from any source. (1973, c. 822, s. 1.)

CASE NOTES

The operation of the sewer system is a public enterprise, and, as such, the method of financing the system is subject to this section. However, the mandate of this section applies only where such "restrictions, limitations, procedures, and regulations otherwise provided by law" are themselves mandatory. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Procedures and Regulations Provided by Law Applicable to Public Enterprises. — When an ordinance regulating a public enterprise is adopted by a local government to finance the public enterprise, the procedures supplied in the General Statutes for adopting such an ordinance must likewise be followed; when a general obligation bond is issued by a local government, the provisions of Chapter 159 must be followed; and when a local government purchases equipment, the applicable statutes regarding competitive bidding, where applicable, must likewise be followed. There is no statute or law that mandates notice and hearing requirements for ordinances requiring mandatory connections and fixing related connection charges and user fees. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Cited in McNeill v. Harnett County, 97 N.C. App. 41, 387 S.E.2d 206 (1990).

§ 153A-277. Authority to fix and enforce rates.

(a) A county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by a public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary for the same class of service in different areas of the county and may vary according to classes of service, and different schedules may be adopted for services provided outside of the county. A county may include a fee relating to subsurface discharge wastewater management systems and services on the property tax bill for the real property where the system for which the fee is imposed is located.

(a1)(1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the board of commissioners shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

(2) The fees established under this subsection must be made applicable throughout the area of the county outside municipalities. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system.

Rates, fees, and charges imposed under this subsection may not exceed the county's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The county's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

(3) No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(b) A county may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A county may also discontinue service to a customer whose account remains delinquent for more than 10 days. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises. If water or sewer services are discontinued for delinquency, it is unlawful for a person other than a duly authorized agent or employee of the county to reconnect the premises to the water or sewer system.

(b1) A county shall not do any of the following in its debt collection practices:

(1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:

a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

c. The person is or becomes responsible for the bill for the service to the customer.

(2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:

a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b2) Notwithstanding the provisions of subsection (b1) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the county shall have the power to collect a delinquent account using any remedy provided by subsection (b) of this section from that customer.

(c) Rents, rates, fees, charges, and penalties for enterprisory services are in no case a lien upon the property or premises served and, except as provided in subsection (d) of this section, are legal obligations of the person contracting for them, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services are legal obligations of the owner of the property or premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter; or

(2) Charges made for use of a sewerage system are billed separately from charges made for the use of a water distribution system. (1961, c. 1001, s. 1; 1973, c. 822, s. 1; 1991, c. 591, s. 2; 1991 (Reg. Sess., 1992), c. 932, s. 3; c. 1007, s. 45; 2000-70, s. 2; 2009-302, s. 2.)

Local Modification. — Cumberland: 1995, c. 469, G.S. 1; Durham: 1998-60; Mecklenburg: 1999-50, s. 1.

Effect of Amendments. — Session Laws 2009-302, s. 2, effective July 17, 2009, added subsections (b1) and (b2).

CASE NOTES

Rate Classification Must Be Reasonable and Based on Substantial Differences. — Rates may be fixed in view of dissimilarities in conditions of service, but there must be some reasonable proportion between the variance in the conditions and the variances in the charges. Classification must be based on substantial difference. Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 856 (1988).

Charge Imposed Only on Commercial, Industrial and Municipal Haulers Upheld. — It was not a levy of an unreasonable discriminatory rate for a county to charge only commercial, industrial and municipal haulers of garbage for the use of the landfills. Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 856 (1988).

§ 153A-278. Joint provision of enterprisory services.

Two or more counties, cities, or other units of local government may cooperate in the exercise of any power granted by this Article according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1961, c. 1001, s. 1; 1973, c. 822, s. 1.)

CASE NOTES

Interlocal Cooperative Agreements Sanctioned. — The use of interlocal cooperative agreements is sanctioned with respect to public enterprises in this section, which provides that "two or more counties, cities, or other units of local government may cooperate in the exercise of any powers granted by this Article [Article 15 of Chapter 153A]." McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

§ 153A-279. Limitations on rail transportation liability.

(a) As used in this section:

(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:

a. The County, a railroad, or an operating rights railroad; or

b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. 105-130.6, or agent of: the County, a railroad, or an operating rights railroad.

(2) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights by a State-Owned Railroad Company or operated over the property of a State-owned railroad company under a claim of right over or adjacent to facilities used by or on behalf of the County.

(3) "Passenger rail services" means the transportation of rail passengers by or on behalf of the County and all services performed by a railroad pursuant to a contract with the County in connection with the transportation of rail passengers, including, but not limited to, the operation of trains; the use of right-of-way, trackage, public or private roadway and rail crossings, equipment, or station areas or appurtenant facilities; the design, construction, reconstruction, operation, or maintenance of rail-related equipment, tracks, and any appurtenant facilities; or the provision of access rights over or adjacent to lines owned by the County or a railroad, or otherwise occupied by the County or a railroad, pursuant to charter grant, fee-simple deed, lease, easement, license, trackage rights, or other form of ownership or authorized use.

(4) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the County concerning passenger rail services.

(b) Contracts Allocating Financial Responsibility Authorized. — The County may contract with any railroad to allocate financial responsibility for passenger rail services claims, including, but not limited to, the execution of indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. —

(1) If the County enters into any contract authorized by subsection (b) of this section, the contract shall require the County to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the county, a liability insurance policy covering the liability of the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad as named insureds and shall have policy limits of not less than two hundred million dollars ($200,000,000) per single accident or incident, and may include a self-insured retention in an amount of not more than five million dollars ($5,000,000).

(2) If the County does not enter into any contract authorized by subsection (b) of this section, upon and after the commencement of the operation of trains by or on behalf of the County, the County shall secure and maintain a liability insurance policy, with policy limits and a self-

insured retention consistent with subdivision (1) of this subsection, for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services.

(d) Liability Limit. — The aggregate liability of the County, the parties to the contract or contracts authorized by subsection (b) of this section, a State-Owned Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all claims arising from a single accident or incident related to passenger rail services for property damage, personal injury, bodily injury, and death is limited to two hundred million dollars ($200,000,000) per single accident or incident or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) Effect on Other Laws. — This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes.

(f) Applicability. — This section shall apply only to counties that have entered into a transit governance interlocal agreement with, among other local governments, a city with a population of more than 500,000 persons. (2002-78, s. 2.)

Editor's Note. — Some of the definitions above were renumbered in alphabetical order at the direction of the Revisor of Statutes.

§ 153A-280. Public enterprise improvements.

(a) Authorization. — A county may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public enterprise improvements that are adjacent or ancillary to a private land development project. Such a contract shall allow the county to reimburse the private party for costs associated with the design and construction of improvements that are in addition to those required by the county's land development regulations. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars ($250,000) and the county determines that: (i) the public cost will not exceed the estimated cost of providing for those improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed improvements would be impracticable. A county may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section.

(b) Property Acquisition. — The improvements may be constructed on property owned or acquired by the private party or on property owned or acquired by the county. The private party may assist the county in obtaining easements in favor of the county from private property owners on those properties that will be involved in or affected by the project. The contract between the county and the private party may be entered into before the acquisition of any real property necessary to the project. (2005-426, s. 8(e).)

Editor's Note. — Session Laws 2005-426, s. 11, made this section effective January 1, 2006.

§§ 153A-281, 153A-282: Reserved for future codification purposes.

Part 2. Special Provisions for Water and Sewer Services.

§ 153A-283. Nonliability for failure to furnish water or sewer services.

In no case may a county be held liable for damages for failure to furnish water or sewer services. (1961, c. 1001, s. 1; 1973, c. 822, s. 1.)

CASE NOTES

Water Service Is Not "Property". — Water service furnished by the County does not rise to the level of "property" protected by due process requirements. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

No Claim of Entitlement to Water Services. — While other statutes specifically authorize disconnections in certain situations, this section states specifically that "in no case may a county be held liable for damages for failure to furnish water or sewer services." In light of this statutory provision, a citizen of a county in North Carolina may not assert a claim of entitlement to water services. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Applicability. — This section did not apply to action against county for denying plaintiffs access to county sewer line, where plaintiffs did not seek sewer services from the the county, which were to be provided by town, but all plaintiffs sought from defendant was access to a county-owned sewer line. Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

§ 153A-284. Power to require connections.

A county may require the owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located so as to be served by a water line or sewer collection line owned, leased as lessee, or operated by the county or on behalf of the county to connect the owner's premises with the water or sewer line and may fix charges for these connections. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the county has installed water or sewer lines or a combination thereof directly available to the property, the county may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. (1963, c. 985, s. 1; 1965, c. 969, s. 2; 1973, c. 822, s. 1; 1979, c. 619, s. 13; 1995, c. 511, s. 3.)

CASE NOTES

Constitutionality. — This section and the ordinances in question, which were passed without notice and an opportunity to be heard and which mandated connections to the sewer lines as well as the payment of related connection charges and user fees, were consistent with federal procedural due process protections and were a valid exercise of the police power. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

This section and county mandating ordinances met the requirements of both the federal and State Constitutions in authorizing the imposition of connection charges and user/availability fees related to mandated connections. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Exercise of Police Power. — The establishment and maintenance of a sewer system by a city is ordinarily regarded as an exercise of its police power. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

The establishment and operation of a sewer system by the sewer district and the county is a valid exercise of the police power under the law of the land clause of the North Carolina Constitution. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Notice and Hearing for Individual Property Owners Not Required. — The law of the land clause does not require notice and opportunity for hearing prior to the passage of an ordinance mandating connection to a sewer system adopted under the authority of this section. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

To require notice and opportunity for hearing to all individual property owners prior to the adoption of an ordinance mandating connection of improved properties pursuant to the enabling act would be burdensome, costly to local governments, and not consistent with procedures employed in the exercise of other police powers. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Power of County to Mandate Connections and Fix Charges. — In addition to those powers granted to the Sewer District in G.S. 162A-88, a county, as operator of a public enterprise, is clothed with those powers set forth in Chapter 153A, Article 15, including the power to mandate connections and to fix charges for those connections under this section. The plain wording of this section clearly supports this conclusion. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

There is no meaningful legal distinction between a mandated connection and mandated charges and fees for that connection. The latter naturally follow the former. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

County Must Own "or" Operate Sewage Collection Line. — This section provides that a county may mandate connections to a sewage collection line "owned or operated" by the county. The use of the word "or," indicating the alternative, is dispositive of this issue. Had the legislature intended that a county could mandate connections only when it both owned and operated a sewage collection line, the language of the statute would have so provided. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Methods of Financing Sewer Project. — The General Assembly intended that the local government may choose between financing the sewer project using a procedure which would result in an assessment and doing so by other methods not involving a lien-producing assessment. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

§ 153A-285: Repealed by Session Laws 1993, c. 348, s. 4.

Cross References. — This section, concerning prerequisites to acquisition of water and water rights in certain counties, was repealed by Session Laws 1993, c. 348, s. 4, effective January 1, 1994. For present similar provisions, see G.S. 143-215.22L.

§ 153A-286. Law with respect to riparian rights not changed.

Nothing in this Article changes or modifies existing common or statute law with respect to the relative rights of riparian owners or others concerning the use of or disposal of water in the streams of North Carolina. (1961, c. 1001, s. 1; 1973, c. 822, s. 1.)

§ 153A-287: Repealed by Session Laws 1993, c. 348, s. 5.

Cross References. — This section, concerning prerequisites to acquisition of water and water rights in certain counties, was repealed by Session Laws 1993, c. 348, s. 4, effective January 1, 1994. For present similar provisions, see G.S. 143-215.22L.

§ 153A-288. Venue for actions by riparian owners.

Any riparian owner alleging injury as a result of an act taken pursuant to this Article by a county or city acting jointly or by a joint agency may maintain an action for relief against the act (i) in the county where the land of the riparian owner lies, (ii) in the county taking the action, or (iii) in any county in which the city or joint agency is located or operates. (1961, c. 1001, s. 1; 1973, c. 822, s. 1.)

§§ 153A-289, 153A-290: Reserved for future codification purposes.

Part 3. Special Provisions for Solid Waste Collection and Disposal.

§ 153A-291. Cooperation between the Department of Transportation and any county in establishing or operating solid waste disposal facilities.

A county and the Department of Transportation may enter into an agreement under which the Department of Transportation will make available to the county the use of equipment and prison and other labor in order to establish or operate solid waste disposal facilities within the county. The county shall reimburse the Department of Transportation for the cost of providing the equipment and labor. The agreement shall specify the work to be done thereunder and shall set forth the basis for reimbursement. (1967, c. 707; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34.)

CASE NOTES

Cited in Meyer v. Walls, 347 N.C. 97, 489 S.E.2d 880 (1997).

§ 153A-292. County collection and disposal facilities.

(a) The board of county commissioners of any county may establish and operate solid waste collection and disposal facilities in areas outside the corporate limits of a city. The board may by ordinance regulate the use of a disposal facility provided by the county, the nature of the solid wastes disposed of in a facility, and the method of disposal. The board may contract with any city, individual, or privately owned corporation to collect and dispose of solid waste in the area. Counties and cities may establish and operate joint collection and disposal facilities. A joint agreement shall be in writing and executed by the governing bodies of the participating units of local government.

(b) The board of county commissioners may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

The board of county commissioners may impose a fee for the use of a disposal facility provided by the county. The fee for use may not exceed the cost of operating the facility and may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. A county may not impose a fee for the use of a disposal facility on a city located in the county or a contractor or resident of the city unless the fee is based on a schedule that applies uniformly throughout the county.

The board of county commissioners may impose a fee for the availability of a disposal facility provided by the county. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the county that benefits from the availability of the facility. A county may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the county. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the county disposal facility is not considered to benefit from a disposal facility provided by the county and is not subject to a fee imposed by the county for the availability of a disposal facility provided by the county. To the extent that the services provided by the county disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same county, the county may charge an availability fee to cover the costs of the additional services provided by the county disposal facility.

In determining the costs of providing and operating a disposal facility, a county may consider solid waste management costs incidental to a county's handling and disposal of solid waste at its disposal facility, including the costs of the methods of solid waste management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of 1989. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the county.

(c) The board of county commissioners may use any suitable vacant land owned by the county for the site of a disposal facility, subject to the permit requirements of Article 9 of Chapter 130A of the General Statutes. If the county does not own suitable vacant land for a disposal facility, it may acquire suitable land by purchase or condemnation. The board may erect a gate across a highway that leads directly to a disposal facility operated by the county. The gate may be erected at or in close proximity to the boundary of the disposal facility. The county shall pay the cost of erecting and maintaining the gate.

(d), (e) Repealed by Session Laws 1991, c. 652, s. 1.

(f) This section does not prohibit a county from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons. (1961, c. 514, s. 1; 1971, c. 568; 1973, c. 535; c. 822, s. 2; 1981, c. 919, s. 22; 1989 (Reg. Sess., 1990), c. 1009, s. 3; 1991, c. 652, s. 1; 1995 (Reg. Sess., 1996), c. 594, s. 27; 2007-550, s. 10(a).)

Editor's Note. — The above section was enacted by Session Laws 1973, c. 535, and codified as G.S. 153-274. As directed by Session Laws 1973, c. 822, s. 2, it has also been codified as G.S. 153A-292.

CASE NOTES

Property Under Consideration for Annexation into Municipality. — When a county initiates condemnation of property for a sanitary landfill, and the property is being considered for voluntary annexation into a municipality, the county may proceed with the condemnation action. The county is entitled to an injunction enjoining the annexation proceeding, and the property owners and the municipality may raise the proposed annexation in the answer to the condemnation complaint, for appropriate consideration by the court. Yandle v. Mecklenburg County, 85 N.C. App. 382, 355 S.E.2d 216, cert. denied, 320 N.C. 798, 361 S.E.2d 91 (1987).

Landfill fees, like sewer service charges, are neither taxes nor assessments, but are tolls or rents for benefits received by the use of the landfill. Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 856 (1988).

Municipality Status Not Available to Privately Owned Corporation to Challenge Validity of an Ordinance. — Where the record revealed that plaintiff was a privately owned corporation, it could not assert the status of a municipality in order to challenge the validity of an ordinance, as an agent of the municipality. Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 856 (1988).

Cited in Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280 (1987); County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002).

OPINIONS OF ATTORNEY GENERAL

The 1971 General Assembly Gave Its Express Approval to the Levy of Taxes for Garbage Collection and Disposal. — See opinion of Attorney General to Mr. Edward H.

McCormick, Harnett County Attorney, 41 N.C.A.G. 756 (1972), issued under former law.

Counties Are Required to Charge Fees Sufficient to Defray Costs of Garbage Collection. — See opinion of Attorney General to Mr. Bill Summerlin, 43 N.C.A.G. 41 (1973), issued under former law.

County Ordinances Involving Sanitation May Not Be Less Stringent Than State Regulations Adopted Pursuant to Former § 130-166.18. — See opinion of Attorney General to Mr. R. Kason Keiger, Town Attorney, Kernersville, N.C., 44 N.C.A.G. 40 (1974).

§ 153A-293. (See editor's note) Collection of fees for solid waste disposal facilities and solid waste collection services.

A county may adopt an ordinance providing that any fee imposed under G.S. 153A-292 may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee. (1989, c. 591, ss. 1, 2; 1989 (Reg. Sess., 1990), cc. 905, 938, 940, 974, 1017; 1991, c. 652, s. 2; 1991 (Reg. Sess., 1992), c. 1007, s. 26.)

Editor's Note. — This section was originally derived from Session Laws 1989, c. 591, effective July 6, 1989, and was applicable to fees imposed on or after April 1, 1989. As enacted, c. 591 was applicable to Ashe, Robeson and Wayne Counties only. The section was made applicable to additional counties by Session Laws 1989 (Reg. Sess., 1990), as follows: Chapter 905, effective July 13, 1990, made this section applicable to Alleghany, Caswell, Richmond, and Watauga; c. 938, effective July 17, 1990, and applicable to fees imposed on or after Jan. 1, 1991, made this section applicable to Polk, Transylvania, and Cleveland; c. 940, effective July 17, 1990, made this section applicable to Duplin; c. 974, effective July 19, 1990, made this section applicable to Burke, Gaston, Lee, Lenoir, and Washington; c. 1017, effective July 26, 1990, made this section applicable to Anson and Montgomery.

Section 6 of Session Laws 1991, c. 652 provides: "Chapters 591, 905, 938, 940, 974, 1007, and 1017 of the 1989 Session Laws are repealed. An ordinance adopted under a local act that is repealed by this act is considered to have been adopted under G.S. 153A-293, as amended by this act."

Session Laws 1991, c. 652, s. 6, as amended by Session Laws 1991 (Reg. Sess., 1992), c. 1007, s. 26, provides: "Chapters 591, 905, 938, 940, 974, 1007, and 1017 of the 1989 Session Laws are repealed to clarify that G.S. 153A-293, as amended by this act, is a statewide statute and not a local statute. An ordinance adopted under a local act that is repealed by this act is considered to have been adopted under G.S. 153A-293, as amended by this act."

§ 153A-294. Solid waste defined.

As used in this Article, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste. (1991 (Reg. Sess., 1992), c. 1013, s. 4.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1013, which enacted this section, in s. 8 provides: "Any contract for solid waste collection or disposal entered into by any county, city, or town that would have been lawful if this act had been in effect at the time the contract was entered into is validated. The provisions of this act that limit a contract or franchise for the collection and disposal of solid waste to a period of not more than 30 years shall not be construed to invalidate any contract or franchise for a longer period up to 60 years that was entered into by any county, city, or town prior to the date this act is effective." The act became effective July 22, 1992.

§§ 153A-295 through 153A-299: Reserved for future codification purposes.

Part 4. Long Term Contracts for Disposal of Solid Waste.

§§ 153A-299.1 through 153A-299.6: Repealed by Session Laws 1991 (Regular Session, 1992), c. 1013, s. 5.

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1013, which repealed this part, in s. 8 provides: "Any contract for solid waste collection or disposal entered into by any county, city, or town that would have been lawful if this act had been in effect at the time the contract was entered into is validated. The provisions of this act that limit a contract or franchise for the collection and disposal of solid waste to a period of not more than 30 years shall not be construed to invalidate any contract or franchise for a longer period up to 60 years that was entered into by any county, city, or town prior to the date this act is effective." The act became effective July 22, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 763, s. 2, provides: "Any contract for solid waste disposal entered into by Bladen, Cumberland, and Hoke Counties which would have been lawful if this act had been in effect at the time the contract was entered into is ratified." The act was ratified June 9, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 763, s. 1, effective June 9, 1992, inserted "Bladen County," "Cumberland County," and "Hoke County" in G.S. 153A-299.6 prior to its repeal.

Session Laws 1991 (Reg. Sess., 1992), c. 773, s. 1, effective June 22, 1992, inserted "Bertie County," "Chowan County," "Hertford County," and "Tyrrell County" in G.S. 153A-299.6 prior to its repeal.

Session Laws 1991 (Reg. Sess., 1992), c. 775, s. 1, effective June 22, 1992, inserted "Moore County" in G.S. 153A-299.6, prior to its repeal.

ARTICLE 16.

County Service Districts; County Research and Production Service Districts; County Economic Development and Training Districts.

Part 1. County Service Districts.

§ 153A-300. Title; effective date.

This Article may be cited as "The County Service District Act of 1973," and is enacted pursuant to Article V, Sec. 2(4) of the Constitution of North Carolina, effective July 1, 1973. (1973, c. 489, s. 1; c. 822, s. 2.)

Editor's Note. — Sections 153A-300 through 153A-308 were originally codified as G.S. 153-383 through 153-391. They have been recodified in Chapter 153A as directed by Session Laws 1973, c. 822, s. 2.

Session Laws 1985, c. 435, s. 1 designated existing Article 16 as Part 1 of Article 16, entitled "County Service Districts," and added new Part 2 of Article 16.

Session Laws 2004-170, s. 37, effective August 2, 2004, rewrote the heading for Article 16 of Chapter 153A of the General Statutes, which formerly read: "County Service Districts; County Research and Production Service Districts."

§ 153A-301. Purposes for which districts may be established.

(a) The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Beach erosion control and flood and hurricane protection works.
(2) Fire protection.
(3) Recreation.
(4) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(5) Solid waste collection and disposal systems.
(6) Water supply and distribution systems.
(7) Ambulance and rescue.
(8) Watershed improvement projects, including but not limited to watershed improvement projects as defined in Chapter 139 of the General Statutes; drainage projects, including but not limited to the drainage projects provided for by Chapter 156 of the General Statutes; and water resources development projects, including but not limited to the federal water resources development projects provided for by Article 21 of Chapter 143 of the General Statutes.
(9) Cemeteries.
(10) Law enforcement if all of the following apply:
  a. The population of the county is over 500,000 according to the most recent federal decennial census.
  b. The county has an interlocal agreement with a city in the county under which the city provides law enforcement services in the entire unincorporated area of the county.
  c. Repealed by Session Laws 2008-134, s. 76 (c), effective July 28, 2008.
(11) Services permitted under Article 24 of this Chapter if the district is subject to G.S. 153A-472.1.

(b) The General Assembly finds that coastal-area counties have a special problem with lack of maintenance of platted rights-of-way, resulting in ungraded sand travelways deviating from the original rights-of-way and encroaching on private property, and such cartways exhibit poor drainage and are blocked by junk automobiles.

(c) To address the problem described in subsection (b), the board of commissioners of any coastal-area county as defined by G.S. 113A-103(2) may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Removal of junk automobiles; and
(2) Street maintenance.

(d) The board of commissioners of a county that contains a protected mountain ridge, as defined by G.S. 113A-206(6), may define any number of service districts, composed of subdivision lots within one or more contiguous subdivisions that are served by common public roads, to finance for the district the maintenance of such public roads that are either located in the district or provide access to some or all lots in the district from a State road, where some portion of those roads is not subject to compliance with the minimum standards of the Board of Transportation set forth in G.S. 136-102.6. The service district or districts created shall include only subdivision lots within the subdivision, and one or more additional contiguous subdivisions, where the property owners' association, whose purpose is to represent these subdivision lots, agrees to be included in the service district. For subdivision lots in an additional contiguous subdivision or for other adjacent or contiguous property to be annexed according to G.S. 153A-303, the property owners' association representing the subdivision or property to be annexed must approve the annexation. For the purposes of this subsection: (i) "subdivision lots" are defined as either separate tracts appearing of record upon a recorded plat, or other lots, building sites, or divisions of land for sale or building development for residential purposes; and (ii) "public roads" are defined as roads that are in actual open use as public vehicular areas, or dedicated or offered for dedication to the public use as a road, highway, street, or avenue, by a deed, grant, map, or plat, and that have been constructed and are in use by the public, but that are not currently being maintained by any public authority.

(e) The board of commissioners of a county that adjoins or contains a lake, river, or tributary of a river or lake that has an identified noxious aquatic weed problem may define any number of noxious aquatic weed control service districts composed of property that is contiguous to the water or that provides direct access to the water through a shared, certified access site to the water. As used in this subsection, the term "noxious aquatic weed" is any plant organism identified by the Secretary of Environment and Natural Resources under G.S. 113A-222 or regulated as a plant pest by the Commissioner of Agriculture under Article 36 of Chapter 106 of the General Statutes. (1973, c. 489, s. 1; c. 822, s. 2; c. 1375; 1979, c. 595, s. 1; c. 619, s. 6; 1983 (Reg. Sess., 1984), c. 1078, s. 1; 1989, c. 620; 1993, c. 378, s. 1; 1995, c. 354, s. 1; c. 434, s. 1; 1997-456, s. 24; 2005-433, s. 10(b); 2005-440, s. 1; 2008-134, s. 76(c).)

Local Modification. — Gaston: 1977, c. 336.

Effect of Amendments. — Session Laws 2008-134, s. 76(c), effective July 28, 2008, deleted subdivision (a)(10)c.

§ 153A-302. Definition of service districts.

(a) Standards. — In determining whether to establish a proposed service district, the board of commissioners shall consider all of the following:

(1) The resident or seasonal population and population density of the proposed district.
(2) The appraised value of property subject to taxation in the proposed district.
(3) The present tax rates of the county and any cities or special districts in which the district or any portion thereof is located.
(4) The ability of the proposed district to sustain the additional taxes necessary to provide the services planned for the district.
(5) If it is proposed to furnish water, sewer, or solid waste collection services in the district, the probable net revenues of the projects to be financed and the extent to which the services will be self-supporting.
(6) Any other matters that the commissioners believe to have a bearing on whether the district should be established.

(a1) Findings. — The board of commissioners may establish a service district if, upon the information and evidence it receives, the board finds that all of the following apply:

(1) There is a demonstrable need for providing in the district one or more of the services listed in G.S. 153A-301.
(2) It is impossible or impracticable to provide those services on a countywide basis.
(3) It is economically feasible to provide the proposed services in the district without unreasonable or burdensome annual tax levies.
(4) There is a demonstrable demand for the proposed services by persons residing in the district.

Territory lying within the corporate limits of a city or sanitary district may not be included unless the governing body of the city or sanitary district agrees by resolution to such inclusion.

(b) Report. — Before the public hearing required by subsection (c), the board of commissioners shall cause to be prepared a report containing:

(1) A map of the proposed district, showing its proposed boundaries;
(2) A statement showing that the proposed district meets the standards set out in subsection (a); and
(3) A plan for providing one or more of the services listed in G.S. 153A-301 to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(d) Effective Date. — The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners.

(e) Exceptions For Countywide District. — The following requirements do not apply to a board of commissioners that proposes to create a law enforcement service district pursuant to G.S. 153A-301(a)(10) that covers the entire unincorporated area of the county:

(1) The requirement that the district cannot be created unless the board makes the finding in subdivision (a1)(2) of this section.
(2) The requirement in subsection (c) of this section to notify each property owner by mail, if the board publishes a notice of its proposal to establish the district, once a week for four successive weeks before the date of the hearing required by that subsection.

(f) Exceptions for Article 24 District. — The following requirements do not apply to a board of commissioners that proposes to create a service district pursuant to G.S. 153A-301(a)(11) that covers the entire unincorporated area of the county:

(1) The requirement that the district cannot be created unless the board makes the finding in subdivision (a1)(2) of this section.
(2) The requirement in subsection (c) of this section to notify each property owner by mail, if the board publishes a notice of its proposal to establish the district, once a week for two successive weeks before the date of the hearing required by that subsection. (1973, c. 489, s. 1; c. 822, s. 2; 1981, c. 53, s. 1; 1995, c. 354, s. 2; 2005-433, s. 10(c).)

Editor's Note. — Subsection (f) was originally enacted as subsection (e). The subsection was redesignated at the direction of the Revisor of Statutes.

§ 153A-303. Extension of service districts.

(a) Standards. — The board of commissioners may by resolution annex territory to any service district upon finding that:

(1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district; and
(2) That the area to be annexed requires the services of the district.

(b) Annexation by Petition. — The board of commissioners may also by resolution extend by annexation the boundaries of any service district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the board for annexation to the service district.

(c) Territory lying within the corporate limits of a city or sanitary district may not be annexed to a service district unless the governing body of the city or sanitary district agrees by resolution to such annexation.

(d) Report. — Before the public hearing required by subsection (e), the board shall cause to be prepared a report containing:
(1) A map of the service district and the adjacent territory, showing the present and proposed boundaries of the district;
(2) A statement showing that the area to be annexed meets the standards and requirements of subsections (a), (b), and (c); and
(3) A plan for extending services to the area to be annexed.

The report shall be available for public inspection in the office of the clerk to the board for at least two weeks before the date of the public hearing.

(e) Hearing and Notice. — The board shall hold a public hearing before adopting any resolution extending the boundaries of a service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (d) is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be annexed. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(f) Effective Date. — The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board. (1973, c. 489, s. 1; c. 822, s. 2; 1981, c. 53, s. 2.)

§ 153A-304. Consolidation of service districts.

(a) The board of commissioners may by resolution consolidate two or more service districts upon finding that:
(1) The districts are contiguous or are in a continuous boundary;
(2) The services provided in each of the districts are substantially the same; or
(3) If the services provided are lower for one of the districts, there is a need to increase those services for that district to the level of that enjoyed by the other districts.

(b) Report. — Before the public hearing required by subsection (c), the board of commissioners shall cause to be prepared a report containing:
(1) A map of the districts to be consolidated;
(2) A statement showing the proposed consolidation meets the standards of subsection (a); and
(3) If necessary, a plan for increasing the services for one of the districts so that they are substantially the same throughout the consolidated district.

The report shall be available in the office of the clerk to the board for at least two weeks before the public hearing.

(c) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution consolidating service districts. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the consolidated district. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(d) Effective Date. — The consolidation of service districts shall take effect at the beginning of a fiscal year commencing after passage of the resolution of consolidation, as determined by the board. (1973, c. 489, s. 1; c. 822, s. 2; 1981, c. 53, s. 2.)

§ 153A-304.1. Reduction in district after annexation.

(a) When the whole or any portion of a county service district organized for fire protection purposes under G.S. 153A-301(2) has been annexed by a municipality furnishing fire protection to its citizens, and the municipality had not agreed to allow territory within it to be within the county service district under G.S. 153A-302(a), then such county service district or the portion thereof so annexed shall immediately thereupon cease to be a county service district or a portion of a county service district; and such district or portion thereof so annexed shall no longer be subject to G.S. 153A-307 authorizing the board of county commissioners to levy and collect a tax in such district for the purpose of furnishing fire protection therein.

(b) Nothing in this section prevents the board of county commissioners from levying and collecting taxes for fire protection in the remaining portion of a county service district not annexed by a municipality.

(c) When all or part of a county service district is annexed, and the effective date of the annexation is a date other than a date in the month of June, the amount of the county service district tax levied on property in the district for the fiscal year in which municipal taxes are prorated under G.S. 160A-58.10 shall be multiplied by the following fraction: the denominator shall be 12 and the numerator shall be the number of full calendar months remaining in the fiscal year following the day on which the annexation becomes effective. For each owner, the product of the multiplication is the prorated fire protection payment. The finance officer of the city shall obtain from the assessor or tax collector of the county where the annexed territory was located a list of the owners of property on which fire protection district taxes were levied in the territory being annexed, and the city shall, no later than 90 days after the effective date of the annexation, pay the amount of the prorated fire protection district payment to the owners of that property. Such payments shall come from any funds not otherwise restricted by law.

(d) Whenever a city is required to make fire protection district tax payments by subsection (c) of this section, and the city has paid or has contracted to pay to a rural fire department funds under G.S. 160A-37.1 or G.S. 160A-49.1, the county shall pay to the city from funds of the county service district an amount equal to the amount paid by the city (or to be paid by the city) to a rural fire department under G.S. 160A-37.1 or G.S. 160A-49.1 on account of annexation of territory in the county service district for the number of months in that fiscal year used in calculating the numerator under subsection (c) of this section;

provided that the required payments by the county to the city shall not exceed the total of fire protection district payments made to taxpayers in the district on account of that annexation. (1987, c. 711, s. 1; 2008-134, s. 76(b).)

Editor's Note. — Session Laws 1987, c. 711, s. 3 made this section effective with respect to annexations effective on or after August 1, 1987.

Effect of Amendments. — Session Laws 2008-134, s. 76(b), effective July 28, 2008, substituted "assessor" for "tax supervisor" in the third sentence of subsection (c).

§ 153A-304.2. Reduction in district after annexation to Chapter 69 fire district.

(a) When the whole or any portion of a county service district organized for fire protection purposes under G.S. 153A-301(a)(2) has been annexed into a fire protection district created under Chapter 69 of the General Statutes, then such county service district or the portion thereof so annexed shall immediately thereupon cease to be a county service district or a portion of a county service district; and such district or portion thereof so annexed shall no longer be subject to G.S. 153A-307 authorizing the board of county commissioners to levy and collect a tax in such district for the purpose of furnishing fire protection therein.

(b) Nothing in this section prevents the board of county commissioners from levying and collecting taxes for fire protection in the remaining portion of a county service district not annexed into a fire protection district. This section does not affect the rights or liabilities of the county, a taxpayer, or other person concerning taxes previously levied. (1989, c. 622.)

§ 153A-304.3. Changes in adjoining service districts.

(a) Changes. — The board of county commissioners may by resolution relocate the boundary lines between adjoining county service districts if the districts were established for substantially similar purposes. The boundary lines may be changed in accordance with a petition from landowners or may be changed in any manner the board deems appropriate. Upon receipt of a request to change service district boundaries, the board of county commissioners shall set a date and time for a public hearing on the request prior to taking action on the request.

(b) Report. — Before the public hearing required by subsection (a) of this section, the board of county commissioners shall cause to be prepared a report containing all of the following:

(1) A map of the service district and the adjacent territory showing the current and proposed boundaries of the district.
(2) A statement indicating that the proposed boundary relocation meets the requirements of subsection (a) of this section.
(3) A plan for providing service to the area affected by the relocation of district boundaries.
(4) The effect that the changes in the amount of taxable property will have on the ability of the district to provide services or to service any debt.

The report shall be available for public inspection in the office of the clerk of the board for at least two weeks before the date of the public hearing.

(c) Notice and Hearing. — The board shall hold a public hearing before adopting any resolution relocating the boundaries of a service district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing.

(d) Effective Date. — The resolution changing the boundaries of the districts shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board. (2005-136, s. 1.)

§ 153A-304.4. Reduction in law enforcement service district after annexation.

When any portion of a county law enforcement service district organized under G.S. 153A-301(10) is annexed by a municipality, and the effective date of the annexation is a date other than a date in the month of June, the amount of the county law enforcement service district tax levied on each parcel of real property in the district for the fiscal year in which municipal taxes are prorated under G.S. 160A-58.10 shall be multiplied by the following fraction: the denominator shall be 12 and the numerator shall be the number of full calendar months remaining in the fiscal year following the day on which the annexation becomes effective. For each parcel of real property in the portion of the district that is annexed, the product of the multiplication is the amount of the law enforcement service district tax to be refunded if the taxes have been paid, or released if the taxes have not been paid. The finance officer of the county shall obtain from the assessor or tax collector of the county a list of the owners of the real property on which law enforcement service district taxes were levied in the territory annexed, and the county shall pay the refund amount, if applicable, to the owner as shown on the records of the tax assessor of the real property as of the January 1 immediately preceding the date of the refund. Refund payments shall come from any funds not otherwise restricted by law. (2008-134, s. 76(a).)

Editor's Note. — Session Laws 2008-134, s. 76(a), made this section applicable to annexations in fiscal year 2006-2007 or a subsequent fiscal year.

§ 153A-305. Required provision or maintenance of services.

(a) New District. — When a county defines a new service district, it shall provide, maintain, or let contracts for the services for which the residents of the district are being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) Extended District. — When a county annexes territory to a service district, it shall provide, maintain, or let contracts for the services provided or maintained throughout the district to the residents of the area annexed to the district within a reasonable time, not to exceed one year, after the effective date of the annexation.

(c) Consolidated District. — When a county consolidates two or more service districts, one of which has had provided or maintained a lower level of services, it shall increase the services within that district (or let contracts therefor) to a level comparable to those provided or maintained elsewhere in the consolidated district within a reasonable time, not to exceed one year, after the effective date of the consolidation. (1973, c. 489, s. 1; c. 822, s. 2.)

Local Modification. — Onslow: 1975, c. 757.

§ 153A-306. Abolition of service districts.

Upon finding that there is no longer a need for a particular service district and that there are no outstanding bonds or notes issued to finance projects in the district, the board of commissioners may by resolution abolish that district. The board shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any service district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board. (1973, c. 489, s. 1; c. 822, s. 2.)

§ 153A-307. Taxes authorized; rate limitation.

A county may levy property taxes within defined service districts in addition to those levied throughout the county, in order to finance, provide or maintain for the districts services provided therein in addition to or to a greater extent than those financed, provided or maintained for the entire county. In addition, a county may allocate to a service district any other revenues whose use is not otherwise restricted by law.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the county as of the preceding January 1.

Property taxes may not be levied within any district established pursuant to this Article in excess of a rate on each one hundred dollars ($100.00) value of property subject to taxation which, when added to the rate levied countywide for purposes subject to the rate limitation, would exceed the rate limitation established in G.S. 153A-149(c), unless the portion of the rate in excess of this limitation is submitted to and approved by a majority of the qualified voters residing within the district. Any referendum held pursuant to this paragraph shall be held and conducted as provided in G.S. 153A-149. (1973, c. 489, s. 1; c. 822, s. 2.)

§ 153A-308. Bonds authorized.

A county may issue its general obligation bonds under the Local Government Bond Act to finance services, facilities, or functions provided within a service district. If a proposed bond issue is required by law to be submitted to and approved by the voters of the county, and if the proceeds of the proposed bond issue are to be used in connection with a service that is or, if the bond issue is approved, will be provided only for one or more service districts or at a higher level in service districts than countywide, the proposed bond issue must be approved concurrently by a majority of those voting throughout the entire county and by a majority of the total of those voting in all of the affected or to-be-affected service districts. (1973, c. 489, s. 1; c. 822, s. 2.)

§ 153A-309. EMS services in fire protection districts.

(a) If a service district is established under this Article for fire protection purposes under G.S. 153A-301(a)(2), (including a district established with a rate limitation under G.S. 153A-309.2), and it was not also established under this Article for ambulance and rescue purposes under G.S. 153A-301(a)(7), the board of county commissioners may, by resolution, permit the service district to provide emergency medical, rescue, and/or ambulance services, and may levy property taxes for such purposes under G.S. 153A-307, but if the district was established under G.S. 153A-309.2, the rate limitation established under that section shall continue to apply.

(b) The resolution expanding the purposes of the district under this section shall take effect at the beginning of a fiscal year commencing after its passage. (1983, c. 642; 1989, c. 559.)

§ 153A-309.1: Reserved for future codification purposes.

§ 153A-309.2. Rate limitation in certain districts — Alternative procedure for fire protection service districts.

(a) In connection with the establishment of a service district for fire protection as provided by G.S. 153A-301(2) [G.S. 153A-301(a)(2)], if the board of commissioners adopts a resolution within 90 days prior to the public hearing required by G.S. 153A-302(c) but prior to the first publication of notice required by subsection (b) of this section, which resolution states that property taxes within a district may not be levied in excess of a rate of fifteen cents (15¢) on each one hundred dollars ($100.00) of property subject to taxation, then property taxes may not be levied in that service district in excess of that rate.

(b) Whenever a service district is established under this section, instead of the procedures for hearing and notice under G.S. 153A-302(c), the board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by G.S. 153A-302(b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least twice, with one publication not less than two weeks before the hearing, and the other publication on some other day not less than two weeks before the hearing. (1985, c. 724.)

Editor's Note. — The reference in subsection (a) to G.S. 153A-301(2) was apparently intended to be a reference to G.S. 153A-301(a)(2).

The section heading has been changed at the direction of the Revisor of Statutes. It formerly read: "Rate limitation in certain districts."

§ 153A-309.3. Rate limitation in certain districts — Fire protection service districts for industrial property.

(a) Any area in a service district for fire protection established pursuant to G.S. 153A-301(a)(2) may be removed from that district by resolution of the county board of commissioners and a new service district simultaneously created for the area so removed if the area is an industrial facility (and appurtenant land and structures):

(1) Subject to a contract not to annex by a municipality under which the owner of the industrial property is obligated to make payments in lieu of taxes equal to or in excess of fifty percent (50%) of the taxes such industry would pay if it were annexed and is current in making such payments.

(2) Actively served by an industrial fire brigade which meets the standards of the National Fire Protection Association and the requirements of the North Carolina Occupational Safety and Health Standards for General Industry (Title 29 Code of Federal Regulations Part 1910 incorporated by reference in 13 NCAC 07F.0101) for industrial fire brigades.

(b) Prior to removing such area from the service district and simultaneously creating a new district of that same area, the board shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least two weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be removed and a new district created. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(c) In any district created under this section from area removed from an existing district, the county may not levy or collect property taxes for the purpose of financing fire protection pursuant to this Article in excess of a rate of three and one-half cents (3.5¢) on each one hundred dollars ($100.00) of property valuation subject to taxation.

(d) If any district established under this section ceases to meet the tests established by subdivisions (a)(1) and (a)(2) of this section, the board of commissioners may by resolution abolish that district and annex that territory to the district from which it was removed after a public hearing under the same provisions as set out in subsection (b) of this section.

(e) Any resolutions adopted under this section become effective the first day of July following their adoption. (2005-281, s. 1.)

Editor's Note. — The section heading has been changed at the direction of the Revisor of Statutes. It formerly read: "Rate limitation in certain districts."

§ 153A-310. Rate limitation in certain districts — Alternative procedure for ambulance and rescue districts.

(a) In connection with the establishment of a service district for ambulance and rescue as provided by G.S. 153A-301(7) [G.S. 153A-301(a)(7)], if the board of commissioners adopts a resolution within 90 days prior to the public hearing required by G.S. 153A-302(c) but prior to the first publication of notice required by subsection (b) of this section, which resolution states that property taxes within a district may not be levied in excess of a rate of five cents (5¢) on each one hundred dollars ($100.00) of property subject to taxation, then property taxes may not be levied in that service district in excess of that rate.

(b) Whenever a service district is established under this section, instead of the procedures for hearing and notice under G.S. 153A-302(c), the board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by G.S. 153A-302(b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least twice, with one publication not less than two weeks before the hearing, and the other publication on some other day not less than two weeks before the hearing. (1985, c. 430, s. 1.)

Editor's Note. — The reference in subsection (a) to G.S. 153A-301(7) was apparently intended to be a reference to G.S. 153A-301(a)(7).

The section heading has been changed at the direction of the Revisor of Statutes. It formerly read: "Rate limitation in certain districts."

Part 2. County Research and Production Service Districts.

§ 153A-311. Purposes for which districts may be established.

The board of commissioners of any county may define a county research and production service district in order to finance, provide, and maintain for the district any service, facility, or function that a county or a city is authorized by general law to provide, finance, or maintain. Such a service, facility, or function shall be financed, provided, or maintained in the district either in addition to or to a greater extent than services, facilities, or functions are financed, provided, or maintained for the entire county. (1985, c. 435, s. 1.)

Editor's Note. — Session Laws 1985, c. 435, s. 2 prohibited any municipality from annexing a described tract of land in Durham and Wake Counties except under Parts 1 or 4 of Chapter 160A. The legal description of this tract can be found in c. 435, s. 2. The tract described is the Research Triangle Park, which is a county research and production service district.

§ 153A-312. Definition of research and production service district.

(a) Standards. — The board of commissioners may by resolution establish a research and production service district for any area of the county that, at the time the resolution is adopted, meets the following standards:

(1) All (i) real property in the district is being used for or is subject to covenants that limit its use to research or scientifically-oriented production or for associated commercial or institutional purposes or (ii) if all the real property in the district is part of a multijurisdictional industrial park that satisfies the criteria of G.S. 143B-437.08(h), all such real property in the district is subject to covenants that limit its use to research or scientifically oriented production, associated commercial or institutional purposes, or other industrial and associated commercial and institutional uses.
(2) The district (i) contains at least 4,000 acres or (ii) satisfies the criteria of G.S. 143B-437.08(h).
(3) The district (i) includes research and production facilities that in combination employ at least 5,000 persons or (ii) satisfies the criteria of G.S. 143B-437.08(h).
(4) All real property located in the district was at one time or is currently owned by a nonprofit corporation, which developed or is developing the property as a research and production park.
(5) A petition requesting creation of the district signed by at least fifty percent (50%) of the owners of real property in the district who own at least fifty percent (50%) of total area of the real property in the district has been presented to the board of commissioners. In determining the total area of real property in the district and the number of owners of real property, there shall be excluded (1) real property exempted from taxation and real property classified and excluded from taxation and (2) the owners of such exempted or classified and excluded property.
(6) The district has no more than 25 permanent residents.
(7) There exists in the district an association of owners and tenants, to which at least seventy-five percent (75%) of the owners of real property belong, which association can make the recommendations provided for in G.S. 153A-313. This subdivision shall not apply to a research and production service district that satisfies the criteria of G.S. 143B-437.08(h).

(8) There exists, or will exist when conveyed by the nonprofit corporation described in subdivision (4) of this subsection, deed-imposed conditions, covenants, restrictions, and reservations that apply to all real property in the district other than property owned by the federal government.

(9) No part of the district lies within the boundaries of any incorporated city or town.

The Board of Commissioners may establish a research and production service district if, upon the information and evidence it receives, the Board finds that:

(1) The proposed district meets the standards set forth in this subsection; and

(2) It is impossible or impracticable to provide on a countywide basis the additional or higher levels of services, facilities, or functions proposed for the district; and

(3) It is economically feasible to provide the proposed services, facilities, or functions to the district without unreasonable or burdensome tax levies.

(b) Multi-County Districts. — If an area that meets the standards for creation of a research and production service district lies in more than one county, the boards of commissioners of those counties may adopt concurrent resolutions establishing a service district, even if that portion of the district lying in any one of the counties does not by itself meet the standards. Each of the county boards of commissioners shall follow the procedure set out in this section for creation of a service district.

If a multi-county service district is established, as provided in this subsection, the boards of commissioners of the counties involved shall jointly determine whether the same appraisal and assessment standards apply uniformly throughout the district. This determination shall be set out in concurrent resolutions of the boards. If the same appraisal and assessment standards apply uniformly throughout the district, the boards of commissioners of all the counties shall levy the same rate of tax for the district, so that a uniform rate of tax is levied for district purposes throughout the district. If the boards determine that the same standards do not apply uniformly throughout the district, the boards shall agree on the extent of divergence between the counties and on the resulting adjustments of tax rates that will be necessary in order that an effectively uniform rate of tax is levied for district purposes throughout the district.

The boards of commissioners of the counties establishing a multi-county service district pursuant to this subsection may, by concurrent resolution, provide for the administration of services within the district by one or more counties on behalf of all the establishing counties.

(c) Report. — Before the public hearing required by subsection (d), the board of commissioners shall cause to be prepared a report containing:

(1) A map of the proposed district, showing its proposed boundaries;

(2) A statement showing that the proposed district meets the standards set out in subsection (a); and

(3) A plan for providing one or more services, facilities, or functions to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(d) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution defining a service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (c) is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(e) Effective Date. — The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners. (1985, c. 435, s. 1; 2009-523, s. 3(a).)

Effect of Amendments. — Session Laws 2009-523, s. 3(a), effective August 26, 2009, added "or (ii) if all the real property . . . institutional uses" at the end of subdivision (a)(1), and made a related change; added "or (ii) satisfies the criteria of G.S. 143B-437.08(h)" at the end of subdivisions (a)(2) and (a)(3), and made related changes; added the second sentence in subdivision (a)(7); substituted "There exists, or will exist when conveyed by the nonprofit corporation described in subdivision (4) of this subsection" for "There exist" at the beginning of subdivision (a)(8); and substituted "by one or more counties" for "by one county" in the last paragraph of subsection (b).

§ 153A-313. Advisory committee.

(a) The board or boards of commissioners, in the resolution establishing a research and production service district, shall also provide for an advisory committee for the district. Such a committee shall have at least 10 members, serving terms as set forth in the resolution; one member shall be the representative of the developer of the research and production park. The resolution shall provide for the appointment or designation of a chairman. The board of commissioners or, in the case of a multi-county service district, the boards of commissioners shall appoint the members of the advisory committee. If a multi-county service district is established, the concurrent resolutions establishing the district shall provide how many members of the advisory committee are to be appointed by each board of commissioners. Before making the appointments, the appropriate board shall request the association of owners and tenants, required by G.S. 153A-312(a), to submit a list of persons to be considered for appointment to the committee; the association shall submit at least two names for each appointment to be made. Except as provided in the next two sentences, the board of commissioners shall make the appointments to the committee from the list of persons submitted. In addition, the developer of the research and production park shall appoint one person to the advisory committee as the developer's representative on the committee. In addition, in a single county service district, the board of commissioners may make two additional appointments of such other persons as the board of commissioners deems appropriate, and in a multi-county service district, each board of county commissioners may make one additional appointment of such other person as that board of commissioners deems appropriate. Whenever a vacancy occurs on the committee in a position filled by appointment by a board of commissioners, the appropriate board, before filling the vacancy, shall request the association to submit the names of at least two persons to be considered for the vacancy; and the board shall fill the vacancy by appointing one of the persons so submitted, except that if the vacancy is in a position appointed by the board of commissioners under the preceding sentence of this section, the board of commissioners making that appointment shall fill the vacancy with such person as that board of commissioners deems appropriate.

Each year, before adopting the budget for the service district and levying the tax for the district, the board or boards of commissioners shall request recommendations from the advisory committee as to the level of services, facilities, or functions to be provided for the district for the ensuing year. The board or boards of commissioners shall, to the extent permitted by law, expend the proceeds of any tax levied for the district in the manner recommended by the advisory board.

(b) In the event that the research and production service district satisfies the criteria of G.S. 143B-437.08(h), the board of directors for the nonprofit corporation which owns the industrial park shall serve as the advisory committee described in subsection (a) of this section. (1985, c. 435, s. 1; 2009-523, s. 3(b).)

Effect of Amendments. — Session Laws 2009-523, s. 3(b), effective August 26, 2009, designated the previously existing provisions as subsection (a), and added subsection (b).

§ 153A-314. Extension of service districts.

(a) Standards. — A board of commissioners may by resolution annex territory to a research and production service district upon finding that:

(1) The conditions, covenants, restrictions, and reservations required by G.S. 153A-312(a)(8) that apply to all real property in the research district, other than property owned by the federal government, also apply or will apply to the property, other than property owned by the federal government, to be annexed.

(2) One hundred percent (100%) of the owners of real property in the area to be annexed have petitioned for annexation.

(3) The district, following the annexation, will continue to meet the standards set out in G.S. 153A-312(a).

(4) The area to be annexed requires the services, facilities, or functions financed, provided, or maintained for the district.

(5) The area to be annexed is contiguous to the district.

(b) Report. — Before the public hearing required by subsection (c), the board shall cause to be prepared a report containing:

(1) A map of the district and the adjacent territory proposed to be annexed, showing the present and proposed boundaries of the district; and

(2) A statement showing that the area to be annexed meets the standards and requirements of subsection (a) of this section.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. — The board shall hold a public hearing before adopting any resolution extending the boundaries of a service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than four weeks before the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the area to be annexed. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and the certificate shall be conclusive in the absence of fraud.

(d) Effective Date. — The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board. (1985, c. 435, s. 1.)

§ 153A-314.1. Removal of territory from service districts.

(a) Standards. — A board of commissioners may by resolution remove territory from a research and production service district upon finding that:

(1) The owners of the territory to be removed contemplate placing residential uses on some of the territory to be removed.

(2) One hundred percent (100%) of the owners of real property in the territory to be removed have petitioned for removal.

(3) The territory to be removed no longer requires the services, facilities, or functions financed, provided, or maintained for the district.

(b) Report. — Before the public hearing required by subsection (c) of this section, the board shall cause to be prepared a report containing:

(1) A map of the district highlighting the territory proposed to be removed, showing the present and proposed boundaries of the district; and

(2) A statement showing that the territory to be removed meets the standards and requirements of subsection (a) of this section.

The report shall be available for public inspection in the office of the clerk to the board for at least 10 days before the date of the public hearing.

(c) Hearing and Notice. — The board shall hold a public hearing before adopting any resolution reducing the boundaries of a service district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than seven days before the hearing. In addition, the notice shall be mailed at least two weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the territory to be removed. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and the certificate shall be conclusive in the absence of fraud.

(d) Municipal Annexation Allowed Under General Law. — The general law concerning annexation, Article 4A of Chapter 160A of the General Statutes, shall apply to any territory removed from the district under this section, notwithstanding any local act to the contrary.

(e) Effective Date. — The resolution reducing the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board. (2003-187, s. 1.)

§ 153A-315. Required provision or maintenance of services.

(a) New District. — When a county or counties define a research and production service district, it or they shall provide, maintain, or let contracts for the services for which the district is being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) Extended District. — When a territory is annexed to a research and production service district, the county or counties shall provide, maintain, or let contracts for the services provided or maintained throughout the district to property in the area annexed to the district within a reasonable time, not to exceed one year, after the effective date of the annexation. (1985, c. 435, s. 1.)

§ 153A-316. Abolition of service districts.

A board or boards of county commissioners may by resolution abolish a research and production service district upon finding that (i) a petition requesting abolition, signed by at least fifty percent (50%) of the owners of real property in the district who own at least fifty percent (50%) of the total area of real property in the district, has been submitted to the board or boards; and (ii) there is no longer a need for such service district. In determining the total area of real property in the district and the number of owners of real property, there shall be excluded (1) real property exempted from taxation and real property classified and excluded from taxation and (2) the owners of such exempted or classified and excluded property. The board or boards shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any service district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board or boards. If a multi-county service district is established, it may be abolished only by concurrent resolution of the board of commissioners of each county in which the district is located. (1985, c. 435, s. 1.)

§ 153A-317. Taxes authorized; rate limitation.

(a) A county, upon recommendation of the advisory committee established pursuant to G.S. 153A-313, may levy property taxes within a research and production service district in addition to those levied throughout the county, in order to finance, provide, or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided, or maintained for the entire county. In addition, a county may allocate to a service district any other revenues whose use is not otherwise restricted by law. The proceeds of taxes only within a service district may be expended only for services provided for the district.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the county as of the preceding January 1.

(b) Such additional property taxes may not be levied within any district established pursuant to this Article in excess of a rate of ten cents (10¢) on each one hundred dollars ($100.00) value of property subject to taxation or, in the event that the research and production service district satisfies the criteria of G.S. 143B-437.08(h), such additional property taxes may not be levied within said district in excess of a rate of fifteen cents (15¢) on each one hundred dollars ($100.00) value of property subject to taxation.

(c) For the purpose of constructing, maintaining, or operating public transportation as defined by G.S. 153A-149(c)(27), in addition to the additional property taxes levied under subsections (a) and (b) of this section, a county, upon recommendation of the advisory committee established pursuant to G.S. 153A-313, may levy additional property taxes within any service district established pursuant to this Article not in excess of a rate of ten cents (10¢) on each one hundred dollars ($100.00) value of property subject to taxation. Such property taxes for public transportation may only be used within the service district, or to provide for public transportation from the service district to other public transportation systems or to other places outside the service district including airports. (1985, c. 435, s. 1; 2009-523, s. 3(c); 2009-527, s. 6.)

Effect of Amendments. — Session Laws 2009-523, s. 3(c), effective August 26, 2009, added "or, in the event . . . subject to taxation" at the end of the of the last paragraph (now subsection (b)).

Session Laws 2009-527, s. 6, effective August 27, 2009, added the subsection (a) and (b) designations; inserted "upon recommendation of the advisory committee established pursuant to G.S. 153A-313," in the first sentence of present subsection (a); and added subsection (c).

§§ 153A-317.1 through 153A-310.10: Reserved for future codification purposes.

Part 3. Economic Development and Training Districts.

§ 153A-317.11. Purpose and nature of districts.

The board of commissioners of any county may define a county economic development and training district, as provided in this Part, to finance, provide, and maintain for the district a skills training center in cooperation with its community college branch in or for the county to prepare residents of the county to perform manufacturing, research and development, and related service and support jobs in the pharmaceutical, biotech, life sciences, chemical, telecommunications, and electronics industries, and allied, ancillary, and subordinate industries, to provide within the district any of the education, training, and related services, facilities, or functions that a county or a city is authorized by general law to provide, finance, or maintain, and to promote economic development in the county. The skills training center and related services shall be financed, provided, or maintained in the district either in addition to or to a greater extent than training facilities and services are financed, provided, or maintained in the entire county. A district created under this Part is a special tax area under Section 2(4) of Article V of the North Carolina Constitution. (2003-418, s. 1; 2004-170, s. 38.)

§ 153A-317.12. Definition of economic development and training district.

(a) Standards. — The board of commissioners may by resolution establish an economic development and training district for an area or areas of the county that, at the time the resolution is adopted, meet the following standards:

(1) All of the real property in the district primarily is being used for, or is subject to, a declaration of covenants, conditions, and restrictions that limits its use primarily to biotech processing, chemical manufacturing, pharmaceutical manufacturing, electronics manufacturing, telecommunications manufacturing, and any allied, ancillary, or subordinate uses including, without limitation, any research and development facility, headquarters or office, temporary lodging facility, restaurant, warehouse, or transportation or distribution facility.

(2) The district includes at least two pharmaceuticals manufacturing or bioprocessing facilities occupying sites in the district containing in the aggregate at least 425 acres owned by publicly held corporations.

(3) The bioprocessing and pharmaceuticals manufacturing facilities in the district employ in the aggregate at least 1,600 persons.

(4) The district includes an industrial park consisting of at least 60 acres within a noncontiguous parcel of at least 625 acres now or formerly owned by an airport authority.

(5) The district's zoning classifications permit the uses listed in this section.

(6) All real property in the district is either zoned for or is being used primarily for pharmaceutical, biotech, life sciences, chemical, telecommunications, or electronics manufacturing or processing or allied, ancillary, or subordinate uses.

(7) The district shall include a skills training center situated on a tract containing not less than eight acres, which facility shall be designed

and staffed to provide relevant training to prepare existing or prospective employees of targeted industries for jobs in one or more of the pharmaceutical, biotech, life sciences, chemical, telecommunications, and electronics industries and allied, ancillary, or subordinate industries. The training center shall be completed within a reasonable period after the creation of the district.

(8) At the date of creation, no part of the district lies within the boundaries of any incorporated city or town.

(9) There exists a uniform set of covenants, conditions, restrictions, and reservations that applies to all real property in the district other than property owned by the federal, State, or local government.

(10) There exists in the district an association of owners and tenants to which owners of real property representing at least fifty percent (50%) of the assessed value of real property in the district belong, which association can make the recommendations provided for in G.S. 153A-317.13.

(11) A petition requesting creation of the district signed by owners of real property in the district who own real and personal property representing at least fifty percent (50%) of the total assessed value of the real and personal property in the district has been presented to the board of commissioners. In determining the assessed value of real and personal property in the district and the owners of real property, there shall be excluded: (i) real property exempted from taxation and real property classified and excluded from taxation and (ii) the owners of such exempted or classified and excluded property. Assessed value shall mean the most recent values determined by the county for the imposition of taxes on real and personal property.

(b) Findings. — The board of commissioners may establish an economic development and training district if, upon the information and evidence it receives, the board determines that:

(1) The proposed district meets the standards set forth in subsection (a) of this section;

(2) Economic development of the county will be served by providing selected skills training in a facility designed specifically to address the needs of targeted industries such as pharmaceuticals, biotech processing, telecommunications, electronics, and allied, ancillary, or subordinate supplies or services to induce existing industries and targeted industries to improve and expand their facilities and new industries to locate facilities in the district, thereby providing employment opportunities for the residents of the county;

(3) It is impossible or impractical to provide training facilities and services on a countywide basis to all existing and future employers in the county to the same extent as such training services are intended to be furnished within the district; and

(4) It is economically feasible to provide the proposed training facilities and services in the district without unreasonable or burdensome tax levies.

(c) Report. — Before the public hearing required by subsection (d) of this section, the board of commissioners shall cause to be prepared a report containing all of the following:

(1) A map of the proposed district showing its proposed boundaries.

(2) A statement showing that the proposed district meets the standards set out in subsection (a) of this section.

(3) A plan for providing the skills training center and training services to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(d) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution defining a district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall include a map of the proposed district and a statement that the report required by subsection (c) of this section is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and the certificate shall be conclusive in the absence of fraud.

(e) Effective Date. — The resolution creating a district shall take effect at the beginning of the fiscal year commencing after its passage or such other date as shall be determined by the board of commissioners. (2003-418, s. 1.)

§ 153A-317.13. Advisory committee.

(a) Creation. — The board of commissioners, in the resolution establishing an economic development and training district, shall also provide for an advisory committee for the district. The committee shall consist of five members, serving terms as set forth in the resolution. The resolution shall provide for the appointment or designation of a chair. The board of commissioners shall appoint the members of the advisory committee as provided in this section.

(b) Membership. — Three of the five committee members shall represent the association of owners and tenants, as required by G.S. 153A-317.12(a)(10), and two members shall represent the county. Before making the appointments representing the association, the board of commissioners shall request the association to submit a list of persons to be considered for appointment to the committee. The association of owners and tenants shall submit at least two names for each appointment to be made and the board of commissioners shall make the appointments to the committee representing the association from the list of persons submitted to it by the association. Whenever a vacancy occurs on the committee in a position filled by an appointment by the board of commissioners representing the association of owners and tenants, the board, before filling the vacancy, shall request the association to submit the names of at least two persons to be considered for the vacancy, and the board shall fill the vacancy by appointing one of the persons so submitted.

(c) Advisory Duties. — Each year, before adopting the budget for the district and levying the tax for the district, the board shall request recommendations from the advisory committee as to the type and level of services, facilities, or functions to be provided for the district for the ensuing years. The board of commissioners shall, to the extent permitted by law, expend the proceeds of any tax levied for the district in the manner recommended by the advisory committee. (2003-418, s. 1.)

§ 153A-317.14. Extension of economic development and training districts.

(a) Standards. — A board of commissioners may by resolution annex territory to an economic development and training district upon finding that:

(1) The conditions, covenants, restrictions, and reservations required by G.S. 153A-317.12(a)(1) that apply to all real property in the district, other than property owned by the federal, State, or local government,

also apply or will apply to the property, other than property owned by the federal government, to be annexed.

(2) One hundred percent (100%) of the owners of real property in the area to be annexed have petitioned for annexation.

(3) The district, following the annexation, will continue to meet the standards set out in G.S. 153A-317.12(a).

(4) The reasonably anticipated training needs of the existing companies in the area to be annexed and of new companies that may locate within the expanded area can be met by the skills training facility located in the district.

(5) The area to be annexed is either contiguous to a lot, parcel, or tract of land in the district or at least 500 acres in the aggregate counting all parcels proposed for annexation. A property shall, for purposes of this section, be deemed to be contiguous notwithstanding that it may be separated from other property by a street, road, highway, right-of-way, or easement.

(6) If any of the area proposed to be annexed to the district is wholly or partially within the extraterritorial jurisdiction of a municipality, then it shall be necessary to first obtain the affirmative vote of a majority of the members of the governing body of the municipality before the area can be annexed.

(b) Report. — Before the public hearing required by subsection (c) of this section, the board shall cause to be prepared a report containing all of the following:

(1) A map of the district and the territory proposed to be annexed showing the present and proposed boundaries of the district.

(2) A statement that the area to be annexed meets the standards and requirements of subsection (a) of this section.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. — The board shall hold a public hearing before adopting any resolution extending the boundaries of a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than four weeks before the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the area to be annexed. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and the certificate shall be conclusive in the absence of fraud.

(d) Effective Date. — The resolution extending the boundaries of the district shall take effect at the beginning of the fiscal year commencing after its passage or such other date as shall be determined by the board. (2003-418, s. 1.)

§ 153A-317.15. Required provision or maintenance of skills training center.

(a) New District. — When a county creates a district, it shall provide, maintain, or let contracts for the skills training center for which the district is being taxed within a reasonable time, not to exceed one year, after the effective date of the creation of the district.

(b) Extended District. — When a territory is annexed to a district, the county shall provide, maintain, or let contracts for any necessary additions to the skills training center to provide the same training provided throughout the district to existing and new industries in the area annexed to the district within a reasonable time, not to exceed one year, after the effective date of the annexation. (2003-418, s. 1.)

§ 153A-317.16. Abolition of economic development and training districts.

A board of county commissioners may by resolution abolish a district upon finding that a petition requesting abolition, signed by at least fifty percent (50%) of the owners of real property in the district who own at least fifty percent (50%) of the real and personal property in the district based upon the most recent valuation thereof, has been submitted to the board and that there is no longer a need for such district. In determining the total real and personal property in the district and the number of owners of real and personal property, there shall be excluded: (i) property exempted from taxation and property classified and excluded from taxation and (ii) the owners of such exempted or classified and excluded property. The board shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall be published at least once not less than one week before the date of the hearing. The abolition of any district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board. (2003-418, s. 1.)

§ 153A-317.17. Taxes authorized; rate limitation.

A county may levy property taxes within an economic development and training district, in addition to those levied throughout the county, for the purposes listed in G.S. 153A-317.11 within the district in addition to or to a greater extent than the same purposes provided for the entire county. In addition, a county may allocate to a district any other revenues whose use is not otherwise restricted by law. The proceeds of taxes within a district may be expended only to pay annual debt service on up to one million two hundred thousand dollars ($1,200,000) of the capital costs of a skills training center provided for the district and any other services or facilities provided by a county in response to a recommendation of an advisory committee.

Property subject to taxation in a newly established district or in an area annexed to an existing district is subject to taxation by the county as of the preceding January 1.

Such additional property taxes may not be levied within any district established pursuant to this Article in excess of a rate of eight cents (8¢) on each one hundred dollars ($100.00) value of property subject to taxation. (2003-418, s. 1; 2004-170, s. 39.)

ARTICLE 17.

§§ 153A-318, 153A-319: Reserved for future codification purposes.

ARTICLE 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-320. Territorial jurisdiction.

Each of the powers granted to counties by this Article, by Chapter 157A, and by Chapter 160A, Article 19 may be exercised throughout the county except as otherwise provided in G.S. 160A-360. (1959, c. 1006, s. 1; c. 1007; 1965, c. 194, s. 2; c. 195; 1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

Local Modification. — (As to Article 18, Parts 1, 2, and 3) Cherokee: 1989 (Reg. Sess., 1990), c. 1049; Mecklenburg: 2000-77, as amended by 2001-275; Wake: 1998-192; 2000-66, s. 1; 2005-89, ss. 1, 2; city of Raleigh: 1998-192; 2000-66, s. 1; 2005-89, ss. 1, 2; town of Apex: 1998-192; 2000-66, s. 1; 2005-89, ss. 1, 2; town of Cary: 1998-192; 2000-66, s. 1; 2005-89, ss. 1, 2; town of Garner: 1998-192; 2000-66, s. 1; 2005-89 ss. 1, 2.

Editor's Note. — Chapter 157A, referred to in this section, was transferred to Chapter 160A, Article 19, Part 3B, by Session Laws 1973, c. 426, s. 62.

Session Laws 2004-161, ss. 4.1 to 4.5, provide: "SECTION 4.1. There is created the Study Commission on Residential and Urban Development Encroachment on Military Bases and Training Areas. The Commission shall consist of 17 members as follows:

"(1) Two county commissioners appointed by the President Pro Tempore of the Senate.

"(2) Two county commissioners appointed by the Speaker of the House of Representatives.

"(3) The commanding generals of Fort Bragg, Pope Air Force Base, Seymour Johnson Air Force Base, Camp Lejeune, and Cherry Point Air Station, or the general's designee.

"(4) Three Senators appointed by the President Pro Tempore of the Senate.

"(5) Three Representatives appointed by the Speaker of the House of Representatives.

"(6) One elected or appointed municipal official appointed by the President Pro Tempore of the Senate.

"(7) One elected or appointed municipal official appointed by the Speaker of the House of Representatives.

"The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Commission. The Commission may meet at any time upon the joint call of the cochairs. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

"SECTION 4.2. The Commission shall study the following concerning residential and urban development encroachment on military bases and training areas:

"(1) Restricting the zoning in the areas around military bases and training areas.

"(2) How encroachment affects deed registration.

"(3) Protecting the areas around military bases and training areas by purchasing development rights and buffers using all available State trust funds and other available funding mechanisms.

"(4) Any other issue the Commission considers relevant.

"SECTION 4.3. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S.120-3.1, 138-5, or 138-6, as appropriate.

"SECTION 4.4. The Commission shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2005 General Assembly upon its convening. The Commission shall terminate upon the convening of the 2005 General Assembly.

"SECTION 4.5. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part."

For provisions of Session Laws 2009-406, ss. 1-5, relating to the extension of certain government approvals affecting the development of real property within the state, see the Editor's note at G.S. 153A-344.1.

CASE NOTES

A county sign ordinance did not violate the equal protection clause of U.S. Const., Amend. XIV or N.C. Const., Art. I, § 19, because the county would not enforce the ordinance with respect to any person owning or operating a sign in certain municipalities within the county since the county could not exercise zoning authority within a city which had enacted a zoning ordinance and it could defer from zoning within cities. County of Cumberland v. Eastern Fed. Corp., 48 N.C. App. 518, 269 S.E.2d 672, cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

Procedures of Article 18 Did Not Apply to County Sign Ordinance. — The enactment of the Sign Control Ordinance of Transylvania County, North Carolina, was a valid exercise of the general police power of Transylvania County, North Carolina, under G.S. 153A-121, and, therefore, Transylvania County did not have to follow the enactment procedures of ch. 153A, art. 18 in enacting the ordinance. Transylvania County v. Moody, 151 N.C. App. 389, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002).

A county may not exercise jurisdiction over any part of a city located within its borders. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Statutes do not give a county authority over provision of sewer services within a city, or over newly annexed areas of the city which also lie in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Cited in Guilford County Planning & Dev. Dep't v. Simmons, 102 N.C. App. 325, 401 S.E.2d 659 (1991); Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

§ 153A-321. Planning boards.

A county may by ordinance create or designate one or more boards or commissions to perform the following duties:

(1) Make studies of the county and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;
(7) Perform any other related duties that the board of commissioners may direct.

A board or commission created or designated pursuant to this section may include but shall not be limited to one or more of the following:

(1) A planning board or commission of any size (with not fewer than three members) or composition considered appropriate, organized in any manner considered appropriate;
(2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1; 1979, c. 611, s. 6; 1997-309, s. 5; 2004-199, s. 41(c).)

Legal Periodicals. — For article, "Moving Toward the Bargaining Table: Contract Zoning, Development Agreements, and the Theoretical Foundations of Government Land Use Deals," see 65 N.C.L. Rev. 957 (1987).

CASE NOTES

Amendment to county zoning ordinance constituted a valid legislative prerogative to change the sanitary landfill use from a "special use permit" category to a "use by right under prescribed conditions" category and that section of the county zoning ordinance, which allowed the county zoning administrator to approve the county's permit application for the siting of a landfill, was constitutional and lawful on its face. County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993).

OPINIONS OF ATTORNEY GENERAL

Member of County Planning Board Serves at Will of Commissioners. — See opinion of Attorney General to Mr. William C. Reeves, Madison County Attorney, 41 N.C.A.G. 230 (1971).

§ 153A-322. Supplemental powers.

(a) A county or its designated planning board may accept, receive, and disburse in furtherance of its functions funds, grants, and services made available by the federal government or its agencies, the State government or its agencies, any local government or its agencies, and private or civic sources. A county, or its designated planning board with the concurrence of the board of commissioners, may enter into and carry out contracts with the State or federal governments or any agencies of either under which financial or other planning assistance is made available to the county and may agree to and comply with any reasonable conditions that are imposed upon the assistance.

(b) A county, or its designated planning board with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. A county, or its designated planning board with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to pay the other local government or planning board for technical planning assistance.

(c) A county may make any appropriations that may be necessary to carry out an activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A, Article 19 or to support, and compensate members of, any planning board that it may create or designate pursuant to this Article.

(d) A county may elect to combine any of the ordinances authorized by this Article into a unified ordinance. Unless expressly provided otherwise, a county may apply any of the definitions and procedures authorized by law to any or all aspects of the unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of the ordinance. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1; 1983, c. 377, s. 8; 2004-199, s. 41(d); 2005-418, s. 1(b).)

Editor's Note. — Chapter 157A, referred to in this section, was transferred to Chapter 160A, Article 19, Part 3B (G.S. 160A-399.1 et seq.), by Session Laws 1973, c. 426, s. 62. Chapter 160A, Article 19, Part 3B was later repealed by Session Laws 1989, c. 706. As to historic districts and landmarks, see now Chapter 160A, Article 19, Part 3C, G.S. 160A-400.1 et seq.

Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

§ 153A-323. Procedure for adopting, amending, or repealing ordinances under this Article and Chapter 160A, Article 19.

(a) Before adopting, amending, or repealing any ordinance authorized by this Article or Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance or amendment. The board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the board of commissioners shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the board of commissioners shall take the comments and analysis into consideration before making a final determination on the ordinance. (1959, c. 1006, s. 1; c. 1007; 1973, c. 822, s. 1; 1981, c. 891, ss. 2, 9; 2004-75, s. 1; 2005-426, s. 1(b).)

Editor's Note. — Session Laws 1993, c. 469, s. 3(a), effective January 1, 1994, repeals various acts, including the following local modifications to this section: Session Laws 1993, c. 101, as to Wilkes; 1993, c. 139, as to Stokes; 1993, c. 156, as to Watauga; 1993, c. 267, as to Davidson and Davie; 1993, c. 296, as to Nash and Franklin. Section 3(b) of c. 469 provides that nothing in the section affects any ordinance adopted under the authority of any act repealed by s. 3(a) prior to the effective date of c. 469.

Session Laws 1993, c. 469, s. 5 provides: "Sec. 5. (a) This act becomes effective January 1, 1994, except that as to any city or county, it becomes effective at any time between the date of ratification of this act and January 1, 1994 if the city or county, as appropriate, adopts an ordinance placing it into effect at such earlier date. Adoption of such ordinance is subject to the procedural requirements of G.S. 160A-364 or G.S. 153A-323, as appropriate, but not to any procedural requirement of the zoning ordinance for adoption of amendments to the zoning ordinance. The ordinance may provide for different dates of applicability based on the stage of the zoning classification action on the effective date.

"If the city or county is subject to a local act repealed by Section 3 of this act, the ordinance prevails over some or all of the local act if the ordinance so provides.

"(b) This section does not apply to Forsyth County or municipalities located within that county."

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under corresponding sections of former law.*

The requirement that a public hearing be conducted is mandatory. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968); Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

Hearing and Opportunity to Present Views Intended. — The manifest intention of the General Assembly was that a public hearing be conducted at which those who opposed and those who favored adoption of the ordinance would have a fair opportunity to present their respective views. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968); Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

Standing. — Owner had standing to challenge the Buncombe County, N.C., Multi-Family Dwelling Ordinance (Ordinance) because the owner's attack on the Ordinance was not an "as-applied" challenge, but rather was an attack on the county's failure to comply with G.S. 153A-323 in enacting the ordinance; thus, the owner's challenge was an attack on the Ordinance's procedural enactment, the owner's use of its land was limited by the zoning regulations, and the owner had standing. Thrash Ltd. P'ship v. County of Buncombe, — N.C. App. —, 673 S.E.2d 689, 2009 N.C. App. LEXIS 256 (2009).

County commissioners are not required to hear all persons in attendance without limitation as to number and time. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

Nor to Answer Questions. — The county commissioners are not required to answer questions asked by those in attendance at the public meeting. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

Repetition of Same Views Not Contemplated. — The General Assembly did not contemplate that all persons entertaining the same views would have an unqualified right to iterate and reiterate these views in endless repetition. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

Notice Requirements Could Not Be Avoided by Citing to Police Powers. — Trial court erred in granting a county's summary judgment motion and in denying a property owner's summary judgment motion where: (1) an ordinance prohibiting heavy industry was enacted after the county was enjoined from enforcing a moratorium on the issuance of building permits in the same area, (2) the moratorium was covered by N.C. Gen. Stat. ch. 153A, art. 18 as it dealt with the issuance of building permits, (3) the county could not avoid the notice requirements G.S. 153A-323, by stating that the moratorium was enacted pursuant to the police powers under G.S. 153A-121, and (4) although the county complied with the notice requirements before enacting the ordinance, the county had already been ordered to issue the building permit. Sandy Mush Props., Inc. v. Rutherford County, 164 N.C. App. 162, 595 S.E.2d 233, 2004 N.C. App. LEXIS 743 (2004).

County's failure to comply with G.S. 153A-323 in enacting the Buncombe County, N.C., Multi-Family Dwelling Ordinance (Ordinance) rendered the ordinance invalid; although the county claimed that the Ordinance was adopted in the exercise of its general police power pursuant to G.S. 153A-121, the Ordinance substantially affected land use, was therefore a zoning ordinance, and the county was not permitted to evade the legislative notice requirements imposed by G.S. 153A-323 by labeling the Ordinance an exercise of police power. Thrash Ltd. P'ship v. County of Buncombe, — N.C. App. —, 673 S.E.2d 689, 2009 N.C. App. LEXIS 256 (2009).

Failure to Comply with Notice Requirements. — Where there was no notice to the public or advertised public hearing prior to adoption of the ordinance as required by this section; the trial court's conclusion that the ordinance passed by the board imposing a moratorium on building permits pending zoning was invalid. Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

A county ordinance that imposed a moratorium on the issuance of building permits dealing with the construction of heavy industry was invalid, because notice was not given once a week for two successive weeks before the public hearing on the ordinance was held as was required under G.S. 153A-323, and instead notice was only published once. Sandy Mush Props., Inc. v. Rutherford County, 160 N.C. App. 683, 586 S.E.2d 849, 2003 N.C. App. LEXIS 1934 (2003).

County's claim that it did not have to issue notice in compliance with G.S. 153A-323 because the ordinance, imposing a moratorium on the issuance of building permits for the construction or operation of heavy industry, was enacted pursuant to the county's police power under G.S. 153A-121, failed. Sandy Mush Props., Inc. v. Rutherford County, 160 N.C. App. 683, 586 S.E.2d 849, 2003 N.C. App. LEXIS 1934 (2003).

Applied in Lee v. Simpson, 44 N.C. App. 611, 261 S.E.2d 295 (1980).

Cited in PNE AOA Media, L.L.C. v. Jackson County, 146 N.C. App. 470, 554 S.E.2d 657, 2001 N.C. App. LEXIS 981 (2001); Transylvania County v. Moody, 151 N.C. App. 389, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002); Molamphy v. Town of S. Pines, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 3594 (M.D.N.C. Mar. 3, 2004).

§ 153A-324. Enforcement of ordinances.

(a) In addition to the enforcement provisions of this Article and subject to the provisions of the ordinance, any ordinance adopted pursuant to this Article, to Chapter 157A, or to Chapter 160A, Article 19 may be enforced by any remedy provided by G.S. 153A-123.

(b) If the county is found to have illegally exacted a tax, fee, or monetary contribution for development or a development permit not specifically authorized by law, the county shall return the tax, fee, or monetary contribution plus interest of six percent (6%) per annum. (1959, c. 1006, s. 1; 1961, c. 414; 1973, c. 822, s. 1; 2007-371, s. 1.)

Editor's Note. — Chapter 157A, referred to in this section, was transferred to Chapter 160A, Article 19, Part 3B (G.S. 160A-399.1 et seq.), by Session Laws 1973, c. 426, s. 62. Chapter 160A, Article 19, Part 3B was later repealed by Session Laws 1989, c. 706. As to historic districts and landmarks, see now Chapter 160A, Article 19, Part 3C (G.S. 160A-400.1 et seq.).

CASE NOTES

Zoning Ordinance May Be Enforced by Injunction. — The relevant enabling acts provide for enforcement of the provisions of a zoning ordinance by injunction. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964), decided under former law.

Ordinance Itself Need Not Provide for Equitable Enforcement. — It is unnecessary for a zoning ordinance itself to contain any specific provision for equitable enforcement because this section allows any remedy under G.S. 153A-123 to be used at the county's election as a matter of right and without qualification, unless the county's zoning ordinance provides otherwise. New Hanover County v. Pleasant, 59 N.C. App. 644, 297 S.E.2d 760 (1982).

§ 153A-325. Submission of statement concerning improvements.

A county may by ordinance require that when a property owner improves property at a cost of more than twenty-five hundred dollars ($2,500) but less than five thousand dollars ($5,000), the property owner must, within 14 days after the completion of the work, submit to the county assessor a statement setting forth the nature of the improvement and the total cost thereof. (1983, c. 614, s. 4; 1987, c. 45, s. 1.)

Editor's Note. — Session Laws 2008-65, s. 1, effective September 1, 2008, repealed Session Laws 1983, c. 614, s. 5, which had provided that the amendments by the 1983 act would not apply to Wilson, Nash and Edgecombe Counties.

§ 153A-326. Building setback lines.

Counties shall have the same authority to regulate building setback lines as is provided for cities in G.S. 160A-306. (1987, c. 747, s. 15.)

§§ 153A-327 through 153A-329: Reserved for future codification purposes.

Part 2. Subdivision Regulation.

§ 153A-330. Subdivision regulation.

A county may by ordinance regulate the subdivision of land within its territorial jurisdiction. If a county, pursuant to G.S. 153A-342, has adopted a zoning ordinance that applies only to one or more designated portions of its territorial jurisdiction, it may adopt subdivision regulations that apply only within the areas so zoned and need not regulate the subdivision of land in the rest of its jurisdiction. In addition to final plat approval, the ordinance may include provisions for review and approval of sketch plans and preliminary plats. The ordinance may provide for different review procedures for differing classes of subdivisions. The ordinance may be adopted as part of a unified development ordinance or as a separate subdivision ordinance. Decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance. Whenever the ordinance includes criteria for decision that require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval. (1959, c. 1007; 1965, c. 195; 1973, c. 822, s. 1; 2005-418, s. 2(b).)

Local Modification. — (As to Article 18, Parts 1, 2, and 3) Cherokee: 1989 (Reg. Sess., 1990), c. 1049; Pender: (As to Part 2 of Article 18) 1991, c. 204, ss. 1, 2; c. 761, s. 36; (As to Part 2) Person: 1987 (Reg. Sess., 1988), c. 932, s. 1; Robeson: 1987, c. 535, s. 1; (As to Part 2) 1993, c. 131, s. 1; c. 553, s. 82; 1993 (Reg. Sess., 1994), c. 638, s. 1.

Cross References. — As to compliance of subdivision streets with minimum standards of the Board of Transportation required of developers, see G.S. 136-102.6. As to subdivision regulation in cities, see G.S. 160A-371 et seq.

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

CASE NOTES

Limitation on Authority of County Commissioners to Adopt Subdivision Control Ordinance. — The authority of a board of county commissioners to adopt a subdivision control ordinance may be lawfully exercised only within prescribed limitations. Thus, a subdivision ordinance adopted by the board of county commissioners applies solely to land lying within the county and outside the subdivision-regulation jurisdiction of any municipality. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969), decided under former law.

Applied in Springdale Estates Ass'n v. Wake County, 47 N.C. App. 462, 267 S.E.2d 415 (1980).

Cited in Jones v. Davis, 163 N.C. App. 628, 594 S.E.2d 235, 2004 N.C. App. LEXIS 577 (2004).

§ 153A-331. Contents and requirements of ordinance.

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning board. For the authorization to reserve school sites to be effective, the board of commissioners or planning board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning board shall immediately notify the board of education. The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation. (1959, c. 1007; 1973, c. 822, s. 1; 1975, c. 231; 1987, c. 747, ss. 10, 17; 2005-426, s. 2(b).)

Local Modification. — Orange: 1987, c. 460, ss. 17, 17.1; 1991, c. 246, s. 1; c. 324, s. 1; 1993 (Reg. Sess., 1994), c. 642, s. 4(a), (c); Transylvania: 1991 (Reg. Sess., 1992), c. 972, s. 2.

Cross References. — As to developers being required to file map or plat of subdivision streets, see G.S. 136-102.6. As to subdivision regulation by cities, see G.S. 160A-371.

CASE NOTES

Former Statute Did Not Authorize Laying Out, etc., of Highways, Streets or Alleys Within Meaning of Constitution. — The statutory provisions of former G.S. 153-266.3 and 153-266.4, as to what might and what must be included in a county subdivision ordinance, did not constitute "authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys" within the meaning of N.C. Const., Art. II, § 24. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Effect of Specific Exemption. — The general health, safety, and welfare language of this section cannot invalidate the specific exemption clearly stated in G.S. 153A-335(2), as the language of subdivision (2) itself is not ambiguous, and plaintiff's division of land falls, without question under this exception. Three Guys Real Estate v. Harnett County, 345 N.C. 468, 480 S.E.2d 681 (1997).

Cited in Coastland Corp. v. County of Currituck, 734 F.2d 175 (4th Cir. 1984); Batch v. Town of Chapel Hill, 326 N.C. 1, 387 S.E.2d 655 (1990).

§ 153A-332. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.

A subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat before its registration.

The ordinance shall provide that the following agencies be given an opportunity to make recommendations concerning an individual subdivision plat before the plat is approved:

(1) The district highway engineer as to proposed State streets, State highways, and related drainage systems;

(2) The county health director or local public utility, as appropriate, as to proposed water or sewerage systems;

(3) Any other agency or official designated by the board of commissioners.

The ordinance may provide that final decisions on preliminary plats and final plats are to be made by:

(1) The board of commissioners,

(2) The board of commissioners on recommendation of a designated body, or

(3) A designated planning board, technical review committee, or other designated body or staff person.

From the effective date of a subdivision ordinance that is adopted by the county, no subdivision plat of land within the county's jurisdiction may be filed or recorded until it has been submitted to and approved by the appropriate board or agency, as specified in the subdivision ordinance, and until this approval is entered in writing on the face of the plat by an authorized representative of the county. The Review Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of the county that has not been approved in accordance with these provisions, and the clerk of superior court may not order or direct the recording of a plat if the recording would be in conflict with this section. (1959, c. 1007; 1973, c. 822, s. 1; 1997-309, s. 6; 2005-418, s. 3(b).)

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Legal Periodicals. — For article, "Transferring North Carolina Real Estate, Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

CASE NOTES

County's Failure To Follow Subdivision Ordinance. — Local governments derive their authority to establish regulations regarding plat approval from the state of North Carolina pursuant to G.S. 153A-332, and the courts have the authority to nullify action taken by the local entity when it has deviated from its own ordinance concerning the issuance of permits on subdivisions; under former New Hanover County, N.C., Subdivision Ordinance 32 § 3, only the plat applicant had the right to appeal the decision to approve a plat made by the county Technical Review Committee (TRC) to the county's Board of Commissioners (BOC), and the BOC had no appellate authority to hear an appeal of the TRC's approval brought by a third party citizens' group. Sanco of Wilmington Serv. Corp. v. New Hanover County, 166 N.C. App. 471, 601 S.E.2d 889, 2004 N.C. App. LEXIS 1740 (2004).

§ 153A-333. Effect of plat approval on dedications.

The approval of a plat does not constitute or effect the acceptance by the county or the public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat and shall not be construed to do so. (1959, c. 1007; 1973, c. 822, s. 1.)

CASE NOTES

Cited in Cavin v. Ostwalt, 76 N.C. App. 309, 332 S.E.2d 509 (1985).

§ 153A-334. Penalties for transferring lots in unapproved subdivisions.

(a) If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 153A-357 may be denied for lots that have been illegally subdivided. In addition to other remedies, a county may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, provided the contract does all of the following:

(1) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.

(2) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.

(3) Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.

(4) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

(c) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision ordinance or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision ordinance and recorded with the register of deeds. (1959, c. 1007; 1973, c. 822, s. 1; 1977, c. 820, s. 1; 1993, c. 539, s. 1063; 1994, Ex. Sess., c. 24, s. 14(c); 2005-426, s. 3(b).)

CASE NOTES

***Editor's Note.** — The case annotated below was decided under former G.S. 153-266.6.*

Purpose of Former § 153-266.6. — The sole purpose of former G.S. 153-266.6, similar to this section, was to compel compliance with ordinance provisions seeking to prevent any subdivision of land covered by its terms unless and until the proposed subdivision map had been submitted to and approved by designated governmental agencies. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

What former § 153-266.6 condemned as a misdemeanor was the description of land in any contract of sale, deed or other instrument of transfer by reference to a subdivision plat that had not been properly approved and recorded. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Recording of Instrument Containing Improper Reference Immaterial. — The misdemeanor defined in former G.S. 153-266.6 related to a sale or transfer of land with reference to a plat showing a subdivision of land before such plat had been properly approved under the ordinance and recorded in the office of the appropriate register of deeds. Whether the contract of sale, deed or other instrument of transfer was recorded was immaterial. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Ordinance Regulating Subdivision of Land Prerequisite to Conviction. — As one of the prerequisites to conviction for sale of land by reference to an unapproved plat, it must be alleged and established that an ordinance regulating the subdivision of land was adopted by the board of county commissioners in accordance with the authority conferred by statute. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Person Subject to Prosecution. — The owner of land or his agent within the "platting jurisdiction" granted the county commissioners by statute was the only person subject to criminal prosecution for the sale of land by reference to an unapproved plat. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Warrant Must Allege That Defendant Was Land Owner or Owner's Agent Within Platting District. — A warrant is fatally defective if it fails to allege one of the essential elements of the criminal offense, namely, that defendant was the owner of land or his agent within the platting jurisdiction granted to the county commissioners by the statute. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

General allegation that defendant's conduct constituted a misdemeanor in violation of the statute was insufficient. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

§ 153A-335. "Subdivision" defined.

(a) For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations.

(2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved.

(3) The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors.

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.

(b) A county may provide for expedited review of specified classes of subdivisions. (1959, c. 1007; 1973, c. 822, s. 1; 1979, c. 611, s. 2; 2003-284, s. 29.23(b); 2005-426, s. 4(b).)

Local Modification. — Bertie: 2007-87, s. 1; Cherokee: 1977, c. 253; Chowan: 2002-141, s. 8 (applicable to all subdivisions created on or after June 16, 1992); 2003-79, s. 1; Davie: 1995, c. 78, s. 1; Henderson: 1989 (Reg. Sess., 1990), c. 863, s. 1; Jones: 1999-125, s. 1; Macon: 2009-33; Montgomery: 1995, c. 337, s. 1; Onslow: 1975, c. 105; Person: 1987 (Reg. Sess., 1988), c. 932, s. 2; Pitt: 2004-46; Richmond: 2000-11; 2001-189, s. 1; Robeson: 1987, c. 535, s. 2; Scotland: 1983, c. 96; Stanly: 1987 (Reg. Sess., 1988), c. 930; 1991, c. 504; 1993 (Reg. Sess., 1994), c. 574; 1998-37; 1998-217, s. 7; 2007-237, s. 1 (applicable only to subdivision submitted to the Stanly County Planning Department for approval on or after July 18, 2007); Transylvania: 1991 (Reg. Sess., 1992), c. 972, s. 1.

Editor's Note. — Session Laws 1979-313, ss. 2 and 3, which provided for a local modification to this section applicable to Rutherford County, are repealed by Session Laws 2006-189, s. 1, effective August 3, 2006.

Session Laws 1993-194, which provided for a local modification to this section applicable to Pasquotank County, is repealed by Session Laws 2007-207, s. 1, effective July 10, 2007.

CASE NOTES

Specific Exemption Controls. — The general health, safety, and welfare language of G.S. 153A-331 cannot invalidate the specific exemption clearly stated in subdivision (2) as the language of subdivision (2) itself is not ambiguous, and plaintiff's division of land falls, without question under this exception. Three Guys Real Estate v. Harnett County, 345 N.C. 468, 480 S.E.2d 681 (1997).

Land Not Subject to Regulations. — Where plaintiff's plat showed a division of land into parcels greater than ten acres, and no street right-of-way dedication was involved, plaintiff's division of land was not subject to any regulations enacted pursuant to G.S. 153A-330 to 153A-335. Three Guys Real Estate v. Harnett County, 345 N.C. 468, 480 S.E.2d 681 (1997).

Survey Requiring Certification. — A survey of a division of land that is described in subsection (2) falls under G.S. 47-30(f)(11)(d) and requires a certification of "no approval required" before the plat may be presented for recordation. Three Guys Real Estate v. Harnett County, 345 N.C. 468, 480 S.E.2d 681 (1997).

Applied in Springdale Estates Ass'n v. Wake County, 47 N.C. App. 462, 267 S.E.2d 415 (1980).

§ 153A-336. Appeals of decisions on subdivision plats.

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a planning board, other than a planning board comprised solely of members of a county planning staff, and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f), 153A-345(e2), and 153A-349 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if the board of commissioners or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the board of commissioners or planning board. (2009-421, s. 2(b).)

Editor's Note. — Session Laws 2009-421, s. 7, made this section effective January 1, 2010, and applicable to quasi-judicial decisions rendered on or after that date.

§§ 153A-337 through 153A-339: Reserved for future codification purposes.

Part 3. Zoning.

§ 153A-340. Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. The ordinance may provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b)(1) These regulations may affect property used for bona fide farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.

(2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products as defined in G.S. 106-581.1 having a domestic or foreign market. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained, provided no change in permitted uses may be authorized by variance.

(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 153A-345.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term "structures" shall include floating homes.

(f) Repealed by Session Laws 2005-426, s. 5(b), effective January 1, 2006.

(g) A member of the board of county commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the board of county commissioners shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(h) As provided in this subsection, counties may adopt temporary moratoria on any county development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the board of commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A-344.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the county prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the county prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the county and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the county during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the county in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the county shall have the burden of showing compliance with the procedural requirements of this subsection.

(i) In order to encourage construction that uses sustainable design principles and to improve energy efficiency in buildings, a county may charge reduced building permit fees or provide partial rebates of building permit fees for buildings that are constructed or renovated using design principles that conform to or exceed one or more of the following certifications or ratings:

(1) Leadership in Energy and Environmental Design (LEED) certification or higher rating under certification standards adopted by the U.S. Green Building Council.

(2) A One Globe or higher rating under the Green Globes program standards adopted by the Green Building Initiative.

(3) A certification or rating by another nationally recognized certification or rating system that is equivalent or greater than those listed in subdivisions (1) and (2) of this subsection. (1959, c. 1006, s. 1; 1967, c. 1208, s. 4; 1973, c. 822, s. 1; 1981, c. 891, s. 6; 1983, c. 441; 1985, c. 442, s. 2; 1987, c. 747, s. 12; 1991, c. 69, s. 1; 1997-458, s. 2.1; 2005-390, s. 6; 2005-426, s. 5(b); 2006-259, s. 26(a); 2007-381, s. 1.)

Local Modification. — (As to Article 18, Parts 1, 2, and 3) Cherokee: 1989 (Reg. Sess., 1990), c. 1049; Durham: 1989 (Reg. Sess., 1990), c. 950; 1999-70, s. 2; Orange: 1987, c. 460, ss. 18, 18.1; 1991, c. 246, s. 2; c. 324, s. 2; 1993 (Reg. Sess., 1994), c. 642, s. 4(b), (d).

Editor's Note. — As to a moratorium on the construction or expansion of swine farms or lagoons or animal waste management systems for swine farms, established by Session Laws 1997-458, ss. 1.1 and 1.2, as amended by Session Laws 1998-188, ss. 2 and 3, by Session Laws 1999-329, ss. 2.1 and 2.2, by Session Laws 2001-254, ss. 1 and 2, and by Session Laws 2003-266, ss. 1 and 2, see the Editor's notes following G.S. 143-215.10A.

Session Laws 1997-458, s. 2.2, provides: "Zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater adopted under G.S. 153A-340(b), as amended by Section 2.1 of this act, shall not, with respect to a swine farm in existence at the time the zoning ordinance is adopted:

"(1) Prohibit the continued existence of the swine farm.

"(2) Require the amortization of the swine farm.

"(3) Prohibit the repair or replacement on the same site of the swine farm so long as the repair or replacement does not increase the swine population beyond the population that the animal waste management system serving the swine farm is designed to accommodate, as set forth in the permit for the animal waste management system."

Session Laws, 2005-426, s. 11, provides that G.S. 153A-340(h), as added by Section 5(b) of this act, is effective September 1, 2005, and any renewal or extension on or after September 1, 2005, of a moratorium on development approvals that is in effect prior to or on that date, is subject to the provisions of this act.

Legal Periodicals. — For note on coastal land use development and area-wide zoning, see 49 N.C.L. Rev. 866 (1971).

For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

For comment, "Exclusionary Zoning and a Reluctant Supreme Court" (U.S.), see 13 Wake Forest L. Rev. 107 (1977).

For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

For article, "Zoning for Direct Social Control," see 1982 Duke L.J. 761 (1982).

For survey of 1983 developments in property law, see 62 N.C.L. Rev. 1346 (1984).

For note, "The North Carolina Supreme Court Solves a City-County Conflict," see 66 N.C.L. Rev. 1266 (1988).

For comment discussing contract zoning and conditional use zoning in North Carolina, see 68 N.C.L. Rev. 177 (1989).

For 1997 legislative survey, see 20 Campbell L. Rev. 450 (1988).

For note, "Hog Farms and Nuisance Law in Parker v. Barefoot: Has North Carolina Become a Hog Heaven and Waste Lagoon?," see 77 N.C. L. Rev. 2355 (1999).

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under corresponding sections of former law.*

Constitutional Protections. — This Part, G.S. 153A-340 through 153A-345, provide adequate constitutional protections for an aggrieved party. JWL Invs., Inc. v. Guilford County Bd. of Adjustment, 133 N.C. App. 426, 515 S.E.2d 715 (1999).

Counties have no inherent authority to enact zoning ordinances. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Construction with Local Law. — Counties may not act to zone a swine farm other than as authorized by the limited statutory exception of subsection (b)(3) of this section; because the General Assembly has provided a "complete and integrated regulatory scheme" of swine farm regulations, the county Swine Ordinance and the county Health Board Rules, which were more burdensome than State law, were preempted by State law. Craig v. County of Chatham, 143 N.C. App. 30, 545 S.E.2d 455, 2001 N.C. App. LEXIS 221 (2001), cert. granted, 354 N.C. 68, 553 S.E.2d 37 (2001).

This section and § 153A-121 do not operate exclusively of each other. Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

Delegation of Power to Adopt Zoning Ordinances as Exception to Rule of Nondelegation of Legislative Powers. — The authority of the General Assembly to delegate to municipal corporations power to legislate concerning local problems, such as zoning, is an exception, established by custom in most, if not all, of the states, to the general rule that legislative powers vested in the General Assembly may not be delegated by it. This exception to the doctrine of nondelegation is not limited to a delegation of such legislative authority to incorporated cities and towns, but extends, as to other types of local matters, to a like delegation to counties and other units established by the General Assembly for local government. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

The General Assembly may confer upon county boards of commissioners power to adopt zoning ordinances otherwise valid, notwithstanding N.C. Const., Art. II, § 1. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

But a county zoning ordinance may not delegate such legislative powers to the county board of adjustment. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Zoning Ordinance Is Presumed Valid. — The presumption is that a zoning ordinance as a whole is a proper exercise of the police power. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

It is the duty of municipal authorities, in their sound discretion, to determine what ordinances or regulations are reasonably necessary for the protection of the public or the better government of the town. When such ordinance is adopted, it is presumed to be valid, and the courts will not declare it invalid unless it is clearly shown to be so. No law or ordinance will be declared unconstitutional unless it clearly is, and every reasonable intendment will be made to sustain it. County of Cumberland v. Eastern Fed. Corp., 48 N.C. App. 518, 269 S.E.2d 672, cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

Counties are authorized to zone property and to regulate and prohibit the expansion of nonconforming uses. Huntington Props., LLC v. Currituck County, 153 N.C. App. 218, 569 S.E.2d 695, 2002 N.C. App. LEXIS 1132 (2002).

When Enactment or Amendment of Ordinance Is Invalid. — The legislative act of enacting or amending a zoning ordinance is invalid if it is unreasonable, arbitrary, or an unequal exercise of legislative power. Chrismon v. Guilford County, 85 N.C. App. 211, 354 S.E.2d 309 (1987).

County zoning ordinance was enacted arbitrarily and capriciously under G.S. 153A-340(a) and G.S. 153A-341; no mention of the county's comprehensive plan was made in the minutes of the meeting at which the county adopted the ordinance, and some of the permitted uses in the area were not consistent with a rural community character. Town of Green Level v. Alamance County, 184 N.C. App. 665, 646 S.E.2d 851, 2007 N.C. App. LEXIS 1622 (2007).

Burden of Showing Invalidity Is on Person Asserting It. — The burden to show that a zoning ordinance as a whole is not a proper exercise of the police power rests upon the property owner who asserts its invalidity. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Mere fact that a zoning ordinance seriously depreciates the value of complainant's property is not enough, standing alone, to establish its invalidity. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Regulation of Signs. — Fact that defendant had authority to regulate signs under the zoning power in this section did not mean that it could not regulate signs in a similar manner under the general police powers in G.S. 153A-121, allowing regulation of "conditions detrimental to the health, safety or welfare of its citizens and the peace and dignity of the county. Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

The practice of conditional use zoning is an approved practice in North Carolina, so long as the action of the local zoning authority in accomplishing the zoning is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Review pursuant to writ of certiorari under this section does not encompass the adjudication of issues such as whether the denial of a special use permit constitutes a taking without the payment of just compensation, inverse condemnation or a violation of 42 U.S.C. 1983. Guilford County Dep't of Emergency Servs. v. Seaboard Chem. Corp., 114 N.C. App. 1, 441 S.E.2d 177, cert. denied, 336 N.C. 604, 447 S.E.2d 390 (1994).

Property Rezoned to Conditional Use District. — It is not necessary that property rezoned to a conditional use district be available for all of the uses allowed under the corresponding general use district. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Rezoning Held Valid Conditional Use Zoning. — The rezoning of two tracts of land from A-1 to CU-M-2 so as to allow the storage and sale of agricultural chemicals was valid conditional use zoning and not illegal contract zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Additional Reasonable Conditions. — Trial court ruling was upheld when it simply ruled that a Zoning Board of Adjustment could not impose conditions on a conditional use permit that were in derogation of either the express conditions of a county Uniform Development Ordinance, or the reasonable conditions permitted in addition to those expressly provided pursuant to G.S. 153A-340(c); the trial court did not rule that the board could not impose conditions upon a property owner's conditional use permit. Overton v. Camden County, 155 N.C. App. 100, 574 S.E.2d 150, 2002 N.C. App. LEXIS 1573 (2002).

While the county board of adjustment could not attach conditions to the replacement mobile home if it continued as a nonconforming use, when issuing a conditional use permit, the board could attach reasonable conditions under G.S. 153A-340(c). The conditions imposed by the board, including that the replacement mobile home was to satisfy inspection and that one individual inhabit the replacement mobile home at all times, were not unreasonable or inappropriate. Overton v. Camden County, 155 N.C. App. 391, 574 S.E.2d 157, 2002 N.C. App. LEXIS 1574 (2002).

The phrase, "trade, industry, residence, or other purposes," as used in this section, relates to private property, and the phrase "other purposes" is not to be broadened to include the use of land by a municipality for a public enterprise listed in G.S. 160A-311. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

City Immune from County's Zoning Ordinances. — City which owned a sewage treatment facility located in a county and outside the city's boundaries was not required to comply with county's zoning ordinances in upgrading the facility and providing sewage service to newly annexed areas of city with that facility. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

A county's zoning authority is limited: it can be applied only to buildings within the county's borders which are outside city limits, and it is confined to the purposes of promoting health, safety, morals, or the general welfare. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Spot Zoning. — Spot zoning is not invalid per se, but rather, it is beyond the authority of the municipality or county and therefore void only in the absence of a clear showing of a reasonable basis therefor. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Clear Showing of Reasonable Basis for Spot Zoning. — While the rezoning of two tracts from A-1 to CU-M-2, so as to allow the storage and sale of agricultural chemicals, constituted a form of spot zoning, this activity was legal and not illegal spot zoning. Because of the substantial benefits created for the surrounding community by the rezoning and because of the close relationship between the likely uses of the rezoned property and the uses already present in the surrounding tracts, there was a clear showing of a reasonable basis for the spot zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

The principal differences between valid conditional use zoning and illegal contract zoning are related and are essentially two in number: First, valid conditional use zoning features merely a unilateral promise from the landowner to the local zoning authority as to the landowner's intended use of the land in question, while illegal contract zoning anticipates a bilateral contract in which the landowner and the zoning authority make reciprocal promises. Second, in the context of conditional use zoning, the local zoning authority maintains its independent decision-making authority, while in the contract zoning scenario, it abandons that authority by binding itself contractually with the landowner seeking a zoning amendment. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Power of County Commissioners to Grant Special Exceptions. — Statute authorizing the board of county commissioners by regulation to provide that the board of adjustment or the board of county commissioners may issue special use permits or conditional permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the zoning ordinance did not purport to confer more power upon the commissioners to grant special exceptions than the commissioners could delegate to the board of adjustment. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

Like the board of adjustment, the commissioners cannot deny applicants a permit in their unguided discretion or, stated differently, refuse it solely because, in their view, a mobile-home park would adversely affect the public interest. The commissioners must also proceed under standards, rules and regulations uniformly applicable to all who apply for permits. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

Ordinance Held Valid. — A county zoning ordinance, applicable only to swine farms "served by an animal waste management system having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater" and enacted pursuant to the express statement of power given by the State, was not preempted. Craig v. County of Chatham, 143 N.C. App. 30, 545 S.E.2d 455, 2001 N.C. App. LEXIS 221 (2001), cert. granted, 354 N.C. 68, 553 S.E.2d 37 (2001).

Ordinance Held Invalid. — So much of an ordinance as required the board of adjustment to deny a permit for the establishment of a mobile-home park in an A-1 agricultural district unless it found that the granting of the special exception would not adversely affect the public interest was beyond the authority of the board of county commissioners to enact and so was invalid. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

County's failure to comply with G.S. 153A-323 in enacting the Buncombe County, N.C., Multi-Family Dwelling Ordinance (Ordinance) rendered the ordinance invalid; although the county claimed that the Ordinance was adopted in the exercise of its general police power pursuant to G.S. 153A-121, the Ordinance substantially affected land use, was therefore a zoning ordinance, and the county was not permitted to evade the legislative notice requirements imposed by G.S. 153A-323 by labeling the Ordinance an exercise of police power. Thrash Ltd. P'ship v. County of Buncombe, — N.C. App. —, 673 S.E.2d 689, 2009 N.C. App. LEXIS 256 (2009).

County Zoning Board Exceeded Its Delegated Authority. — County zoning board exceeded its authority when it voided a mine operator's special use exception permit after finding violations, then treated the mine operator's current permit application as one for a new permit and applied the standard under a new ordinance; instead of voiding the original permit, which was issued in 1997, the board should have considered the application in light of the standards in effect prior to October of 2000, the date of the new ordinance, and had the board done so, it should have found that the mine operator met the burden when the mine operator produced a current permit from the Department of Environment, Health, and Natural Resources, Division of Land Resources for the activities contemplated and the 1997 ordinance had no other, more stringent conditions specified. Hewett v. County of Brunswick, 155 N.C. App. 138, 573 S.E.2d 688, 2002 N.C. App. LEXIS 1592 (2002).

Activities Regarding Transportation of Farm Products. — The use of large trucks to transport farm products, and the creation of facilities such as driveways and loading docks for such trucks, are both activities so essential to large-scale agricultural production that their exclusion from the exemption would render it meaningless. Sedman v. Rijdes, 127 N.C. App. 700, 492 S.E.2d 620 (1997).

Constitutionality of County Sign Ordinance. — A county sign ordinance did not violate the equal protection clause of U.S. Const., Amend. XIV or N.C. Const., Art. I, § 19, because the county would not enforce the ordinance with respect to any person owning or operating a sign in certain municipalities within the county, since the county could not exercise zoning authority within a city which had enacted a zoning ordinance, and it could defer from zoning within cities. County of Cumberland v. Eastern Fed. Corp., 48 N.C. App. 518, 269 S.E.2d 672, cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

Provision of a county sign ordinance requiring nonconforming uses to be discontinued within three years from the effective date of the ordinance, thus giving the owner of a nonconforming sign a three-year period in which to amortize or depreciate the cost of the sign, was reasonable and did not provide for an unconstitutional taking of property. County of Cumberland v. Eastern Fed. Corp., 48 N.C. App. 518, 269 S.E.2d 672, cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

Soil Remediation Not Agricultural Use. — Remediation of petroleum contaminated soil is a waste treatment process, not an agricultural use, and thus it was a nonconforming use in a residential agricultural zoning district of a county. Ball v. Randolph County Bd. of Adjustment, 129 N.C. App. 300, 498 S.E.2d 833 (1998), petition for discretionary review improvidently granted, 49 N.C. 348, 507 S.E.2d 272 (1998).

Kennel Operation Not "Farming". — Dogs are not livestock, and a dog breeding and kennel operation does not constitute "farming," so as to exempt property used therefor from a county's zoning authority pursuant to this section. Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980), cert. denied, 301 N.C. 719, 274 S.E.2d 227 (1981).

Horses Considered Livestock. — Where activity undertaken by landowner was related and incidental to the farming activities of boarding, breeding, raising, pasturing and watering horses, horses were considered as livestock, qualifying the property for the exemption granted bona fide farms under G.S. 153A-340. County of Durham v. Roberts, 145 N.C. App. 665, 551 S.E.2d 494, 2001 N.C. App. LEXIS 747 (2001).

Non-Farm Independent Commercial En-

terprise. — Rezoning applicant's intended biodiesel production was not a bona fide farm use that was subject to zoning. The hauling of raw materials from surrounding farms, and the production of 500,000 gallons of biodiesel per year, when the farming operation required only 100,000 gallons of biodiesel per year, removed this production from the realm of bona fide farm use to a non-farm independent commercial enterprise; although the large scale industrial farming operation fit under the G.S. 153A-340(b)(2) bona fide farm exception to date, this added industrial process was not the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products as defined in G.S. 106-581.1 having a domestic or foreign market. N. Iredell Neighbors for Rural Life v. Iredell County, — N.C. App. —, 674 S.E.2d 436, 2009 N.C. App. LEXIS 370 (2009).

The use of fans and heating devises is "incidental" to the year-round raising of plants inside greenhouses. Sedman v. Rijdes, 127 N.C. App. 700, 492 S.E.2d 620 (1997).

Greenhouse Operations Exempt. — Activities of greenhouse operation, including the construction of a driveway, the use of large trucks to export plants, and the operation of fans and heating devices were exempt from compliance with zoning ordinances. Sedman v. Rijdes, 127 N.C. App. 700, 492 S.E.2d 620 (1997).

Statute Did Not Authorize "School Impact Fees." — G.S. 153A-121 and 153A-340 did not authorize a county to impose "school impact fees" on new residential construction. They did not allow a county to charge a fee for providing its own governmental services, such as school construction, to the public. Durham Land Owners Ass'n v. County of Durham, 177 N.C. App. 629, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

Owner's Lacked Standing to Appeal Conditional Use Permit. — Dismissal of owners' petition seeking review of a board's decision granting buyers' application for a conditional use permit for property was proper because standing was required before a petitioner was allowed to seek review of a special use permit or conditional use permit, and because the owners failed to allege any damages whatsoever, they lacked standing. Casper v. Chatham County, 186 N.C. App. 456, 651 S.E.2d 299, 2007 N.C. App. LEXIS 2212 (2007).

Applied in Laurel Valley Watch, Inc. v. Mt. Enters. of Wolf Ridge, LLC, — N.C. App. —, 665 S.E.2d 561, 2008 N.C. App. LEXIS 1629 (2008).

Cited in White v. Union County, 93 N.C. App. 148, 377 S.E.2d 93 (1989); Guilford County Planning & Dev. Dep't v. Simmons, 102 N.C. App. 325, 401 S.E.2d 659; County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993); County of Lenoir v. Moore, 114 N.C. App. 110, 441 S.E.2d 589 (1994); Vulcan Materials Co. v. Guilford County Bd. of County Comm'rs, 115 N.C. App. 319, 444 S.E.2d 639; AT&T Wireless PCS, Inc. v. Winston-Salem Zoning Bd. of Adjustment, 172 F.3d 307 (4th Cir. 1999); Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002); Mann Media, Inc. v. Randolph County Planning Bd., 356 N.C. 1, 565 S.E.2d 9, 2002 N.C. LEXIS 544 (2002); Davidson County Broad., Inc. v. Rowan County Bd. of Comm'rs, 186 N.C. App. 81, 649 S.E.2d 904, 2007 N.C. App. LEXIS 1977 (2007); Five C'S, Inc. v. County of Pasquotank, — N.C. App. —, 672 S.E.2d 737, 2009 N.C. App. LEXIS 152 (2009).

OPINIONS OF ATTORNEY GENERAL

Height of State Owned and Operated Structures. — This section does not grant authority to a county to regulate the height of state owned and operated structures under its general police power. See opinion of Attorney General to Mr. Jeffery M. Hedrick, Watauga County Attorney, 2000 N.C. AG LEXIS 33 (9/20/2000).

§ 153A-341. Purposes in view.

Zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the board of county commissioners that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration as to, among other things, the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county. In addition, the regulations shall be made with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development. (1959, c. 1006, s. 1; 1973, c. 822, s. 1; 2005-426, s. 7(b).)

Local Modification. — Durham: 1989 (Reg. Sess., 1990), c. 950; 1999-70, s. 2.

Legal Periodicals. — For article, "Zoning for Direct Social Control," see 1982 Duke L.J. 761 (1982).

CASE NOTES

In exercising their zoning authority, counties are limited in that they are required by statute to exercise their zoning regulations "with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development." Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Zoning generally must be accomplished in accordance with a comprehensive plan in order to promote the general welfare and serve the purposes of the enabling statute. Chrismon v. Guilford County, 85 N.C. App. 211, 354 S.E.2d 309 (1987), rev'd on other grounds, 322 N.C. 611, 370 S.E.2d 579 (1988).

The language of this section does not require an extensive written plan, such as a master plan based upon a comprehensive study; the ordinance itself may show that the zoning is comprehensive in nature. Willis v. Union County, 77 N.C. App. 407, 335 S.E.2d 76 (1985).

County Zoning Ordinance Enacted Arbitrarily and Capriciously. — County zoning ordinance was enacted arbitrarily and capriciously under G.S. 153A-340(a) and G.S. 153A-341; no mention of the county's comprehensive plan was made in the minutes of the meeting at which the county adopted the ordinance, and some of the permitted uses in the area were not consistent with a rural community character. Town of Green Level v. Alamance County, 184 N.C. App. 665, 646 S.E.2d 851, 2007 N.C. App. LEXIS 1622 (2007).

A county's legislative body has authority to rezone when reasonably necessary to do so in the interests of the public health, safety, morals or general welfare; ordinarily the only limitation upon this authority is that it may not be exercised arbitrarily or capriciously. Willis v. Union County, 77 N.C. App. 407, 335 S.E.2d 76 (1985); Nelson v. City of Burlington, 80 N.C. App. 285, 341 S.E.2d 739 (1986).

A duly adopted rezoning ordinance is presumed to be valid, and the burden is upon the plaintiff to establish its invalidity. Nelson v. City of Burlington, 80 N.C. App. 285, 341 S.E.2d 739 (1986).

Statutes do not give a county authority over provision of sewer services within a city, or over newly annexed areas of the city which also lie in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High

Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Spot Zoning. — Because it zones a small area differently than a much larger area surrounding it, spot zoning, by definition, conflicts with the whole purpose of planned zoning. Therefore, unless there is a clear showing of a reasonable basis, spot zoning is beyond the authority of the county or municipality. Chrismon v. Guilford County, 85 N.C. App. 211, 354 S.E.2d 309 (1987), rev'd on other grounds, 322 N.C. 611, 370 S.E.2d 579 (1988); Alderman v. Chatham County, 89 N.C. App. 610, 366 S.E.2d 885, cert. denied, 323 N.C. 171, 373 S.E.2d 103 (1988).

In determining whether rezoning was invalid as spot zoning, the courts have also considered the classification and development of nearby land. Alderman v. Chatham County, 89 N.C. App. 610, 366 S.E.2d 885, cert. denied, 323 N.C. 171, 373 S.E.2d 103 (1988).

Contract Zoning. — To avoid contract zoning, all the areas in each class must be subject to the same restrictions; if the rezoning is done in consideration of an assurance that a particular tract or parcel will be developed in accordance with a restricted plan, this is contract zoning and is illegal. Willis v. Union County, 77 N.C. App. 407, 335 S.E.2d 76 (1985).

Approval Improper. — Where county commissioners approved the rezoning application without considering the factors set out in this section, the Commissioners acted arbitrarily and capriciously. Gregory v. County of Harnett, 128 N.C. App. 161, 493 S.E.2d 786 (1997).

Applied in Mahaffey v. Forsyth County, 99 N.C. App. 676, 394 S.E.2d 203 (1990); Covington v. Town of Apex, 108 N.C. App. 231, 423 S.E.2d 537 (1992).

Cited in Maynor v. Onslow County, 127 N.C. App. 102, 488 S.E.2d 289 (1997); Transylvania County v. Moody, 151 N.C. App. 389, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002); Sandy Mush Props., Inc. v. Rutherford County, 164 N.C. App. 162, 595 S.E.2d 233, 2004 N.C. App. LEXIS 743 (2004); Durham Land Owners Ass'n v. County of Durham, 177 N.C. App. 629, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

§ 153A-341.1. Zoning regulations for manufactured homes.

The provisions of G.S. 160A-383.1 shall apply to counties. (1987, c. 805, s. 2.)

CASE NOTES

County Ordinance Requiring Certain Siding and Shingles. — A county ordinance requiring mobile homes to have siding and shingles of a type similar to standard residential construction was enacted to remove from the range of safe and satisfactorily performing materials only ones based on undesirable appearance, and left the regulation of safety and performance of roofing and siding materials to Congress and the Department of Housing and Urban Development, and thus was not preempted. CMH Mfg., Inc. v. Catawba County, 994 F. Supp. 697 (W.D.N.C. 1998).

County Exceeded Statutory Authority With Regard to Zoning Regulations for Manufactured Homes. — County exceeded the power the general assembly conferred upon it with regard to zoning regulations for manufactured homes because an ordinance, as amended, did not employ appearance and dimensional criteria as intended in G.S. 153A-341.1 and G.S. 160A-383.1 when the intent of the ordinance was to increase the tax base by the elimination of housing that rapidly depreciated in value, and that wealth based criterion was neither an appearance nor dimensional criteria; G.S. 160A-383.1, as made applicable to counties by G.S. 153A-341.1, limits a county's power to enact zoning regulations for manufactured homes, and a county may not use its broad police powers as a guise to enact zoning regulations for manufactured homes inconsistent with G.S. 160A-383.1. Five C'S, Inc. v. County of Pasquotank, — N.C. App. —, 672 S.E.2d 737, 2009 N.C. App. LEXIS 152 (2009).

Cited in White v. Union County, 93 N.C. App. 148, 377 S.E.2d 93 (1989).

§ 153A-341.2. Reasonable accommodation of amateur radio antennas.

A county ordinance based on health, safety, or aesthetic considerations that regulates the placement, screening, or height of the antennas or support structures of amateur radio operators must reasonably accommodate amateur radio communications and must represent the minimum practicable regulation necessary to accomplish the purpose of the county. A county may not restrict antennas or antenna support structures of amateur radio operators to heights of 90 feet or lower unless the restriction is necessary to achieve a clearly defined health, safety, or aesthetic objective of the county. (2007-147, s. 2.)

Cross References. — As to city ordinances providing reasonable accommodation of amateur radio antennas, see G.S. 160A-383.3.

Editor's Note. — Session Laws 2007-147, s. 3, made this section effective October 1, 2007.

§ 153A-342. Districts; zoning less than entire jurisdiction.

(a) A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to the districts may be proposed by the petitioner or the county or its agencies, but only those conditions mutually approved by the county and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to county ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

(d) A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated. (1959, c. 1006, s. 1; 1965, c. 194, s. 2; 1973, c. 822, s. 1; 1985, c. 607, s. 3; 2005-426, s. 6(b).)

Local Modification. — Alamance: 1997, c. 445, s. 2.1; Durham: 1989 (Reg. Sess., 1990), c. 950; 1999-70, s. 2; Orange: 1991, c. 246, s. 3.

Legal Periodicals. — For comment discussing contract zoning and conditional use zoning in North Carolina, see 68 N.C.L. Rev. 177 (1989).

CASE NOTES

Zoning Map Requirement. — This section does not require the county to have a zoning map for the entire county when its objective is to implement zoning on an area by area basis; only a map of the area being zoned and a full text of the zoning ordinance zoned are required. Frizzelle v. Harnett County, 106 N.C. App. 234, 416 S.E.2d 421, cert. denied, 332 N.C. 147, 419 S.E.2d 571 (1992).

The practice of conditional use zoning is an approved practice in North Carolina, so long as the action of the local zoning authority in accomplishing the zoning is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Property Rezoned to Conditional Use District. — It is not necessary that property rezoned to a conditional use district be available for all of the uses allowed under the corresponding general use district. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Spot zoning is not invalid per se, but rather, it is beyond the authority of the municipality or county and therefore void only in the absence of a clear showing of a reasonable basis therefor. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Clear Showing of Reasonable Basis for Spot Zoning. — While the rezoning of two tracts from A-1 to CU-M-2, so as to allow the storage and sale of agricultural chemicals, constituted a form of spot zoning, this activity was legal and not illegal spot zoning. Because of the substantial benefits created for the surrounding community by the rezoning and because of the close relationship between the likely uses of the rezoned property and the uses already present in the surrounding tracts, there was a clear showing of a reasonable basis for the spot zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

The principal differences between valid conditional use zoning and illegal contract zoning are related and are essentially two in number: First, valid conditional use zoning features merely a unilateral promise from the landowner to the local zoning authority as to the landowner's intended use of the land in question, while illegal contract zoning anticipates a bilateral contract in which the landowner and the zoning authority make reciprocal promises. Second, in the context of conditional use zoning, the local zoning authority maintains its independent decision-making authority, while in the contract zoning scenario, it abandons that authority by binding itself contractually with the landowner seeking a zoning amendment. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Rezoning Held Valid Conditional Use Zoning. — The rezoning of two tracts of land from A-1 to CU-M-2 so as to allow the storage and sale of agricultural chemicals was valid conditional use zoning and not illegal contract zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Zoning Ordinance Invalid Where Improperly Enacted. — County's failure to comply with G.S. 153A-323 in enacting the Buncombe County, N.C., Multi-Family Dwelling Ordinance (Ordinance) rendered the ordinance invalid; although the county claimed that the Ordinance was adopted in the exercise of its general police power pursuant to G.S. 153A-121, the Ordinance substantially affected land use, was therefore a zoning ordinance, and the county was not permitted to evade the legislative notice requirements imposed by G.S. 153A-323 by labeling the Ordinance an exercise of police power. Thrash Ltd. P'ship v. County of Buncombe, — N.C. App. —, 673 S.E.2d 689, 2009 N.C. App. LEXIS 256 (2009).

A county sign ordinance did not violate the equal protection clause of U.S. Const., Amend. XIV or N.C. Const., Art. I, § 19, because the county would not enforce the ordinance with respect to any person owning or operating a sign in certain municipalities within the county, since the county could not exercise zoning authority within a city which had enacted a zoning ordinance, and it could defer from zoning within cities. County of Cumberland v. Eastern Fed. Corp., 48 N.C. App. 518, 269 S.E.2d 672, cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

Cited in Chrismon v. Guilford County, 85 N.C. App. 211, 354 S.E.2d 309 (1987); Sandy Mush Props., Inc. v. Rutherford County, 164 N.C. App. 162, 595 S.E.2d 233, 2004 N.C. App. LEXIS 743 (2004).

§ 153A-343. Method of procedure.

(a) The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. Except for a county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the board of commissioners that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the board of commissioners that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearings required by G.S. 153A-323, but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a county-initiated zoning map amendment.

(c) Repealed by Session Laws 2005-418, s. 4, effective January 1, 2006.

(d) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons. (1973, c. 822, s. 1; 1985, c. 595, s. 1; 1987, c. 807, s. 2; 1989 (Reg. Sess., 1990), c. 980, s. 2; 1993, c. 469, s. 2; 1995, c. 261, s. 1; c. 546, s. 2; 1997-456, s. 25; 2005-418, s. 4(b); 2009-178, s. 1.)

Local Modification. — Durham; 1989, c. 516, s. 1; Orange: 1995, c. 339, s. 1.

Editor's Note. — Session Laws 1985, c. 595, which added the last two sentences (now the second and third sentences), provides that the amendment is applicable only when tax maps are available for the areas to be zoned.

Session Laws 1985 (Reg. Sess., 1986), c. 950 provides that Session Laws 1985, c. 595, which added the last two sentences of this section, does not apply to the City of Asheboro or the counties of Scotland, Stanly, Union, and Richmond, and incorporated cities or towns located wholly within those counties.

Session Laws 1993, c. 469, which amended this section, in ss. 5 and 6 provides: "Sec. 5. (a)

This act becomes effective January 1, 1994, except that as to any city or county, it becomes effective at any time between the date of ratification of this act and January 1, 1994 if the city or county, as appropriate, adopts an ordinance placing it into effect at such earlier date. Adoption of such ordinance is subject to the procedural requirements of G.S. 160A-364 or G.S. 153A-323, as appropriate, but not to any procedural requirement of the zoning ordinance for adoption of amendments to the zoning ordinance. The ordinance may provide for different dates of applicability based on the stage of the zoning classification action on the effective date.

"If the city or county is subject to a local act repealed by Section 3 of this act, the ordinance prevails over some or all of the local act if the ordinance so provides.

"(b) This section does not apply to Forsyth County or municipalities located within that county.

"Sec. 6. (a) This act becomes effective January 1, 1995 as to Forsyth County or any municipality located within that county, but it becomes effective at any time between the date of ratification of this act and January 1, 1995 if the municipality or Forsyth County, as appropriate, adopts an ordinance placing it into effect at such earlier date. Adoption of such ordinance is subject to the procedural requirements of G.S. 160A-364 or G.S. 153A-323, as appropriate, but not to any procedural requirement of the zoning ordinance for adoption of amendments to the zoning ordinance. The ordinance may provide for different dates of applicability based on the stage of the zoning classification action on the effective date.

"The ordinance prevails over some or all of Chapter 455, Session Laws of 1987, as amended by Chapter 271, Session Laws of 1993, if the ordinance so provides."

Session Laws 1993, c. 469, s. 3(a), effective January 1, 1994, repeals various acts, including the following local modifications to this section: Session Laws 1993, c. 101, as to Wilkes: 1993, c. 139, as to Stokes; 1993, c. 156, as to Watauga; 1993, c. 267, as to Davidson and Davie; 1993, c. 271, as to Rockingham; 1993, c. 296, as to Nash and Franklin; 1993, c. 358, s. 15, as to Orange. In addition, by virtue of Session Laws 1993, c. 469, s. 3, the local modifications for Alexander, Cabarrus, Catawba, Iredell, Johnston, Martin, Randolph, Wake, and Yadkin should be stricken from the main volume. Section 3(b) of c. 469 provides that nothing in the section affects any ordinance adopted under the authority of any act repealed by s. 3(a) prior to the effective date of c. 469.

Session Laws 1995, c. 546, s. 2.1, effective July 29, 1995, provides "Any local act in conflict with this act is repealed to the extent of the conflict."

Session Laws 1997-456, s. 25, effective August 29, 1997, repealed Session Laws 1995, c. 261, s. 1, which had inserted ", at its option, provide said notice or" following "a county shall" in the first sentence following subdivision (b)(5). Subsection (b) was subsequently rewritten by Session Laws 1995, c. 546, s. 2, but that phrase was not shown as deleted.

Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Effect of Amendments. — Session Laws 2009-178, s. 1, effective June 26, 2009, and applicable to any application for a zoning map amendment made on or after that date, in subsection (a), added the fourth sentence, and in the fifth sentence, substituted "required to provide notice shall certify to the board of commissioners that proper notice has been provided in fact" for "mailing such notices shall certify to the Board of Commissioners that fact"; and added subsection (b1).

CASE NOTES

Cited in Frizzelle v. Harnett County, 106 N.C. App. 234, 416 S.E.2d 421 (1992); Transylvania County v. Moody, 151 N.C. App. 389, 565 S.E.2d 720, 2002 N.C. App. LEXIS 748 (2002).

§ 153A-344. Planning board; zoning plan; certification to board of commissioners.

(a) To initially exercise the powers conferred by this Part, a county shall create or designate a planning board under the provisions of this Article or of a local act. The planning board shall prepare or shall review and comment upon a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning board may hold public hearings in the course of preparing the ordinance. Upon completion, the planning board shall make a written recommendation regarding adoption of the ordinance to the board of commissioners. The board of commissioners shall not hold the public hearing required by G.S. 153A-323 or take action until it has received a recommendation regarding the ordinance from the planning board. Following its required public hearing, the board of commissioners may refer the ordinance back to the planning board for any further recommendations that the board may wish to make prior to final action by the board in adopting, modifying and adopting, or rejecting the ordinance.

Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the board of county commissioners may proceed in its consideration of the amendment without the planning board report. The board of commissioners is not bound by the recommendations, if any, of the planning board.

(b) Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii) a vested right has been established pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired pursuant to G.S. 153A-344.1. (1959, c. 1006, s. 1; 1965, c. 194, s. 3; 1973, c. 822, s. 1; 1979, c. 611, s. 3; 1985, c. 540, s. 1; 1989 (Reg. Sess., 1990), c. 996, s. 5; 2005-418, s. 7(b).)

Local Modification. — Guilford: 1985, c. 485.

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Legal Periodicals. — For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

CASE NOTES

When Enactment or Amendment Is Invalid. — The legislative act of enacting or amending a zoning ordinance is invalid if it is unreasonable, arbitrary, or an unequal exercise of legislative power. Chrismon v. Guilford County, 85 N.C. App. 211, 354 S.E.2d 309 (1987), rev'd on other grounds, 322 N.C. 611, 370 S.E.2d 579 (1988); Alderman v. Chatham County, 89 N.C. App. 610, 366 S.E.2d 885, cert. denied, 323 N.C. 171, 373 S.E.2d 103 (1988).

County Zoning Ordinance Did Not Preclude Town's Extension. — Pursuant to G.S. 160A-360(e) because an earlier county ordinance did not extend zoning into the proposed area under G.S. 153A-344(a); the county ordinance was not sufficiently detailed, nor did the county maintain or control a required map. Town of Green Level v. Alamance County, 184 N.C. App. 665, 646 S.E.2d 851, 2007 N.C. App. LEXIS 1622 (2007).

Amendment Held Not Applicable to Defendants. — Where the uncontradicted forecast of evidence established as a matter of law that defendants made substantial expenditures for the operation of a quarry on the property in question in good faith and in reliance upon the special use permit previously granted by the Zoning Board, a later amendment by the Zoning Board precluding operation of a quarry on such property would not apply to defendants. Cardwell v. Smith, 106 N.C. App. 187, 415 S.E.2d 770, cert. denied, 332 N.C. 146, 419 S.E.2d 569 (1992).

The manifest intention of the General Assembly was that a public hearing be conducted at which those who opposed and those who favored adoption of an ordinance would have a fair opportunity to present their respective views. Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971), decided under former law.

The requirement that a public hearing be conducted is mandatory. Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971), decided under former law.

Spot Zoning. — Because it zones a small area differently than a much larger area surrounding it, spot zoning, by definition, conflicts with the whole purpose of planned zoning. Therefore, unless there is a clear showing of a reasonable basis, spot zoning is beyond the authority of the county or municipality.

Chrismon v. Guilford County, 85 N.C. App. 211, 354 S.E.2d 309 (1987), rev'd on other grounds, 322 N.C. 611, 370 S.E.2d 579 (1988); Alderman v. Chatham County, 89 N.C. App. 610, 366 S.E.2d 885, cert. denied, 323 N.C. 171, 373 S.E.2d 103 (1988).

Building Permits. — Plaintiffs had a valid building permit because their appeal of the order that prevented them from building tolled the statutory time period in which plaintiffs could resume construction under their office building permit; however, the building permit only authorized the construction of an office building it did not establish a statutory vested right to mine the property. Sandy Mush Props. v. Rutherford County, 181 N.C. App. 224, 638 S.E.2d 557, 2007 N.C. App. LEXIS 87 (2007), petition allowed as to additional issues, 361 N.C. 569, 2007 N.C. LEXIS 958 (2007).

Spot zoning is not invalid per se, but rather, it is beyond the authority of the municipality or county and therefore void only in the absence of a clear showing of a reasonable basis therefor. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Clear Showing of Reasonable Basis for Spot Zoning. — While the rezoning of two tracts from A-1 to CU-M-2, so as to allow the storage and sale of agricultural chemicals, constituted a form of spot zoning, this activity was legal and not illegal spot zoning. Because of the substantial benefits created for the surrounding community by the rezoning and because of the close relationship between the likely uses of the rezoned property and the uses already present in the surrounding tracts, there was a clear showing of a reasonable basis for the spot zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Rezoning. — It is not necessary that property rezoned to a conditional use district be available for all of the uses allowed under the corresponding general use district. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Rezoning lacks a permissible basis where it is done on consideration of assurances that a particular tract or parcel will be developed in accordance with restricted approval plans. Chrismon v. Guilford County, 85 N.C. App. 211, 354 S.E.2d 309 (1987), rev'd on other grounds, 322 N.C. 611, 370 S.E.2d 579 (1988).

Rezoning Held Valid Conditional Use Zoning. — The rezoning of two tracts of land from A-1 to CU-M-2 so as to allow the storage and sale of agricultural chemicals was valid conditional use zoning and not illegal contract zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

As the board of commissioners' enactment of a rezoning ordinance was a legislative act reviewable under the "whole record" test, the trial court erred in considering evidence outside the record of the rezoning process. Kerik v. Davidson County, 145 N.C. App. 222, 551 S.E.2d 186, 2001 N.C. App. LEXIS 671 (2001).

Changes in Zoning Classifications Held Invalid. — Changes in zoning classification were never considered by the Planning Board but were instead handled by the planning staff, which meant that the approved 404 changes in zoning violated G.S. 153A-344; this violation, among other violations, provided a basis for declaring the Buncombe County, N.C. Amended Zoning Ordinance invalid. The language of G.S. 153A-344 was mandatory, not discretionary. Thrash Ltd. P'ship v. County of Buncombe, — N.C. App. —, 673 S.E.2d 706, 2009 N.C. App. LEXIS 253 (2009).

Applied in Mann Media, Inc. v. Randolph County Planning Bd., 356 N.C. 1, 565 S.E.2d 9, 2002 N.C. LEXIS 544 (2002).

Cited in Frizzelle v. Harnett County, 106 N.C. App. 234, 416 S.E.2d 421 (1992).

§ 153A-344.1. Vesting rights.

(a) The General Assembly finds and declares that it is necessary and desirable, as a matter of public policy, to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning. Furthermore, the General Assembly recognizes that county approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses.

The ability of a landowner to obtain a vested right after county approval of a site specific development plan or a phased development plan will preserve the prerogatives and authority of local elected officials with respect to land-use matters. There will be ample opportunities for public participation and the public interest will be served. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare.

(b) Definitions.

(1) "Landowner" means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan under this section, in the manner allowed by ordinance.

(2) "County" shall have the same meaning as set forth in G.S. 153A-1(3).

(3) "Phased development plan" means a plan which has been submitted to a county by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan determined by the county to be a site specific development plan.

(4) "Property" means all real property subject to zoning regulations and restrictions and zone boundaries by a county.

(5) "Site specific development plan" means a plan which has been submitted to a county by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a preliminary or general development plan, a conditional or special use permit, a conditional or special use district zoning plan, or any other land-use approval designation as may be utilized by a county. Unless otherwise expressly provided by the county such a plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the county pursuant to an ordinance, and the document that triggers such vesting shall be so identified at the time of its approval. However, at a minimum, the ordinance to be adopted by the county shall designate a vesting point earlier than the issuance of a building permit. A variance shall not constitute a site specific development plan, and approval of a site specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels or property may constitute a site specific development plan.

(6) "Vested right" means the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

(c) Establishment of vested right.

A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the county with jurisdiction over the property. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan including any amendments thereto. A county may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. A county shall not require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phased development plan shall be deemed approved upon the effective date of the county's action or ordinance relating thereto.

(d) Duration and termination of vested right.

(1) A right which has been vested as provided for in this section shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the county.

(2) Notwithstanding the provisions of subsection (d)(1), a county may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the county.

(3) Notwithstanding the provisions of (d)(1) and (d)(2), the county may provide by ordinance that approval by a county of a phased development plan shall vest the zoning classification or classifications so approved for a period not to exceed five years. The document that triggers such vesting shall be so identified at the time of its approval. The county still may require the landowner to submit a site specific development plan for approval by the county with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification or classifications. Nothing in this section shall be construed to require a county to adopt an ordinance providing for vesting of rights upon approval of a phased development plan.

(4) Following approval or conditional approval of a site specific development plan or a phased development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the county to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the county from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.

(5) Upon issuance of a building permit, the provisions of G.S. 153A-358 and G.S. 153A-362 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

(6) A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(e) Subsequent changes prohibited; exceptions.

(1) A vested right, once established as provided for in this section, precludes any zoning action by a county which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan or an approved phased development plan, except:

a. With the written consent of the affected landowner;
b. Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan or the phased development plan;
c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the county, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
d. Upon findings, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the county of the site specific development plan or the phased development plan; or
e. Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in the site specific development plan or the phased development plan, in which case the county may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

(2) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land-use regulation by a county, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan or a phased development plan upon the expiration or termination of the vesting rights period provided for in this section.

(3) Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of a county to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses.

(f) Miscellaneous provisions.

(1) A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan or a phased development plan, all successors to the original landowner shall be entitled to exercise such rights.

(2) Nothing in this section shall preclude judicial determination, based on common-law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

(3) In the event a county fails to adopt an ordinance setting forth what constitutes a site specific development plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice. (1989 (Reg. Sess., 1990), c. 996, s. 6.)

Extension of Permits. — Session Laws 2009-406, ss. 1 through 5.1, as amended by Session Laws 2009-484, s. 5.1, 2009-550, s. 5.2, and 2009-572, ss. 1-3, provide: "SECTION 1. This act shall be known and may be cited as the 'Permit Extension Act of 2009.'

"SECTION 2. The General Assembly makes the following findings:

"(1) There exists a state of economic emergency in the State of North Carolina and the nation, which has drastically affected various segments of the North Carolina economy, but none as severely as the State's banking, real estate, and construction sectors.

"(2) The real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub-prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets.

"(3) As a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including home builders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, cancelled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled back growth plans.

"(4) The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and government bodies.

"(5) The process of obtaining the myriad of other government approvals, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, can be difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, difficult to renew or reobtain.

"(6) County and municipal governments, including local sewer and water authorities, obtain permits and approvals from State government agencies, particularly the Department of Environment and Natural Resources, which permits and approvals may expire or lapse due to the state of the economy and the inability of both the public sector and the private sector to proceed with projects authorized by the permit or approval.

"(7) County and municipal governments also obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State and regional government entities that may expire or lapse without implementation due to the state of the economy.

"(8) The current national recession has severely weakened the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry.

"(9) The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would exacerbate, if not addressed, those losses.

"(10) Financial institutions that lent money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State.

"(11) Due to the current inability of builders and their purchasers to obtain financing under existing economic conditions, more and more once-approved permits are expiring or lapsing, and, as these approvals lapse, lenders must reappraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans, which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.

"(12) As a result of the continued downturn of the economy and the continued expiration of approvals that were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.

"(13) Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions; moreover, the costs imposed fall on the public as well as the private sector.

"(14) It is the purpose of this act to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources.

"SECTION 3. Definitions. — As used in this act, the following definitions apply:

"(1) Development approval. — Any of the following approvals issued by the State, any agency or subdivision of the State, or any unit of local government, regardless of the form of the approval, that are for the development of land or for the provision of water or wastewater services by a government entity:

"a. Any detailed statement by a State agency under G.S. 113A-4.

"b. Any detailed statement submitted by a special purpose unit of government or a private developer of a major development project under G.S. 113A-8.

"c. Any finding of no significant impact prepared by a State agency under Article 1 of Chapter 113A of the General Statutes.

"d. Any approval of an erosion and sedimentation control plan granted by a local government or by the North Carolina Sedimentation Control Commission under Article 4 of Chapter 113A of the General Statutes.

"e. Any permit for major development or minor development, as defined in G.S. 113A-118, or any other permit issued under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

"f. Any water or wastewater permit issued under Article 10 or Article 11 of Chapter 130A of the General Statutes.

"g. Any building permit issued under Article 9 of Chapter 143 of the General Statutes.

"h. Any nondischarge or extension permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes.

"i. Any stream origination certifications issued under Article 21 of Chapter 143 of the General Statutes.

"j. Any water quality certification under Article 21 of Chapter 143 of the General Statutes.

"k. Any air quality permit issued by the Environmental Management Commission under Article 21B of Chapter 143 of the General Statutes.

"*l*. Any approval by a county of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, a development agreement, or a building permit under Article 18 of Chapter 153A of the General Statutes.

"m. Any approval by a city of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, a development agreement, or a building permit under Article 19 of Chapter 160A of the General Statutes.

"n. Any certificate of appropriateness issued by a preservation commission of a city under Part 3C of Article 19 of Chapter 160A of the General Statutes.

"(2) Development. — The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility, or any grading, soil removal or relocation, excavation or landfill, or any use or change in the use of any building or other structure or land or extension of the use of land.

"SECTION 4. For any development approval that is current and valid at any point during the period beginning January 1, 2008, and ending December 31, 2010, the running of the period of the development approval and any associated vested right under G.S. 153A-344.1 or G.S. 160A-385.1 is suspended during the period beginning January 1, 2008, and ending December 31, 2010.

"SECTION 5. This act shall not be construed or implemented to:

"(1) Extend any permit or approval issued by the United States or any of its agencies or instrumentalities.

"(2) Extend any permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law.

"(3) Shorten the duration that any development approval would have had in the absence of this act.

"(4) Prohibit the granting of such additional extensions as are provided by law.

"(5) Affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued at any time from the effective date of this act to December 31, 2010.

"(6) Affect the ability of a government entity to revoke or modify a development approval or to accept voluntary relinquishment of a development approval by the holder of the development approval pursuant to law.

"(7) Modify any requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program."

"SECTION 5.1 [as added by 2009-572, s. 2]. (a) This act does not revive a vested right to the water or sewer allocation associated with a development approval that expired between January 1, 2008, and August 5, 2009, and is revived by the operation of this act if both of the following conditions are met:

"(1) The water or sewer capacity was reallocated to other development projects prior to August 5, 2009, based upon the expiration of the development approval.

"(2) There is not sufficient supply or treatment capacity to accommodate the project that is the subject of the revived development approval.

"(b) A person whose development approval is revived under this act but whose water or sewer allocation is not revived under this section must be given first priority if additional supply or treatment capacity becomes available."

Session Laws 2009-572, s. 3, provided: "If House Bill 274, 2009 Regular Session, becomes law, Section 5.2 of of House Bill 274, 2009 Regular Session, is repealed." House Bill 274 was Session Laws 2009-550, which, in s. 5.2, added a new s. 5.1 to Session Laws 2009-406 that read as follows: "SECTION 5.1. If developmental approvals that expired during the period beginning January 1, 2008 and the effective date of this act are revived by operation of this act, and (i) in reliance upon such expiration the water or sewer capacity was reallocated to other development projects prior to the effective date of this act, and (ii) there is no longer sufficient supply or treatment capacity to accommodate the project that is the subject of the revived development approval, the act shall not be construed to revive any vested right to the water or sewer allocation associated with the revived development approval, but the holder of the revived development approval may request new capacity and shall be given first priority if additional supply or treatment capacity becomes available."

CASE NOTES

North Carolina recognizes two methods for a landowner to establish a vested right in a zoning ordinance: (1) qualify with relevant statutes (G.S. 153A-344.1, 160A-385.1) or (2) qualify under the common law. Browning-Ferris Indus. of S. Atl., Inc. v. Guilford County Bd. of Adjustment, 126 N.C. App. 168, 484 S.E.2d 411 (1997).

§ 153A-345. Board of adjustment.

(a) The board of commissioners may provide for the appointment and compensation, if any, of a board of adjustment consisting of at least five members, each to be appointed for three years. In appointing the original members of the board, or in filling vacancies caused by the expiration of the terms of existing members, the board of commissioners may appoint some members for less than three years to the end that thereafter the terms of all members do not expire at the same time. The board of commissioners may provide for the appointment and compensation, if any, of alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving on behalf of a regular member, has and may exercise all the powers and duties of a regular member. If the board of commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall have at least one resident as a member of the board of adjustment.

A county may designate a planning board or the board of county commissioners to perform any or all of the duties of a board of adjustment in addition to its other duties.

(b) A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part shall provide that the board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. Any person aggrieved or any officer, department, board, or bureau of the county may take an appeal. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice of the appeal to the parties, and decide the appeal within a reasonable time. The board of adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the circumstances. To this end the board has all of the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations as provided in subsection (d) of this section, not including variances in permitted uses, and that the board may use special and conditional use permits, all to be in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under the zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power to vary or modify any regulation or provision of the ordinance so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

(e) The board of adjustment, by a vote of four-fifths of its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the applicant a matter upon which the board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(e1) A member of the board or any other body exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e2) Each decision of the board is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman may in his official capacity administer oaths to witnesses in any matter coming before the board.

(g) The board of adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor. (1959, c. 1006, s. 1; 1965, c. 194, s. 4; 1967, c. 1208, ss. 5-7; 1973, c. 822, s. 1; 1979, c. 611, s. 4; c. 635; 1981, c. 891, s. 8; 1985, c. 397, s. 1; 2005-418, s. 8(b); 2009-421, s. 6.)

Local Modification. — Durham: 1997-165; Mecklenburg: 1981, cc. 293, 583; Union: 1987, c. 604, s. 2(3).

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Effect of Amendments. — Session Laws 2009-421, s. 6, effective January 1, 2010, and applicable to quasi-judicial decisions rendered on or after that date, substituted "quasi-judicial functions pursuant to this Article" for "the functions of a board of adjustment" in the first sentence of subsection (e1).

Legal Periodicals. — For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under corresponding sections of former law.*

Construction of Section. — The purpose of this section is to provide a right of review, and statutes providing for review of administrative decisions should be liberally construed to preserve and effectuate that right. Mize v. County of Mecklenburg, 80 N.C. App. 279, 341 S.E.2d 767 (1986).

In the context of an appeal from the grant of a special use permit, G.S. 160A-388(e) is a substantially parallel statute to G.S. 153A-345(e). Sarda v. City/Durham Bd. of Adjustment, 156 N.C. App. 213, 575 S.E.2d 829, 2003 N.C. App. LEXIS 79 (2003).

N.C. R. App. P. 10(b) did not apply to an appeal by certiorari to the superior court from a hearing before a county zoning board of adjustment because the North Carolina Rules of Appellate Procedure were inapplicable as there was no direct right of appeal from the board of adjustment to the appellate division; the board of adjustment was not a trial tribunal as defined by N.C. R. App. P. 1(c), and appeals from the board of adjustment were to the superior court, by certiorari pursuant to G.S. 153A-345(e). Cook v. Union County Zoning Bd. of Adjustment, 185 N.C. App. 582, 649 S.E.2d 458, 2007 N.C. App. LEXIS 1949 (2007).

The legislature may delegate to the board of adjustment, as a quasi-judicial body, authority to determine facts and draw conclusions as a basis for its official action. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969).

Power of Board to Impose Civil Penalties. — Since the Board possesses all powers of the enforcement officer for non-compliance, the trial court did not err in finding that the Board had authority to impose civil penalties. JWL Invs., Inc. v. Guilford County Bd. of Adjustment, 133 N.C. App. 426, 515 S.E.2d 715 (1999).

Finality of Board's Decisions. — The decisions of the board are final, subject to the right of the courts to review errors in law and to give relief against its orders which are arbitrary, oppressive or attended with manifest abuse of authority. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969).

Decisions of the board of adjustment are final, subject to the right of courts on certiorari to review errors in law and to give relief against its orders which are arbitrary, oppressive or attended with manifest abuse of authority. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Conclusive Effect of Board's Findings. — Upon review by a superior court upon writ of certiorari issued pursuant to subsection (e) of this section, the findings of fact made by the board, if supported by evidence introduced at the hearing before the board, are conclusive. Godfrey v. Zoning Bd. of Adjustment, 317 N.C. 51, 344 S.E.2d 272 (1986).

Enforcement of Zoning Ordinances. — Section 153A-123 and this section give the superior court the power to enforce zoning ordinances through the issuance of an injunction. Mize v. County of Mecklenburg, 80 N.C. App. 279, 341 S.E.2d 767 (1986).

County Board of Adjustment Rightly Applied Local Notice Provision. — Section 1A-1-6 did not apply in a case where the language of a local ordinance was clear and unambiguous in its requirement that a minimum ten-day "notice of public hearing" be given and further stated how that ten days should be calculated. Richardson v. Union County Bd. of Adjustment, 136 N.C. App. 134, 523 S.E.2d 432, 1999 N.C. App. LEXIS 1297 (1999).

Writ permitted to obtain review of the decision of a board of adjustment is a writ to bring the matter before the court upon the evidence presented by the record itself for review of alleged errors of law. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969).

The inquiry on review upon writ of certiorari under this section is whether the board committed an error of law or whether an order of the board is arbitrary, oppressive or attended with manifest abuse of authority. Teen Challenge Training Center, Inc. v. Board of Adjustment, 90 N.C. App. 452, 368 S.E.2d 661 (1988).

Appeal Held Not Taken Within Reasonable Time. — Where Board of Adjustment failed to prescribe any time within which an appeal had to be taken from a zoning compliance officer, a notice of appeal, consisting of a letter from an attorney representing adjacent landowners, filed 322 days after the officer issued the certificate of zoning compliance, was not taken within a reasonable time. See Teen Challenge Training Center, Inc. v. Board of Adjustment, 90 N.C. App. 452, 368 S.E.2d 661 (1988).

Challenge Under Dillon's Rule — Certiorari Not Necessary. — Where owner of mobile home challenged validity of city ordinance as violating requirements of Dillon's Rule, complaint did not need to be in form of a petition for certiorari since trial court should have allowed owner to attack ordinance directly; owner stated direct attack on ordinance so long as she could show that attack was timely under G.S. 153A-348. White v. Union County, 93 N.C. App. 148, 377 S.E.2d 93 (1989).

Decisions of a board of adjustment are not subject to collateral attack. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

For case holding that defendant in action for violating zoning ordinance, having failed to exhaust his statutory remedies, could not challenge validity of ordinance, see Forsyth County v. York, 19 N.C. App. 361, 198 S.E.2d 770, cert. denied, 284 N.C. 253, 200 S.E.2d 653 (1973).

Since Board Decision Would Be Rendered Meaningless. — To allow a collateral attack on an unappealed board decision would make the decision meaningless. New Hanover County v. Pleasant, 59 N.C. App. 644, 297 S.E.2d 760 (1982).

The Zoning Board of Adjustment is a necessary party respondent to a petition filed pursuant to subsection (e) of this section. Mize v. County of Mecklenburg, 80 N.C. App. 279, 341 S.E.2d 767 (1986).

Board of Adjustment Necessary Party. — In dispute over zoning code the trial court did not err in dismissing the action based on the failure to join the Board of Adjustment as a necessary party to the lawsuit. City of Raleigh v. Hudson Belk Co., 114 N.C. App. 815, 443 S.E.2d 112 (1994).

In addition to the Zoning Board of Adjustment, other parties may in fact be necessary to determine issues raised in a petition under subsection (e) of this section. Mize v. County of Mecklenburg, 80 N.C. App. 279, 341 S.E.2d 767 (1986).

Amendment of Petition to Join Party. — Where petitioners complied with all the express requirements of this vague section by filing a petition in Mecklenburg County Superior Court within 30 days of the decision of the board, under the circumstances presented, the court abused its discretion by failing to allow the petitioners to amend the petition to join the Zoning Board of Adjustment. Mize v. County of Mecklenburg, 80 N.C. App. 279, 341 S.E.2d 767 (1986).

Standing. — Where an owner was granted a special use permit to operate a paintball playing field on the owner's property, the adjoining neighbors lacked standing to appeal the grant of the permit, as their mere averment that they owned land in the immediate vicinity of the subject property, absent an allegation of special damages distinct from the rest of the community, was insufficient to confer standing upon them. Sarda v. City/Durham Bd. of Adjustment, 156 N.C. App. 213, 575 S.E.2d 829, 2003 N.C. App. LEXIS 79 (2003).

County did not need to show that it was an aggrieved person to have standing to appeal pursuant to a petition for certiorari the grant of a special use permit by a county zoning board of adjustment because G.S. 153A-345 indicated that such an appeal was permitted; moreover, the abutting landowners to the subject property, upon which a retailer intended to build a large store, had standing because they suffered special damages to their properties that were unique in character and quantity and distinct from those inflicted upon the community at large, including a reduction in the values of their properties. Cook v. Union County Zoning Bd. of Adjustment, 185 N.C. App. 582, 649 S.E.2d 458, 2007 N.C. App. LEXIS 1949 (2007).

Dismissal of owners' petition seeking review of a board's decision granting buyers' application for a conditional use permit for property was proper because standing was required before a petitioner was allowed to seek review of a special use permit or conditional use permit, and because the owners failed to allege any damages whatsoever, they lacked standing. Casper v. Chatham County, 186 N.C. App. 456, 651 S.E.2d 299, 2007 N.C. App. LEXIS 2212 (2007).

Where a county zoning officer granted a building permit to a church, an adjacent property owner lacked standing to appeal from the zoning officer to the zoning board under G.S. 153A-345(b) or 1947 N.C. Sess. Laws, ch. 677, § 33, because the property owner did not allege or show the requisite special damages to assert standing as a person aggrieved since the application did not allege that the zoning decisions had decreased the value of the property owner's property or would do so in the future. Smith v. Forsyth County Bd. of Adjustment, 186 N.C. App. 651, 652 S.E.2d 355, 2007 N.C. App. LEXIS 2272 (2007).

Time for Filing Petition for Review. — The language of this section requires only that any petition seeking review by the superior court be filed with the clerk of superior court within 30 days after the decision of the board is filed or after a written copy has been delivered to every aggrieved party. Mize v. County of Mecklenburg, 80 N.C. App. 279, 341 S.E.2d 767 (1986).

The scope of review under subsection (e) of this section is: (1) Reviewing the record for errors in law; (2) insuring that procedures specified by law in both statute and ordinance are followed; (3) insuring that appropriate due process rights of a petitioner are protected, including the right to offer evidence, cross-examine witnesses and inspect documents; (4) insuring that the decisions of zoning boards are supported by competent, material and substantial evidence in the whole record; and (5) insuring that decisions are not arbitrary and capricious. Mize v. County of Mecklenburg, 80 N.C. App. 279, 341 S.E.2d 767 (1986).

It is not the function of the reviewing court, upon writ of certiorari under subsection (e) of this section, to find the facts, but to determine whether the findings of fact made by the board are supported by the evidence before the board. It may vacate an order based upon a finding of fact not supported by the evidence. Godfrey v. Zoning Bd. of Adjustment, 317 N.C. 51, 344 S.E.2d 272 (1986).

The matter is before the court upon writ of certiorari under subsection (e) of this section to determine whether an error of law has been committed and to give relief from an order of the board which is found to be arbitrary, oppressive or attended with manifest abuse of authority. Godfrey v. Zoning Bd. of Adjustment, 317 N.C. 51, 344 S.E.2d 272 (1986).

In reviewing zoning decisions, the superior court is not the trier of fact; it sits in the posture of an appellate court. There is no necessity for, or entitlement to, a jury trial. Mize v. County of Mecklenburg, 80 N.C. App. 279, 341 S.E.2d 767 (1986).

No Ground for Equitable Relief Absent Invasion of Property Rights or Lack of Other Adequate Remedy. — There is no ground for equitable relief against zoning where there has been no invasion of property rights, or where there is an adequate remedy at law, as by certiorari or mandamus, or by pursuit of a statutory remedy. Michael v. Guilford County, 269 N.C. 515, 153 S.E.2d 106 (1967).

Depreciation of Complainant's Property Does Not Invalidate Ordinance. — The mere fact that a zoning ordinance seriously depreciates the value of complainant's property is not enough, standing alone, to establish its invalidity. Michael v. Guilford County, 269 N.C. 515, 153 S.E.2d 106 (1967).

Special Exception Defined. — A special exception, within the meaning of a zoning ordinance, is one which is expressly permitted in a given zone upon proof that certain facts and conditions detailed in the ordinance exist. It is granted by the board, after a public hearing, upon a finding that the specified conditions have been satisfied. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

Right to a special exception permit cannot be made to hinge upon whether the board considers proposed structure beneficial or harmful to the community. Such power would subject the board to the pressures of individuals or groups who, for an infinite variety of reasons, might oppose the permit, and enable it to make a different rule of law in every case. Statute empowering the commissioners to authorize the board of adjustment to permit special exceptions in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance does not purport to confer such unbridled discretion upon it. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

Provision of a county ordinance requiring board of adjustment to deny a permit if it found the granting of it would adversely affect the public interest was in excess of the authority which the statute permitted to be so conferred upon the board. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

This section did not change Forsyth County zoning ordinance enacted pursuant to Session Laws 1947, c. 677 in April, 1967. Cardwell v. Forsyth County Zoning Bd. of Adjustment, 88 N.C. App. 244, 362 S.E.2d 843 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 858 (1988).

Cemetery was not estopped from asserting that no special use permit was required for the construction and installation of facilities for above-ground burial since such facilities were not an unlawful extension of its nonconforming use of its cemetery property. Stegall v. Zoning Bd. of Adjustment, 87 N.C. App. 359, 361 S.E.2d 309 (1987), cert. denied, 321 N.C. 480, 364 S.E.2d 671 (1988).

Above-Ground Burial Facilities Held Legal Extension of Cemetery's Nonconforming Use of Cemetery Property. — Where the Zoning Ordinance provides for the continuation of pre-existing nonconforming uses of property, a cemetery construction of above-ground burial facilities relates to the process by which the nonconforming activity is conducted and does not amount to a change in the nature and kind of use to which the property was devoted. Stegall v. Zoning Bd. of Adjustment, 87 N.C. App. 359, 361 S.E.2d 309 (1987), cert. denied, 321 N.C. 480, 364 S.E.2d 671 (1988).

Board's Action Upheld. — Petitioners failed to show that Board of Adjustment acted arbitrarily or capriciously in combining standards for granting a special use permit to a broadcasting company. Richardson v. Union County Bd. of Adjustment, 136 N.C. App. 134, 523 S.E.2d 432, 1999 N.C. App. LEXIS 1297 (1999).

Superior court, pursuant to G.S. 153A-345(e), properly affirmed a county board of adjustment's approval of a special use permit to allow a park owner to build and operate a go-cart track because (1) the board properly placed the burden of proof on the park owner to prove that the health and safety requirements of the county's special use permit ordinance were met; and (2) the findings of fact and conclusions of law were supported by competent, material, and substantial evidence in the record as a whole, based on the testimony of a civil engineer as to sound levels and the sound test results from an engineering firm. Harding v. Bd. of Adjustment, 170 N.C. App. 392, 612 S.E.2d 431, 2005 N.C. App. LEXIS 994 (2005).

Board's Action Vacated. — Superior court properly vacated a special use permit issued by a county zoning board of adjustment because the county and the abutting landowners were denied due process by the board's failure to comply with hearing procedures as set forth in a county zoning ordinance. Cook v. Union County Zoning Bd. of Adjustment, 185 N.C. App. 582, 649 S.E.2d 458, 2007 N.C. App. LEXIS 1949 (2007).

County Zoning Board Exceeded Its Delegated Authority. — County zoning board exceeded its authority when it voided a mine operator's special use exception permit after finding violations, then treated the mine operator's current permit application as one for a new permit and applied the standard under a new ordinance; instead of voiding the original permit, which was issued in 1997, the board should have considered the application in light of the standards in effect prior to October of 2000, the date of the new ordinance, and had the board done so, it should have found that the mine operator met the burden when the mine operator produced a current permit from the Department of Environment, Health, and Natural Resources, Division of Land Resources for the activities contemplated and the 1997 ordinance had no other, more stringent conditions specified. Hewett v. County of Brunswick, 155 N.C. App. 138, 573 S.E.2d 688, 2002 N.C. App. LEXIS 1592 (2002).

Planning Official Had No Authority to Interpret a Zoning Map. — As a County Zoning Ordinance had the force of law, its provisions could not be waived and a planning official had no authority to interpret a zoning map; thus, the trial court properly reversed the Board of Commissioner's approval of a property owner's rezoning requests. Murdock v. Chatham County, — N.C. App. —, 679 S.E.2d 850, 2009 N.C. App. LEXIS 1164 (July 21, 2009).

Applied in Lathan v. Zoning Bd. of Adj., 69 N.C. App. 686, 317 S.E.2d 733 (1984); In re Dunn, 73 N.C. App. 243, 326 S.E.2d 309 (1985); JWL Invs., Inc. v. Guilford County Bd. of Adjustment, 133 N.C. App. 426, 515 S.E.2d 715 (1999); Mann Media, Inc. v. Randolph County Planning Bd., 356 N.C. 1, 565 S.E.2d 9, 2002 N.C. LEXIS 544 (2002); Laurel Valley Watch, Inc. v. Mt. Enters. of Wolf Ridge, LLC, — N.C. App. —, 665 S.E.2d 561, 2008 N.C. App. LEXIS 1629 (2008).

Cited in Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977); Davis v. Zoning Bd. of Adjustment, 41 N.C. App. 579, 255 S.E.2d 444 (1979); Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980); Atkins v. Zoning Bd. of Adjustment, 53 N.C. App. 723, 281 S.E.2d 756 (1981); Guilford County Planning & Dev. Dep't v. Simmons, 102 N.C. App. 325, 401 S.E.2d 659 (1991); County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993); Guilford County Planning & Dev. Dep't v. Simmons, 115 N.C. App. 87, 443 S.E.2d 765 (1994); Ball v. Randolph County Bd. of Adjustment, 129 N.C. App. 300, 498 S.E.2d 833 (1998); Willis v. City of Southport Bd. of Adjustment, 129 N.C. App. 499, 500 S.E.2d 723 (1998).

§ 153A-346. Conflict with other laws.

When regulations made under authority of this Part require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under authority of this Part govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by regulations made under authority of this Part, the provisions of the other statute or local ordinance or regulation govern. (1959, c. 1006, s. 1; 1973, c. 822, s. 1.)

§ 153A-347. Part applicable to buildings constructed by the State and its subdivisions; exception.

Each provision of this Part is applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions.

Notwithstanding the provisions of any general or local law or ordinance, no land owned by the State of North Carolina may be included within an overlay district or a special use or conditional use district without approval of the Council of State. (1959, c. 1006, s. 1; 1973, c. 822, s. 1; 1985, c. 607, s. 4.)

Legal Periodicals. — For comment on exclusionary zoning of community facilities, see 12 N.C. Cent. L.J. 167 (1980).

CASE NOTES

The word "building," as used in this section, does not encompass a "public enterprise," as used in G.S. 153A-274 and 160A-311. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

City Immune from County's Zoning Ordinances. — City which owned a sewage treatment facility located in a county and outside the city's boundaries was not required to comply with county's zoning ordinances in upgrading the facility and providing sewage service to newly annexed areas of city with that facility. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

County does not have authority over provision of sewer services within a city, or over newly annexed areas of a city which also lie in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Locating Buildings in Violation of Another Jurisdiction's Zoning Laws. — While municipalities or counties may exercise the power of eminent domain for the construction, enlarging or improving of those buildings listed in G.S. 40A-3(b)(6), the power of eminent domain does not include locating a particular building in violation of another jurisdiction's zoning laws by virtue of the fact that through this section and G.S. 160A-392 the Legislature has made zoning regulations with regard to buildings specifically applicable to political subdivisions. The same zoning restrictions do not apply, however, to the construction, establishment, enlargement, improvement, maintenance, ownership or operation of a public enterprise unless the Legislature has clearly manifested a contrary intent. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

§ 153A-348. Statute of limitations.

A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under this Part or other applicable law shall accrue upon adoption of the ordinance, or amendment thereto, and shall be brought within two months as provided in G.S. 1-54.1. (1981, c. 705, s. 2; 1995 (Reg. Sess., 1996), c. 746, s. 6.)

CASE NOTES

This section is absolute bar to plaintiff's attack on validity of amended zoning ordinance since the period of time between the enactment of the amended zoning ordinance and the institution of this action was approximately four and one-half years. Baucom's Nursery Co. v. Mecklenburg County, 89 N.C. App. 542, 366 S.E.2d 558, cert. denied, 322 N.C. 834, 371 S.E.2d 274 (1988).

Challenge Under Dillon's Rule — Certiorari Not Necessary. — Where owner of mobile home challenged validity of city ordinance as violating requirements of Dillon's Rule, complaint did not need to be in form of a petition for certiorari since trial court should have allowed owner to attack ordinance directly; owner stated direct attack on ordinance so long as she could show that attack was timely under this section. White v. Union County, 93 N.C. App. 148, 377 S.E.2d 93 (1989).

Equitable Estoppel did not Apply. — Because a non-profit corporation's members had notice that the County had rezoned 12 acres to I-D to allow for the development of an airport, and the evidence did not show that the members reasonably relied on the minutes in filing the lawsuit after the expiration of the statute of limitations, the doctrine of equitable estoppel did not apply. Laurel Valley Watch, Inc. v. Mt. Enters. of Wolf Ridge, LLC, — N.C. App. —, 665 S.E.2d 561, 2008 N.C. App. LEXIS 1629 (2008).

Cited in Five C'S, Inc. v. County of Pasquotank, — N.C. App. —, 672 S.E.2d 737, 2009 N.C. App. LEXIS 152 (2009).

§ 153A-349. Appeals in the nature of certiorari.

(a) Whenever appeals of quasi-judicial decisions of decision-making boards are to superior court and in the nature of certiorari as required by this Article, the provisions of G.S. 160A-393 shall be applicable to those appeals.

(b) For purposes of this section, as used in G.S. 160A-393, the term "city council" shall be deemed to refer to the "board of commissioners," and the term "city" or "municipal" shall be deemed to refer to the "county."

(c) For purposes of this section, the "impermissible conflict as described in G.S. 160A-388(e1)" shall mean "impermissible conflict as described in G.S. 153A-345(e1)." (2009-421, s. 1(b).)

Editor's Note. — Session Laws 2009-421, s. 7, made this section effective January 1, 2010 and applicable to quasi-judicial decisions rendered on or after that date.

Part 3A. Development Agreements.

§ 153A-349.1. Authorization for development agreements.

(a) The General Assembly finds:

(1) Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.

(2) Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development.

(4) Because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments.

(b) Local governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part. In entering into such agreements, a local government may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law.

(c) This Part is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other law regarding building permits, site-specific development plans, phased development plans, or other provisions of law. (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 11, made this Part effective January 1, 2006.

Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.2. Definitions.

The following definitions apply in this Part:

(1) Comprehensive plan. — The comprehensive plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, official map, and any other plans regarding land use and development that have been officially adopted by the governing board.

(2) Developer. — A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(3) Development. — The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels.

"Development", as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(4) Development permit. — A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.

(5) Governing body. — The board of county commissioners of a county.

(6) Land development regulations. — Ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.

(7) Laws. — All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by a local government affecting the development of property, and includes laws governing permitted uses of the property, density, design, and improvements.

(8) Local government. — Any county that exercises regulatory authority over and grants development permits for land development or which provides public facilities.

(9) Local planning board. — Any planning board established pursuant to G.S. 153A-321.

(10) Person. — An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, State agency, or any legal entity.

(11) Property. — All real property subject to land-use regulation by a local government and includes any improvements or structures customarily regarded as a part of real property.

(12) Public facilities. — Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities. (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.3. Local governments authorized to enter into development agreements; approval of governing body required.

A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a local government by ordinance. (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.4. Developed property must contain certain number of acres; permissible durations of agreements.

A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years. (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.5. Public hearing.

Before entering into a development agreement, a local government shall conduct a public hearing on the proposed agreement following the procedures set forth in G.S. 153A-323 regarding zoning ordinance adoption or amendment. The notice for the public hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards). (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.6. What development agreement must provide; what it may provide; major modification requires public notice and hearing.

(a) A development agreement shall at a minimum include all of the following:

(1) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.

(2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.

(3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

(4) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.

(6) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.

(7) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens.

(8) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(b) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 153A-349.8 but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. The developer may request a modification in the dates as set forth in the agreement. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement.

(c) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(d) The development agreement also may cover any other matter not inconsistent with this Part. (2005-426, s. 9(b).)

Local Modification. — Chatham County: 2007-339, s. 1.

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.7. Law in effect at time of agreement governs development; exceptions.

(a) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(b) Except for grounds specified in G.S. 153A-344.1(e), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(c) In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the local government may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement, by ordinance after notice and a hearing.

(d) This section does not abrogate any rights preserved by G.S. 153A-344 or G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of a development agreement. (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.8. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.

(a) Procedures established pursuant to G.S. 153A-349.3 must include a provision for requiring periodic review by the zoning administrator or other appropriate officer of the local government at least every 12 months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(b) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 153A-345(b). (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.9. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.10. Validity and duration of agreement entered into prior to change of jurisdiction; subsequent modification or suspension.

(a) Except as otherwise provided by this Part, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement, or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both. (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.11. Developer to record agreement within 14 days; burdens and benefits inure to successors in interest.

Within 14 days after a local government enters into a development agreement, the developer shall record the agreement with the register of deeds in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement. (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.12. Applicability to local government of constitutional and statutory procedures for approval of debt.

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt. (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

§ 153A-349.13. Relationship of agreement to building or housing code.

A development agreement adopted pursuant to this Chapter shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the local government's planning, zoning, or subdivision regulations. (2005-426, s. 9(b).)

Editor's Note. — Session Laws 2005-426, s. 9(b), designated the sections in this Part as G.S. 153A-379.1 through G.S. 153A-379.13. They have been redesignated as G.S. 153A-349.1 through G.S. 153A-349.13 at the direction of the Revisor of Statutes.

Part 3B. Wireless Telecommunications Facilities.

§ 153A-349.50. Purpose and compliance with federal law.

(a) Purpose. — The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare. The following standards shall apply to a county's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(b) Compliance with the Federal Communications Act. — The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332 as amended, and in accordance with the rules promulgated by the Federal Communications Commission. (2007-526, s. 2.)

Cross References. — As to Wireless Telecommunications Facilities, see G.S. 160A-400.50 et seq.

Editor's Note. — Session Laws 2007-526, s. 4, made this Part effective December 1, 2007. Session Laws 2007-526, s. 3, is a severability clause.

§ 153A-349.51. Definitions.

The following definitions apply in this Part:

(1) Antenna. — Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(2) Application. — A formal request submitted to the county to construct or modify a wireless support structure or a wireless facility.

(3) Building permit. — An official administrative authorization issued by the county prior to beginning construction consistent with the provisions of G.S. 153A-357.

(4) Collocation. — The installation of new wireless facilities on previously-approved structures, including towers, buildings, utility poles, and water tanks.

(5) Equipment enclosure. — An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

(5a) Fall zone. — The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(6) Land development regulation. — Any ordinance enacted pursuant to this Part.

(7) Search ring. — The area within which a wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(8) Utility pole. — A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

(9) Wireless facility. — The set of equipment and network components, exclusive of the underlying support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and telecommunications services to a discrete geographic area.

(10) Wireless support structure. — A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure. (2007-526, s. 2.)

§ 153A-349.52. Construction of wireless facilities and wireless support structures.

(a) A county may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a county from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 153A-349.50. For purposes of this Part, public safety shall not include requirements relating to radio frequency emissions of wireless facilities.

(b) Any person that proposes to construct or modify a wireless support structure or wireless facility within the planning and land-use jurisdiction of a county must do both of the following:

(1) Submit a completed application with the necessary copies and attachments to the appropriate planning authority.

(2) Comply with any local ordinances concerning land use and any applicable permitting processes.

(c) A county's review of an application for the placement, construction, or modification of a wireless facility or wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the county may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. In reviewing an application the county may review the following:

(1) Applicable public safety, land use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.

(2) Information or materials directly related to an identified public safety, land development or zoning issue including evidence that no existing or previously approved structure can reasonably be used for the antenna placement instead of the construction of a new tower, that residential, historic, and designated scenic areas cannot be served from outside the area, or that the proposed height of a new tower or initial antenna placement or a proposed height increase of a modified tower, replacement tower, or collocation is necessary to provide the applicant's designed service.

(3) A county may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing structure or structures within the applicant's search ring. Collocation on an existing structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the tower is unwilling to enter into a contract for such use at fair market value. Counties may require information necessary to determine whether collocation on existing structures is reasonably feasible.

(d) A collocation application entitled to streamlined processing under G.S. 153A-349.53 shall be deemed complete unless the city provides notice in writing to the applicant within 45 days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(e) The county shall issue a written decision approving or denying an application within 45 days in the case of collocation applications entitled to streamlined processing under G.S. 153A-349.53 and within a reasonable period of time consistent with the issuance of other land-use permits in the case of other applications, each as measured from the time the application is deemed complete.

(f) A county may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site or modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by a county on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the county in connection with the regulatory review authorized under this section. The foregoing does not prohibit a county from imposing additional reasonable and cost based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant.

(g) The county may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. A county shall not deny an initial land-use or zoning permit based on such documentation. A county may condition a permit on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months.

(h) The county may not require the placement of wireless support structures or wireless facilities on county owned or leased property, but may develop a process to encourage the placement of wireless support structures or facilities on county owned or leased property, including an expedited approval process.

(i) This section shall not be construed to limit the provisions or requirements of any historic district or landmark regulation adopted pursuant to Part 3C of this Article. (2007-526, s. 2.)

§ 153A-349.53. Collocation of wireless facilities.

(a) Applications for collocation entitled to streamlined processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review.

(b) Applications for collocation of wireless facilities are entitled to streamlined processing if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to wireless support structures which are approved on or after December 1, 2007.

(c) The streamlined process set forth in subsection (a) of this section shall apply to all collocations, in addition to collocations qualified for streamlined processing under subsection (b) of this section, that meet the following requirements:

(1) The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.
(2) The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.
(3) The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.
(4) The additional wireless facilities comply with all federal, State, and local safety requirements.
(5) The collocation does not exceed the applicable weight limits for the wireless support structure. (2007-526, s. 2.)

Part 4. Building Inspection.

§ 153A-350. "Building" defined.

As used in this Part, the words "building" or "buildings" include other structures. (1973, c. 822, s. 1.)

Legal Periodicals. — For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

CASE NOTES

A mobile home is deemed a "building." Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

Cited in County of Durham v. Maddry & Co., 315 N.C. 296, 337 S.E.2d 576 (1985); Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

§ 153A-350.1. Tribal lands.

As used in this Part, the term:
(1) "Board of commissioners" includes the Tribal Council of such tribe.
(2) "County" or "counties" also means a federally recognized Indian Tribe, and as to such tribe includes lands held in trust for the tribe. (1999-78, s. 1.)

§ 153A-351. Inspection department; certification of electrical inspectors.

(a) A county may create an inspection department, consisting of one or more inspectors who may be given the titles of building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, deputy or assistant inspector, or any other title that is generally descriptive of the duties assigned. The department may be headed by a superintendent or director of inspections.

(a1) Every county shall perform the duties and responsibilities set forth in G.S. 153A-352 either by:
(1) Creating its own inspection department;
(2) Creating a joint inspection department in cooperation with one or more other units of local government, pursuant to G.S. 153A-353 or Part 1 of Article 20 of Chapter 160A; or,
(3) Contracting with another unit of local government for the provision of inspection services pursuant to Part 1 of Article 20 of Chapter 160A.

Such action shall be taken no later than the applicable date in the schedule below, according to the county's population as published in the 1970 United States Census:

Counties over 75,000 population — July 1, 1979
Counties between 50,001 and 75,000 — July 1, 1981
Counties between 25,001 and 50,000 — July 1, 1983
Counties 25,000 and under — July 1, 1985.

In the event that any county shall fail to provide inspection services by the date specified above or shall cease to provide such services at any time thereafter, the Commissioner of Insurance shall arrange for the provision of such services, either through personnel employed by his Department or through an arrangement with other units of government. In either event, the Commissioner shall have and may exercise within the county's jurisdiction all powers made available to the board of county commissioners with respect to building inspection under Part 4 of Article 18 of this Chapter and Part 1 of Article 20 of Chapter 160A. Whenever the Commissioner has intervened in this manner, the county may assume provision of inspection services only after giving the Commissioner two years' written notice of its intention to do so; provided, however, that the Commissioner may waive this requirement or permit assumption at an earlier date if he finds that such earlier assumption will not unduly interfere with arrangements he has made for the provision of those services.

(b) No person may perform electrical inspections pursuant to this Part unless he has been certified as qualified by the Commissioner of Insurance. To be certified a person must pass a written examination based on the electrical regulations included in the latest edition of the State Building Code as filed with the Secretary of State. The examination shall be under the supervision of and conducted according to rules and regulations prescribed by the Chief State Electrical Inspector or Engineer of the State Department of Insurance and the Board of Examiners of Electrical Contractors. It shall be held quarterly, in Raleigh or any other place designated by the Chief State Electrical Inspector or Engineer.

The rules and regulations may provide for the certification of class I, class II, and class III inspectors, according to the results of the examination. The examination shall be based on the type and character of electrical installations being made in the territory in which the applicant wishes to serve as an electrical inspector. A class I inspector may serve anywhere in the State, but class II and class III inspectors shall be limited to service in the territory for which they have qualified.

The Commissioner of Insurance shall issue a certificate to each person who passes the examination, approving the person for service in a designated territory. To remain valid, a certificate must be renewed each January by payment of an annual renewal fee of one dollar ($1.00). The examination fee shall be five dollars ($5.00).

If the person appointed by a county as electrical inspector fails to pass the examination, the county shall continue to make appointments until an appointee has passed the examination. For the interim the Commissioner of Insurance may authorize the county to use a temporary inspector.

The provisions of this subsection shall become void and ineffective on such date as the North Carolina Code Officials Qualification Board certifies to the Secretary of State that it has placed in effect a certification system for electrical inspectors pursuant to its authority granted by Article 9C of Chapter 143 of the General Statutes. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 940, 1031; 1961, cc. 763, 884, 1036; 1963, cc. 639, 868; 1965, cc. 243, 371, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, ss. 1, 3; 1969, cc. 675, 918; c. 1003,

s. 7; c. 1010, s. 4; c. 1064, ss. 1, 4, 5; c. 1066, s. 1; 1973, c. 822, s. 1; 1977, c. 531, ss. 2, 3; 1991, c. 720, s. 77.)

CASE NOTES

Failure of City to Provide Inspection Services. — Section 160A-411 does not mandate that the city and the county must agree regarding the provision of inspection services; rather, it provides the options available to the city in determining who shall perform the inspections, one of which is arranging for the county to perform them, and if the city fails to provide inspection services via any of the four options, the statute dictates that the Commissioner of Insurance shall arrange for the provision of the services. The legislature does not need to intervene in the process should the county and the city fail to agree; instead, the legislature has provided that the Commissioner of Insurance shall do so should the city fail to follow the requirements of the statute. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

§ 153A-351.1. Qualifications of inspectors.

On and after the applicable date set forth in the schedule in G.S. 153A-351, no county shall employ an inspector to enforce the State Building Code as a member of a county or joint inspection department who does not have one of the following types of certificates issued by the North Carolina Code Officials Qualification Board attesting to his qualifications to hold such position: (i) a probationary certificate, valid for one year only; (ii) a standard certificate; or (iii) a limited certificate, which shall be valid only as an authorization for him to continue in the position held on the date specified in G.S. 143-151.10(c) and which shall become invalid if he does not successfully complete in-service training prescribed by the Qualification Board within the period specified in G.S. 143-151.10(c). An inspector holding one of the above certificates can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position. (1977, c. 531, s. 4.)

Cross References. — As to the North Carolina Code Officials Qualification Board, see G.S. 143-151.8 through 143-151.20.

Editor's Note. — The reference to G.S. 143-151.10(c) in two places above appears to be incorrect. The reference should apparently be to G.S. 143-151.13(c).

§ 153A-352. Duties and responsibilities.

The duties and responsibilities of an inspection department and of the inspectors in it are to enforce within the county's territorial jurisdiction State and local laws and local ordinances and regulations relating to:

(1) The construction of buildings;

(2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;

(3) The maintenance of buildings in a safe, sanitary, and healthful condition;

(4) Other matters that may be specified by the board of commissioners.

These duties and responsibilities include receiving applications for permits and issuing or denying permits, making necessary inspections, issuing or denying certificates of compliance, issuing orders to correct violations, bringing judicial actions against actual or threatened violations, keeping adequate records, and taking any other actions that may be required to adequately enforce the laws and ordinances and regulations. The board of commissioners may enact reasonable and appropriate provisions governing the enforcement of the laws and ordinances and regulations. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 940, 1031; 1961, cc. 763, 884, 1036; 1963, cc. 639, 868; 1965, cc. 243, 371, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, ss. 1, 3; 1969, cc. 675, 918; c. 1003, s. 7; c. 1010, s. 4; c. 1064, ss. 1, 4, 5; c. 1066, s. 1; 1973, c. 822, s. 1.)

CASE NOTES

Cited in Kennedy v. Haywood County, 158 N.C. App. 526, 581 S.E.2d 119, 2003 N.C. App. LEXIS 1174 (2003).

OPINIONS OF ATTORNEY GENERAL

Statutorily Obligated Services to School System. — Any agreement between a county school system and the county or a municipality which obligates a school system to pay the county or municipality "development charges" under the guise of consideration for services which the county or municipality is statutorily obligated to provide would be null and void as contrary to legislative intent. See opinion of Attorney General to The Honorable J. Sam Ellis House of Representatives, 1998 N.C.A.G. 41 (10/13/98).

§ 153A-353. Joint inspection department; other arrangements.

A county may enter into and carry out contracts with one or more other counties or cities under which the parties agree to create and support a joint inspection department for enforcing those State and local laws and local ordinances and regulations specified in the agreement. The governing bodies of the contracting units may make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a county may designate an inspector from another county or from a city to serve as a member of the county inspection department, with the approval of the governing body of the other county or city. A county may also contract with an individual who is not a city or county employee but who holds one of the applicable certificates as provided in G.S. 153A-351.1 or G.S. 160A-411.1 or with the employer of an individual who holds one of the applicable certificates as provided in G.S. 153A-351.1 or G.S. 160A-411.1. The inspector, if designated from another county or city under this section, while exercising the duties of the position, is a county employee. The county shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the county as it does for an individual who is an employee of the county. The company or individual with whom the county contracts shall have errors and omissions and other insurance coverage acceptable to the county. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1959, c. 940; 1963, c. 639; 1965, c. 371; 1967, c. 495, s. 1; 1969, c. 918; c. 1010, s. 4; c. 1064, ss. 1, 5; c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 232, s. 1; 1999-372, s. 1; 2001-278, s. 1.)

CASE NOTES

Cited in Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

§ 153A-354. Financial support.

A county may appropriate any available funds for the support of its inspection department. It may provide for paying inspectors fixed salaries, or it may reimburse them for their services by paying over part or all of any fees collected. It may fix reasonable fees for issuing permits, for inspections, and for other services of the inspection department. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 940, 1031; 1961, cc. 763, 884, 1036; 1963, cc. 639, 868; 1965, cc. 243, 371, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, ss. 1, 3; 1969, cc. 675, 918; c. 1003, s. 7; c. 1010, s. 4; c. 1064, ss. 1, 4, 5; c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-355. Conflicts of interest.

Unless he or she is the owner of the building, no member of an inspection department shall be financially interested or employed by a business that is financially interested in furnishing labor, material, or appliances for the construction, alteration, or maintenance of any building within the county's territorial jurisdiction or any part or system thereof, or in making plans or specifications therefor. No member of any inspection department or other individual or an employee of a company contracting with a county to conduct inspections may engage in any work that is inconsistent with his or her duties or with the interest of the county, as determined by the county. The county must find a conflict of interest if any of the following is the case:

(1) If the individual, company, or employee of a company contracting to perform inspections for the county has worked for the owner, developer, contractor, or project manager of the project to be inspected within the last two years.

(2) If the individual, company, or employee of a company contracting to perform inspections for the county is closely related to the owner, developer, contractor, or project manager of the project to be inspected.

(3) If the individual, company, or employee of a company contracting to perform inspections for the county has a financial or business interest in the project to be inspected. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 1031; 1961, cc. 763, 884, 1036; 1963, c. 868; 1965, cc. 243, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, s. 3; 1969, cc. 675, 918; c. 1003, s. 7; c. 1064, ss. 1, 4; c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 232, s. 2; 1999-372, s. 2.)

§ 153A-356. Failure to perform duties.

If a member of an inspection department willfully fails to perform the duties required of him by law, or willfully improperly issues a permit, or gives a certificate of compliance without first making the inspections required by law, or willfully improperly gives a certificate of compliance, he is guilty of a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 539, s. 1064; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Cited in Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

§ 153A-357. Permits.

(a) No person may commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building.

(2) The installation, extension, or general repair of any plumbing system except that in any one- or two-family dwelling unit a permit shall not be required for the connection of a water heater that is being replaced, provided that the work is performed by a person licensed under G.S. 87-21, who personally examines the work at completion and ensures that a leak test has been performed on the gas piping, and provided the energy use rate or thermal input is not greater than that of the water heater which is being replaced, there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment except that in any one- or two-family dwelling unit a permit shall not be required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:

a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original.

b. With respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or less amperage.

c. The work is performed by a person licensed under G.S. 87-43.

d. The repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a Class 1 misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion and sedimentation control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity.

(c)(1) A county may by ordinance provide that a permit may not be issued under subsection (a) of this section to a person who owes delinquent property taxes, determined under G.S. 105-360, on property owned by the person. Such ordinance may provide that a building permit may be issued to a person protesting the assessment or collection of property taxes.

(2) This subsection applies to Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Davie, Gates, Greene, Lenoir, Lincoln, Iredell, Stokes, Surry, Tyrrell, Wayne, and Yadkin Counties only.

(d) No permit shall be issued pursuant to subsection (a) of this section for any land-disturbing activity that is subject to, but does not comply with, the requirements of G.S. 113A-71. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1981, c. 677, s. 2; 1983, c. 377, s. 2; c. 614, s. 2; 1987 (Reg. Sess., 1988), c. 1000, s. 1; 1993, c. 539, s. 1065; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 741, s. 1; 2002-165, s. 2.19; 2005-433, s. 3; 2006-150, s. 2; 2007-58, s. 1; 2008-198, s. 8(c); 2009-117, s. 1; 2009-532, s. 2.)

Local Modification. — Alamance: 1993, c. 381, s. 1; Cumberland: 1995 (Reg. Sess., 1996), c. 732, s. 1; Davie: 1991, c. 194; Scotland: 1995, c. 124, s. 1; town of Sunset Beach: 1997-63.

Cross References. — For provisions specifying that permits required for installation, alteration or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards meet all requirements of this section or G.S. 160A-417, see G.S. 143-151.30. For provision that a county may by ordinance require that when a property owner improves property at a cost of more than $2500.00 but less than $5000.00 the property owner must submit a statement setting forth the nature of the improvement and the total cost thereof, see G.S. 153A-325.

Editor's Note. — Session Laws 2008-65, s. 1, effective September 1, 2008, repealed Session Laws 1983, c. 614, s. 5, which had provided that the amendments by the 1983 act would not apply to Wilson, Nash and Edgecombe Counties.

Session Laws 2008-198, s. 12 provided, in part, that subsection 8(c) of the act applies to building permits issued pursuant to G.S. 153A-357 and G.S. 160A-417 for which applications are received on or after April 1, 2009.

At the direction of the Revisor of Statutes, local modifications to G.S. 153A-357 have been codified as subsection (c) of this section. The historical citation has been updated with modifying statutes at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-198, s. 8(c), effective April 1, 2009, added subsection (d). See Editor's note for applicability.

Session Laws 2009-117, s. 1, effective June 18, 2009, inserted "Alexander, Alleghany, Anson, Bertie, Catawba, Chowan" and "Stokes, Surry, Tyrrell" in subdivision (c)(2).

Session Laws 2009-532, s. 2, effective October 1, 2009, in subsection (a), added "any of the following . . . applicable to the work:" at the end of the introductory language, added "except that in . . . with the current edition of the State Building Code" in subdivision (a)(2), substituted a period for "or" at the end of subdivision (a)(3), added "except that . . . the following requirements are met:" in the present introductory language of subdivision (a)(4), added subdivisions (a)(4)a-(a)(4)d, deleted "without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work" following present subdivision (a)(4)d; and made related stylistic changes.

CASE NOTES

Applied in Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

§ 153A-358. Time limitations on validity of permits.

A permit issued pursuant to G.S. 153A-357 expires six months, or any lesser time fixed by ordinance of the county, after the date of issuance if the work authorized by the permit has not commenced. If after commencement the work is discontinued for a period of 12 months, the permit therefor immediately expires. No work authorized by a permit that has expired may thereafter be performed until a new permit has been secured. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

CASE NOTES

Tolling. — Plaintiffs had a valid building permit because their appeal of the order that prevented them from building tolled the statutory time period in which plaintiffs could resume construction under their office building permit; however, the building permit only authorized the construction of an office building it did not establish a statutory vested right to mine the property. Sandy Mush Props. v. Rutherford County, 181 N.C. App. 224, 638 S.E.2d 557, 2007 N.C. App. LEXIS 87 (2007), petition allowed as to additional issues, 361 N.C. 569, 2007 N.C. LEXIS 958 (2007).

§ 153A-359. Changes in work.

After a permit has been issued, no change or deviation from the terms of the application, the plans and specifications, or the permit, except if the change or deviation is clearly permissible under the State Building Code, may be made until specific written approval of the proposed change or deviation has been obtained from the inspection department. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-360. Inspections of work in progress.

As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

Cross References. — As to inspections by the energy and insulation inspector and issuance of a certificate of compliance for work done with regard to the installation, alteration or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards, see G.S. 143-151.32.

CASE NOTES

Cited in Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

§ 153A-361. Stop orders.

Whenever a building or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of a State or local building law or local building ordinance or regulation, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or that presents such a hazard to be immediately stopped. The stop order shall be in writing and directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his designee within five days after the day the order is issued. The owner or builder shall give to the Commissioner of Insurance or his designee written notice of appeal, with a copy to the local inspector. The Commissioner or his designee shall promptly conduct an investigation and the appellant and the inspector shall be permitted to submit relevant evidence. The Commissioner or his designee shall as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his designee on an appeal, no further work may take place in violation of a stop order. In the event of dissatisfaction with the decision, the person affected shall have the options of:

(1) Appealing to the Building Code Council, or

(2) Appealing to the Superior Court as provided in G.S. 143-141.

Violation of a stop order constitutes a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1983, c. 377, s. 4; 1989, c. 681, s. 5; 1993, c. 539, s. 1066; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 153A-362. Revocation of permits.

The appropriate inspector may revoke and require the return of any permit by giving written notice to the permit holder, stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application or plans and specifications, for refusal or failure to comply with the requirements of any applicable State or local laws or local ordinances or regulations, or for false statements or misrepresentations made in securing the permit. A permit mistakenly issued in violation of an applicable State or local law or local ordinance or regulation also may be revoked. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

CASE NOTES

Revocation of Building Permit Because of Zoning Ordinance. — County board of adjustment had the authority to revoke two building permits that had been issued where the building permits were for the construction of two billboards that were in violation of a county zoning ordinance that did not permit construction of the billboards in the area zoned for agricultural use. E. Outdoor, Inc. v. Bd. of Adjustment, 150 N.C. App. 516, 564 S.E.2d 78, 2002 N.C. App. LEXIS 582 (2002), appeal dismissed, 356 N.C. 670, 577 S.E.2d 116 (2003).

aff'd sub nom. Eastern Outdoor, Inc. v. Bd. of Adjustment, 357 N.C. 501, 586 S.E.2d 90 (2003).

OPINIONS OF ATTORNEY GENERAL

Failure to Obtain Air Quality Permit Prior to Undertaking Construction Activities. — This section did not require a county inspections department to revoke a building permit issued for the construction of an asphalt plant where the permittee failed to obtain an air quality permit from the Division of Air Quality prior to undertaking some construction activities at the facility site. See opinion of Attorney General to Grover Sawyer, Deputy Commissioner, Chief Engineer, North Carolina Department of Insurance, 2001 N.C. AG LEXIS 18 (5/22/2001).

§ 153A-363. Certificates of compliance.

At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection. If he finds that the completed work complies with all applicable State and local laws and local ordinances and regulations and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof may be occupied, no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or removed may be occupied until the inspection department has issued a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied before completion of the entire building. Violation of this section constitutes a Class 1 misdemeanor. (1973, c. 822, s. 1; 1993, c. 539, s. 1067; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to inspections by the energy and insulation inspector and issuance of a certificate of compliance for work done with regard to the installation, alteration or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards, see G.S. 143-151.32.

CASE NOTES

Issuance of Certificate of Occupancy Was Date of Substantial Completion for Purposes of Statute of Repose. — Summary judgment for a builder was proper in homeowners' claim for damages arising from alleged construction defects in their home because the suit was filed more than seven years after the certificate of occupancy was issued, and thus the homeowners were unable to prove that the G.S. 1-50(a)(5)(a) six-year statute of repose was not a bar; the homeowners alleged no act by the builder after the date of the certificate of occupancy, nor any fraud or willful or wanton negligence in the construction of the home pursuant to G.S. 1-50(a)(5)(e), and, as such, the date of "substantial completion" for purposes of G.S. 1-50(a)(5)(c) was the date of the certificate of occupancy. Peter T. v. Spectrum Homes, Inc., — N.C. App. —, — S.E.2d —, 2009 N.C. App. LEXIS 529 (May 5, 2009).

Cited in Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996); Nolan v. Paramount Homes, Inc., 135 N.C. App. 73, 518 S.E.2d 789 (1999).

§ 153A-364. Periodic inspections for hazardous or unlawful conditions.

The inspection department shall make periodic inspections, subject to the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings within its territorial jurisdiction. In addition, it shall make any necessary inspections when it has reason to believe that such conditions may exist in a particular building. In exercising these powers, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-365. Defects in buildings to be corrected.

If a local inspector finds any defect in a building, or finds that the building has not been constructed in accordance with the applicable State and local laws and local ordinances and regulations, or finds that a building because of its condition is dangerous or contains fire-hazardous conditions, he shall notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner and the occupant shall each immediately remedy the defects, hazardous conditions, or violations of law in the property each owns. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-366. Unsafe buildings condemned.

The inspector shall condemn as unsafe each building that appears to him to be especially dangerous to life because of its liability to fire, bad conditions of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes; and he shall affix a notice of the dangerous character of the building to a conspicuous place on its exterior wall. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-367. Removing notice from condemned building.

If a person removes a notice that has been affixed to a building by a local inspector and that states the dangerous character of the building, he is guilty of a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 539, s. 1068; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 153A-368. Action in event of failure to take corrective action.

If the owner of a building that has been condemned as unsafe pursuant to G.S. 153A-366 fails to take prompt corrective action, the local inspector shall by certified or registered mail to his last known address or by personal service give him written notice:

(1) That the building is in a condition that appears to constitute a fire or safety hazard or to be dangerous to life, health, or other property;

(2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner is entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the inspector may issue any order to repair, close, vacate, or demolish the building that appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building in question at least 10 days before the day of the hearing and a notice of the hearing is published at least once not later than one week before the hearing. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-369. Order to take corrective action.

If, upon a hearing held pursuant to G.S. 153A-368, the inspector finds that the building is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, he shall issue a written order, directed to the owner of the building, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe; provided, that where the inspector finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1979, c. 611, s. 5.)

§ 153A-370. Appeal; finality of order not appealed.

An owner who has received an order under G.S. 153A-369 may appeal from the order to the board of commissioners by giving written notice of appeal to the inspector and to the clerk within 10 days following the day the order is issued. In the absence of an appeal, the order of the inspector is final. The board of commissioners shall hear any appeal within a reasonable time and may affirm, modify and affirm, or revoke the order. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-371. Failure to comply with order.

If the owner of a building fails to comply with an order issued pursuant to G.S. 153A-369 from which no appeal has been taken, or fails to comply with an order of the board of commissioners following an appeal, he is guilty of a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 539, s. 1069; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 153A-372. Equitable enforcement.

Whenever a violation is denominated a misdemeanor under the provisions of this Part, the county, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building involved. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

CASE NOTES

Applied in Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

§ 153A-372.1. Ordinance authorized as to repair, closing, and demolition of nonresidential buildings or structures; order of public officer.

The provisions of G.S. 160A-439 shall apply to counties. (2007-414, s. 2.)

Editor's Note. — Session Laws 2007-414, s. 3, made this section effective August 21, 2007.

§ 153A-373. Records and reports.

The inspection department shall keep complete, and accurate records in convenient form of each application received, each permit issued, each inspection and reinspection made, and each defect found, each certificate of compliance granted, and all other work and activities of the department. These records shall be kept in the manner and for the periods prescribed by the North Carolina Department of Cultural Resources. The department shall submit periodic reports to the board of commissioners and to the Commissioner of Insurance as the board or the Commissioner may require. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1983, c. 377, s. 6.)

§ 153A-374. Appeals.

Unless otherwise provided by law, any appeal from an order, decision, or determination of a member of a local inspection department pertaining to the State Building Code or any other State building law shall be taken to the Commissioner of Insurance or his designee or other official specified in G.S. 143-139, by filing a written notice with him and with the inspection department within 10 days after the day of the order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1989, c. 681, s. 7.)

§ 153A-375. Establishment of fire limits.

A county may by ordinance establish and define fire limits in any area within the county and not within a city. The limits may include only business and industrial areas. Within any fire limits, no frame or wooden building or addition thereto may be erected, altered, repaired, or moved (either into the fire limits or from one place to another within the limits) except upon the permit of the inspection department and approval of the Commissioner of Insurance. The board of commissioners may make additional regulations necessary for the prevention, extinguishment, or mitigation of fires within the fire limits. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

Part 5. Community Development.

§ 153A-376. Community development programs and activities.

(a) Any county is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a county may engage in the following activities:

(1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low and moderate income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans;

(2) Programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.

(b) Any board of county commissioners may exercise directly those powers granted by law to county redevelopment commissions and those powers granted by law to county housing authorities. Any board of county commissioners desiring to do so may delegate to redevelopment commission or to any housing authority the responsibility of undertaking or carrying out any specified community development activities. Any board of county commissioners and any municipal governing body may by agreement undertake or carry out for each other any specified community development activities. Any board of county commissioners may contract with any person, association, or corporation in undertaking any specified community development activities. Any county or city board of health, county board of social services, or county or city board of education, may by agreement undertake or carry out for any board of county commissioners any specified community development activities.

(c) Any board of county commissioners undertaking community development programs or activities may create one or more advisory committees to advise it and to make recommendations concerning such programs or activities.

(d) Any board of county commissioners proposing to undertake any loan guaranty or similar program for rehabilitation of private buildings is authorized to submit to its voters the question whether such program shall be undertaken, such referendum to be conducted pursuant to the general and local laws applicable to special elections in such county.

(e) No state or local taxes shall be appropriated or expended by a county pursuant to this section for any purpose not expressly authorized by G.S. 153A-149, unless the same is first submitted to a vote of the people as therein provided.

(f) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient "economically distressed counties", as defined in G.S. 143B-437.01 for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by counties of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the county shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. 143B-437.01 or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration.

(g) Any county may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any county that receives these funds directly from the federal government may pledge current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. A county may implement the receipt, dispensing, and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a portion of those funds to a third party in accordance with applicable laws governing the CDBG program.

Any county that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes. (1975, c. 435, s. 2; c. 689, s. 2; 1987 (Reg. Sess., 1988), c. 992, s. 1; 1995, c. 310, s. 2; 1995 (Reg. Sess., 1996), c. 575, s. 2; 1996, 2nd Ex. Sess., c. 13, s. 3.8; 2006-259, s. 27(a).)

Editor's Note. — Session Laws 1995, c. 310, s. 2, effective July 1, 1995, enacted a subsection (e). As a subsection (e) already existed, that subsection was redesignated as subsection (g) at the direction of the Revisor of Statutes.

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051.

§ 153A-377. Acquisition and disposition of property for redevelopment.

In addition to the powers granted by G.S. 153A-376, any county is authorized, either as a part of a community development program or independently thereof, and without the necessity of compliance with the Urban Redevelopment Law, to exercise the following powers:

(1) To acquire, by voluntary purchase from the owner or owners, real property which is either:
   a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;
   b. Appropriate for rehabilitation or conservation activities;
   c. Appropriate for housing construction of the economic development of the community; or
   d. Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open space, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

(2) To clear, demolish, remove, or rehabilitate buildings and improvements on land so acquired; and

(3) To retain property so acquired for public purposes, or to dispose, through sale, lease, or otherwise, of any property so acquired to any person, firm, corporation, or governmental unit; provided, the disposition of such property shall be undertaken in accordance with the procedures of G.S. 153A-176, or the procedures of G.S. 160A-514, or any applicable local act modifying such procedures. (1977, c. 660, s. 2.)

CASE NOTES

Cited in Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

§ 153A-378. Low- and moderate-income housing programs.

In addition to the powers granted by G.S. 153A-376 and G.S. 153A-377, any county is authorized to exercise the following powers:

(1) To engage in and to appropriate and expend funds for residential housing construction, new or rehabilitated, for sale or rental to persons and families of low and moderate income. Any board of

commissioners may contract with any person, association, or corporation to implement the provisions of this subdivision.

(2) To acquire real property by voluntary purchase from the owners to be developed by the county or to be used by the county to provide affordable housing to persons of low and moderate income.

(3) Under procedures and standards established by the county, to convey property by private sale to any public or private entity that provides affordable housing to persons of low or moderate income. The county shall include as part of any such conveyance covenants or conditions that assure the property will be developed by the entity for sale or lease to persons of low or moderate income.

(4) Under procedures and standards established by the county, to convey residential property by private sale to persons of low or moderate income in accordance with G.S. 160A-267 and any terms and conditions that the board of commissioners may determine. (1999-366, s. 2.)

Editor's Note. — Session Laws 1999-366, s. 5, made this section effective August 4, 1999.

Session Laws 1999-366, s. 1, provides: "The General Assembly finds and declares that the purpose of this act is to provide authority for counties in North Carolina to provide funds for residential housing construction, new or rehabilitated, and to provide for the sale or rental of housing to persons and families of low and moderate income. The General Assembly finds and declares that there exists in counties in the State a serious shortage of decent, safe, and sanitary residential housing available at low prices or rentals to persons and families of low and moderate income. This shortage is inimical to the health, safety, welfare, and prosperity of all residents of the State and to the sound growth of North Carolina communities."

§§ 153A-379 through 153A-390: Reserved for future codification purposes.

Article 19.

Regional Planning Commissions.

§ 153A-391. Creation; admission of new members.

Two or more counties, cities, or counties and cities may create a regional planning commission by adopting identical concurrent resolutions to that effect in accordance with the provisions and procedures of this Article. A county or city may join an existing regional planning commission with the consent of the existing member governments.

The resolution creating a regional planning commission may be modified, amended, or repealed by the unanimous action of the member governments. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

Local Modification. — Cherokee, Graham, Jackson and Swain: 1973, c. 1406.

Editor's Note. — Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc., for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

CASE NOTES

Cited in Hyde v. Land-Of-Sky Regional Council, 572 F.2d 988 (4th Cir. 1978).

§ 153A-392. Contents of resolution.

The resolutions creating a regional planning commission shall:

(1) Specify the name of the commission;

(2) Establish the number of delegates to represent each member government, fix the delegates' terms of office and the conditions, if any, for their removal, provide methods for filling vacancies, and prescribe the compensation and allowances, if any, to be paid to delegates;

(3) Set out the method of determining the financial support that will be given to the commission by each member government;

(4) Set out the budgetary and fiscal control procedures to be followed by the commission, which shall substantially comply with the Local Government Budget and Fiscal Control Act (Chapter 159, Subchapter III).

In addition the resolution may, but need not, contain rules and regulations for the conduct of commission business and any other matters pertaining to the organization, powers, and functioning of the commission that the member governments consider appropriate. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

CASE NOTES

Contributions Held Due. — Where, from 1971 through February 1982, defendant county participated as a member in plaintiff regional council's activities, attending meetings and workshops and receiving the benefits of plaintiff's plans and services, and during this time defendant made full payments of its proportionate share of plaintiff's budget as set forth in plaintiff's bylaws, and where, most significantly, defendant indicated in a letter of March 8, 1982, that the county board of commissioners unanimously voted to comply with the obligations incumbent on a withdrawing member, and furthermore, where defendant did not raise any material question of fact pertaining to plaintiff's request that defendant should be estopped from denying its obligation, grant of plaintiff's motion for summary judgment on its complaint seeking contributions due from defendant would be affirmed. Land-of-Sky Regional Council v. County of Henderson, 78 N.C. App. 85, 336 S.E.2d 653 (1985), cert. denied, 316 N.C. 553, 344 S.E.2d 7 (1986).

§ 153A-393. Withdrawal from commission.

A member government may withdraw from a regional planning commission by giving at least two years' written notice to the other counties and cities involved. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

CASE NOTES

Contributions Held Due. — Where from 1971 through February 1982, defendant county participated as a member in plaintiff regional council's activities, attending meetings and workshops and receiving the benefits of plaintiff's plans and services, and during this time defendant made full payments of its proportionate share of plaintiff's budget as set forth in plaintiff's bylaws, and where, most significantly, defendant indicated in a letter of March 8, 1982, that the county board of commissioners unanimously voted to comply with the obligations incumbent on a withdrawing member, and furthermore, where defendant did not raise any material question of fact pertaining to plaintiff's request that defendant should be estopped from denying its obligation, grant of plaintiff's motion for summary judgment on its complaint seeking contributions due from defendant would be affirmed. Land-of-Sky Regional Council v. County of Henderson, 78 N.C. App. 85, 336 S.E.2d 653 (1985), cert. denied, 316 N.C. 553, 344 S.E.2d 7 (1986).

§ 153A-394. Organization of the commission.

Upon its creation, a regional planning commission shall meet at a time and place agreed upon by the counties and cities involved. It shall organize by electing a chairman and any other officers that the resolution specifies or that the commission considers advisable. The commission may adopt bylaws for the conduct of its business. All commission meetings shall be open to the public.

The chairman of the commission may appoint any committees authorized by the bylaws. Committee members need not be delegates to the commission. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

§ 153A-395. Powers and duties.

A regional planning commission may:

(1) Apply for, accept, receive, and disburse funds, grants, and services made available to it by the State of North Carolina or any agency thereof, the federal government or any agency thereof, any unit of local government or any agency thereof, or any private or civic agency;
(2) Employ personnel;
(3) Contract with consultants;
(4) Contract for services with the State of North Carolina, any other state, the United States, or any agency of those governments;
(5) Study and inventory regional goals, resources, and problems;
(6) Prepare and amend regional development plans, which may include recommendations for land use within the region, recommendations concerning the need for and general location of public works of regional concern, recommendations for economic development of the region, and any other relevant matters;
(7) Cooperate with and provide assistance to federal, State, other regional, and local planning activities within the region;
(8) Encourage local efforts toward economic development;
(9) Make recommendations for review and action to its member governments and other public agencies that perform functions within the region;
(9a) For the purpose of meeting its office space and program needs, acquire real property by purchase, gift, or otherwise, and improve that property. It may pledge real property as security for an indebtedness used to finance acquisition of that property or for improvements to that property, subject to approval by the Local Government Commission as required under G.S. 159-153. It may not exercise the power of eminent domain in exercising the powers granted by this subdivision.
(10) Exercise any other power necessary to the discharge of its duties. (1961, c. 722, s. 3; 1973, c. 822, s. 1; 2006-211, s. 2.)

§ 153A-396. Fiscal affairs.

Each county and city having membership in a regional planning commission may appropriate to the commission revenues not otherwise limited as to use by law. Services of personnel, use of equipment and office space, and other services may be made available to a commission by its member governments as a part of their financial support. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

§ 153A-397. Reports.

Each regional planning commission shall prepare and distribute to its member governments and make available to the public an annual report of its activities, including a financial statement. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

§ 153A-398. Regional planning and economic development commissions.

Two or more counties, cities, or counties and cities may create a regional planning and economic development commission by adopting identical concurrent resolutions to that effect. Such a commission has the powers granted by this Article and the powers granted by Chapter 158, Article 2. If such a commission is created, it shall maintain separate books of account for appropriations and expenditures made pursuant to this Article and for appropriations and expenditures made pursuant to Chapter 158, Article 2. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

§§ 153A-399, 153A-400: Reserved for future codification purposes.

Article 20.

Consolidation and Governmental Study Commissions.

§ 153A-401. Establishment; support.

(a) Two or more counties or cities or counties and cities may by concurrent resolutions of their governing bodies establish a charter or governmental study commission as provided in this section:

(1) Two or more counties that are contiguous or that lie within a continuous boundary may create a commission to study the consolidation of the counties or of one or more functions and services of the counties.

(2) Two or more cities that are contiguous or that lie within a continuous boundary may create a commission to study the consolidation of the cities or of one or more functions and services of the cities.

(3) A county and one or more cities within the county may create a commission to study the consolidation of the county and the city or cities or of one or more of their functions and services.

(b) A county or city that participates in the establishment of a commission pursuant to this Article may appropriate for the support of the commission any revenues not otherwise limited as to use by law. (1973, c. 822, s. 1.)

§ 153A-402. Purposes of a commission.

A commission established pursuant to this Article may be charged with any of the following purposes:

(1) To study the powers, duties, functions, responsibilities, and organizational structures of the counties or cities that established the commission and of other units of local government and public agencies within those counties or cities;

(2) To prepare a report on its studies and findings;

(3) To prepare a plan for consolidating one or more functions and services of the governments that established the commission;

(4) To prepare drafts of any agreements or legislation necessary to effect the consolidation of one or more functions and services;

(5) To prepare a plan for consolidating into a single government some or all of the governments that established the commission;

(6) To prepare drafts of any legislation necessary to effect the plan of governmental consolidation;

(7) To call a referendum, as provided in G.S. 153A-405, on the plan of governmental consolidation. (1973, c. 822, s. 1.)

§ 153A-403. Content of concurrent resolutions.

The concurrent resolutions establishing a commission shall:

(1) Set forth the purposes that are to be vested in the commission pursuant to G.S. 153A-402;
(2) Determine the composition of the commission, the manner of appointment of its members, and the manner of selection of its officers;
(3) Determine the compensation, if any, to be paid to commission members;
(4) Provide for the organizational meeting of the commission;
(5) Set out the method for determining the financial support that will be given to the commission by each of the governments establishing the commission;
(6) Set forth the date by which the commission is to complete its work;
(7) Set forth any other directions or limitations considered necessary. (1973, c. 822, s. 1.)

§ 153A-404. Powers of a commission.

A commission established pursuant to this Article may:

(1) Adopt rules and regulations for the conduct of its business;
(2) Apply for, accept, receive, and disburse funds, grants, and services made available to it by the State of North Carolina or any agency thereof, the federal government or any agency thereof, any unit of local government, or any private or civic agency;
(3) Employ personnel;
(4) Contract with consultants;
(5) Hold hearings in the furtherance of its business;
(6) Take any other action necessary or expedient to the furtherance of its business. (1973, c. 822, s. 1.)

§ 153A-405. Referendum; General Assembly action.

(a) If authorized to do so by the concurrent resolutions that established it, a commission may call a referendum on its proposed plan of governmental consolidation. If authorized or directed in the concurrent resolutions, the ballot question may include the assumption of debt secured by a pledge of faith and credit language and may also include the assumption of the right to issue authorized but unissued faith and credit debt language as provided in subsection (b) of this section. The referendum may be held on the same day as any other referendum or election in the county or counties involved, but may not otherwise be held during the period beginning 30 days before and ending 30 days after the day of any other referendum or election to be conducted by the board or boards of elections conducting the referendum and already validly called or scheduled by law.

(b) The proposition submitted to the voters shall be substantially in one or more of the following forms and may include part or all of the bracketed language as appropriate and other such modifications as may be needed to reflect the issued debt secured by a pledge of faith and credit of any of the consolidating units or the portion of the authorized but unissued debt secured by a pledge of faith and credit of any of the consolidating units the right to issue which is proposed to be assumed by the consolidated city-county:

(1) "Shall the County of ____________ and the County of ____________ be consolidated [and the consolidated unit assume the debt of each

secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said counties on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and credit]?
[ ] YES [ ] NO”

(2) “Shall the City of __________ and the City of __________ be consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said cities on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and credit]?
[ ] YES [ ] NO”

(3) “Shall the City of __________ and the County of __________ be consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said city or county on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and credit]?
[ ] YES [ ] NO”

(c) The proposition submitted to the voters shall be substantially in one of the following forms:

(1) “Shall the County of __________ and the County of __________ be consolidated?
[ ] YES [ ] NO”

(2) “Shall the City of __________ and the City of __________ be consolidated?
[ ] YES [ ] NO”

(3) “Shall the City of __________ and the County of __________ be consolidated?
[ ] YES [ ] NO”

(d) If the proposition is to consolidate two or more counties or to consolidate two or more cities, to be approved it must receive the votes of a majority of those voting in each of the counties or cities, as the case may be. If the proposition is to consolidate one or more cities with a county, to be approved it must receive the votes of a majority of those voting in the referendum. In addition, no governmental consolidation may become effective until enacted into law by the General Assembly.

(e) Subsection (b) of this section applies to any county that has (i) a population over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles. Subsection (c) of this section applies to all other counties. If any subsection or provision of this section is declared unconstitutional or invalid by the courts, it does not affect the validity of the section as a whole or any part other than the part so declared to be unconstitutional or invalid, provided that if the classifications in subsections (b) and (c) of this section are held unconstitutional or invalid then subsection (c) of this section is repealed and subsection (b) of this section shall be applicable uniformly to all counties. (1973, c. 822, s. 1; 1995, c. 461, s. 5; 1995 (Reg. Sess., 1996), c. 742, s. 38.)

ARTICLE 21.

§§ 153A-406 through 153A-420: Reserved for future codification purposes.

ARTICLE 22.

Regional Solid Waste Management Authorities.

§ 153A-421. Definitions; applicability; creation of authorities.

(a) Unless a different meaning is required by the context, terms relating to the management of solid waste used in this Article have the same meaning as in G.S. 130A-2 and in G.S. 130A-290. As used in this Article, the term "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste. In addition to the meaning set out in G.S. 130A-290, the term "unit of local government" means the Eastern Band of the Cherokee Indians in North Carolina.

(b) This Article shall not be construed to authorize any authority created pursuant to this Article to regulate or manage hazardous waste. An authority created under this Article may manage sludges, other than a sludge that is a hazardous waste, under rules of the Commission for Public Health and criteria established by the Department of Environment and Natural Resources for the management of sludge.

(c) Any two or more units of local government may create a regional solid waste management authority by adopting substantially identical resolutions to that effect in accordance with the provisions of this Article. The resolutions creating a regional solid waste management authority and any amendments thereto are referred to in this Article as the "charter" of the regional solid waste management authority. Units of local government which participate in the creation of a regional solid waste management authority are referred to in this Article as "members".

(d) As used in G.S. 153A-427(a)(24), the term "transferred" means placed at or delivered to any (i) place normally and customarily used by the authority for the collection of solid waste, (ii) other place agreed upon by the generator or owner of recyclable materials and the authority, or (iii) facility owned, operated, or designated by the authority. (1989 (Reg. Sess., 1990), c. 888, s. 1; 1991, c. 580, s. 2; 1991 (Reg. Sess., 1992), c. 932, s. 4; c. 948, s. 1; 1997-443, s. 11A.123; 2007-182, s. 2.)

§ 153A-422. Purposes of an authority.

The purpose of a regional solid waste management authority is to provide environmentally sound, cost effective management of solid waste, including storage, collection, transporting, separation, processing, recycling, and disposal of solid waste in order to protect the public health, safety, and welfare; enhance the environment for the people of this State; and recover resources and energy which have the potential for further use and to encourage, implement and promote the purposes set forth in Part 2A of Article 9 of Chapter 130A of the General Statutes. (1989 (Reg. Sess., 1990), c. 888, s. 1.)

§ 153A-423. Membership; board; delegates.

(a) Each unit of local government initially adopting a resolution under G.S. 153A-421 shall become a member of the regional solid waste management authority. Thereafter, any unit of local government may join the authority by ratifying its charter and by being admitted by a unanimous vote of the existing members. All of the rights and privileges of membership in a regional solid waste management authority shall be exercised on behalf of the member units of local government by a board composed of delegates to the authority who shall be appointed by and shall serve at the pleasure of the governing boards of their respective units of local government. A vacancy on the board shall be filled by appointment by the governing board of the unit of local government having the original appointment.

(b) Any delegate appointed by a member unit of local government to an authority created pursuant to this Article who is a county commissioner or city or town alderman or commissioner serves on the board of the authority in an ex officio capacity and such service shall not constitute the holding of an office for the purpose of determining dual office holding under Section 9 of Article VI of the Constitution of North Carolina or of Article 1 of Chapter 128 of the General Statutes. (1989 (Reg. Sess., 1990), c. 888, s. 1.)

§ 153A-424. Contents of charter.

(a) The charter of a regional solid waste management authority shall:

(1) Specify the name of the authority;

(2) Establish the powers, duties and functions that the authority may exercise and perform;

(3) Establish the number of delegates to represent the member units of local government and prescribe the compensation and allowances, if any, to be paid to delegates;

(4) Set out the method of determining the financial support that will be given to the authority by each member unit of local government; and

(5) Establish a method for amending the charter, and for dissolving the authority and liquidating its assets and liabilities.

(b) The charter of a regional solid waste management authority may, but need not, contain rules for the conduct of authority business and any other matter pertaining to the organization, powers, and functioning of the authority that the member units of local government deem appropriate. (1989 (Reg. Sess., 1990), c. 888, s. 1.)

§ 153A-425. Organization of authorities.

The governing board of a regional solid waste management authority shall hold an initial organizational meeting at such time and place as is agreed upon by its member units of local government and shall elect a chairman and any other officers that the charter may specify or the delegates may deem advisable. The authority shall then adopt bylaws for the conduct of its business. All meetings of regional solid waste management authorities shall be subject to the provisions of Article 33C of Chapter 143 of the General Statutes. (1989 (Reg. Sess., 1990), c. 888, s. 1.)

§ 153A-426. Withdrawal from an authority.

If the authority has no outstanding indebtedness, any member may withdraw from a regional solid waste management authority effective at the end of the current fiscal year by giving at least six months notice in writing to each of the other members. Withdrawal of a member shall not dissolve the authority if at least two members remain. (1989 (Reg. Sess., 1990), c. 888, s. 1.)

§ 153A-427. Powers of an authority.

(a) The charter may confer on the regional solid waste management authority any or all of the following powers:

(1) To apply for, accept, receive, and disburse funds and grants made available to it by the State or any agency thereof, the United States of America or any agency thereof, any unit of local government whether or not a member of the authority, any private or civic agency, and any persons, firms, or corporations;
(2) To employ personnel;
(3) To contract with consultants;
(4) To contract with the United States of America or any agency or instrumentality thereof, the State or any agency, instrumentality, political subdivision, or municipality thereof, or any private corporation, partnership, association, or individual, providing for the acquisition, construction, improvement, enlargement, operation or maintenance of any solid waste management facility, or providing for any solid waste management services;
(5) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties, not inconsistent with this Article;
(6) To adopt an official seal and alter the same;
(7) To establish and maintain suitable administrative buildings or offices at such place or places as it may determine by purchase, construction, lease, or other arrangements either by the authority alone or through appropriate cost-sharing arrangements with any unit of local government or other person;
(8) To sue and be sued in its own name, and to plead and be impleaded;
(9) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;
(10) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;
(11) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to any real or personal property or interest therein;
(12) To pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign, or otherwise grant a security interest in any money, rents, charges, or other revenues and any proceeds derived by an authority from any and all sources;
(13) To issue revenue bonds of the authority and enter into other financial arrangements including those permitted by this Chapter and Chapters 159, 159I, and 160A of the General Statutes to finance solid waste management activities, including but not limited to systems and facilities for waste reduction, materials recovery, recycling, resource recovery, landfilling, ash management, and disposal and for related support facilities, to refund any revenue bonds or notes issued by the authority, whether or not in advance of their maturity or earliest redemption date, or to provide funds for other corporate purposes of the authority;
(14) With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;
(15) To develop and make data, plans, information, surveys, and studies of solid waste management facilities within the territorial jurisdiction of the members of the authority, to prepare and make recommendations in regard thereto;

(16) To study, plan, design, construct, operate, acquire, lease, and improve systems and facilities, including systems and facilities for waste reduction, materials recovery, recycling, resource recovery, landfilling, ash management, household hazardous waste management, transportation, disposal, and public education regarding solid waste management, in order to provide environmentally sound, cost-effective management of solid waste including storage, collection, transporting, separation, processing, recycling, and disposal of solid waste in order to protect the public health, safety, and welfare; to enhance the environment for the people of this State; recover resources and energy which have the potential for further use, and to promote and implement the purposes set forth in Part 2A of Article 9 of Chapter 130A of the General Statutes;

(17) To locate solid waste facilities, including ancillary support facilities, as the authority may see fit;

(18) To assume any responsibility for disposal and management of solid waste imposed by law on any member unit of local government;

(19) To operate such facilities together with any person, firm, corporation, the State, any entity of the State, or any unit of local government as appropriate and otherwise permitted by its charter and the laws of this State;

(20) To set and collect such fees and charges as is reasonable to offset operating costs, debt service, and capital reserve requirements of the authority;

(21) To apply to the appropriate agencies of the State, the United States of America or any state thereof, and to any other appropriate agency for such permits, licenses, certificates, or approvals as may be necessary, and to construct, maintain, and operate projects in accordance with such permits, licenses, certificates, or approvals in the same manner as any other person or operating unit of any other person;

(22) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and such other consultants and employees as may be required in the judgment of the authority, to fix and pay their compensation from funds available to the authority therefor, to select and retain, subject to approval of the Local Government Commission, the financial consultants, underwriters, and bond attorneys to be associated with the issuance of any revenue bonds, and to pay for services rendered by financial consultants, underwriters, or bond attorneys from funds available to the authority including the proceeds of any revenue bond issue with regard to which the services were performed;

(23) To acquire property located within the territorial jurisdiction of any member unit of local government by eminent domain pursuant to authority granted to counties;

(24) To require that any and all (i) solid waste generated within the authority's service area and (ii) recyclable materials generated within the authority's service area and transferred to the authority be separated and delivered to specific locations and facilities provided that if a private landfill shall be substantially affected by such requirement then the regional solid waste management authority shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the requirement; and

(25) To do all things necessary, convenient, or desirable to carry out the purposes and to exercise the powers granted to an authority under its charter.

(b) The acquisition and disposal of real and personal property by an authority created under this Article shall be governed by those provisions of the General Statutes which govern the acquisition and disposal of real and personal property by counties, except that Article 8 of Chapter 143 of the General Statutes and Part 3 of Article 8 of Chapter 153A of the General Statutes do not apply. No authority created pursuant to this Article shall exercise any power of eminent domain with respect to any property located outside the territorial jurisdiction of the members of such authority.

(c) Each authority's plan shall take into consideration facilities and other resources for management of solid waste which may be available through private enterprise. This Article shall be construed to encourage the involvement and participation of private enterprise in solid waste management. An authority created pursuant to this Article shall establish goals for the procurement of goods and services from minority and historically underutilized businesses. (1989 (Reg. Sess., 1990), c. 888, s. 1; 1991, c. 580, s. 1; 2007-131, ss. 1, 2.)

§ 153A-428. Fiscal accountability; support from other governments.

(a) A regional solid waste management authority is a public authority subject to the provisions of Chapter 159 of the General Statutes.

(b) The establishment and operation of an authority as herein authorized are governmental functions and constitute a public purpose, and the State and any unit of local government may appropriate funds to support the establishment and operation of an authority.

(c) The State and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to an authority. (1989 (Reg. Sess., 1990), c. 888, s. 1.)

§ 153A-429. Long-term contract permitted by and with an authority.

(a) To the extent authorized by its charter, an authority may enter into long-term and continuing contracts, not to exceed a term of 60 years, with member or other units of local government for the acquisition, construction, improvement, enlargement, operation, or maintenance of any solid waste management facility or for solid waste management services with respect to solid waste generated within their geographic boundaries or brought into their geographic boundaries.

(b) Contracts entered into by an authority may include, but are not limited to, provisions for:

(1) Payment by the members of the authority and other units of local government of a fee or other charge by the authority to accept and dispose of solid waste;

(2) Periodic adjustments to the fee or other charges to be paid by each member of the authority and such other units of local government;

(3) Warranties from the members of the authority and such other units of local government with respect to the quantity of the solid waste which will be delivered to the authority and warranties relating to the content or quality of the solid waste; and

(4) Legal and equitable title to the solid waste passing to the authority upon delivery of the solid waste to the authority. (1989 (Reg. Sess., 1990), c. 888, s. 1.)

§ 153A-430. Compliance with other law.

(a) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1004, s. 47.

(b) An authority created pursuant to this Article shall comply with all applicable federal and State laws, regulations, and rules, including specifically those enacted or adopted for the management of solid waste or for the protection of the environment or public health.

(c) Except as provided by subsection (d) of this section, a unit of local government that is exempt from compliance with State laws or rules enacted or adopted for the management of solid waste or for the protection of the environment shall, by becoming a member of a regional solid waste management authority created under this Article and as a condition of such membership, agree to comply with and to be bound by all applicable federal and State laws, regulations, and rules enacted or adopted for the management of solid waste and for the protection of the environment with respect to all solid waste management activities of the authority within the territorial jurisdiction of the unit of local government and with respect to all solid waste management activities performed by the unit of local government in connection with membership in the authority.

(d) A unit of local government that is exempt from compliance with State laws or rules enacted or adopted for the management of solid waste shall obtain all permits that may be necessary for the conduct of solid waste management activities within the territorial jurisdiction of the unit of local government as provided by federal law and regulations. Responsibility for the enforcement of laws, regulations, and rules enacted or adopted for the management of solid waste within the territorial jurisdiction of a unit of local government that is exempt from compliance with State laws or rules enacted or adopted for the management of solid waste shall be as provided by federal law and regulations. (1989 (Reg. Sess., 1990), c. 888, s. 1; c. 1004, s. 47; c. 1075, s. 5; 1991 (Reg. Sess., 1992), c. 948, s. 2.)

§ 153A-431. Issuance of revenue bonds and notes.

The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, governs the issuance of revenue bonds by an authority. Article 9 of Chapter 159 of the General Statutes governs the issuance of notes in anticipation of the sale of revenue bonds. (1989 (Reg. Sess., 1990), c. 888, s. 1.)

§ 153A-432. Advances.

Any member or other units of local government may make advances from any monies that may be available for such purpose, in connection with the creation of an authority and to provide for the preliminary expenses of an authority. Any such advances may be repaid to such member or other units of local government from the proceeds of the revenue bonds or anticipation notes issued by such authority or from funds otherwise available to the authority. (1989 (Reg. Sess., 1990), c. 888, s. 1.)

§§ 153A-433, 153A-434: Reserved for future codification purposes.

ARTICLE 23.

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.

(a) A county may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligent or intentional damage to person or property or against absolute liability for damage to person or property caused by an act or omission of the county or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The board of commissioners shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this subsection.

Purchase of insurance pursuant to this subsection waives the county's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. By entering into an insurance contract with the county, an insurer waives any defense based upon the governmental immunity of the county.

If a county uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the county or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the county board of commissioners may adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the county's governmental immunity only to the extent specified in the board's resolution, but in no event greater than funds available in the funded reserve for the payment of claims.

(b) If a county has waived its governmental immunity pursuant to subsection (a) of this section, any person, or if he dies, his personal representative, sustaining damages as a result of an act or omission of the county or any of its officers, agents, or employees, occurring in the exercise of a governmental function, may sue the county for recovery of damages. To the extent of the coverage of insurance purchased pursuant to subsection (a) of this section, governmental immunity may not be a defense to the action. Otherwise, however, the county has all defenses available to private litigants in any action brought pursuant to this section without restriction, limitation, or other effect, whether the defense arises from common law or by virtue of a statute.

Despite the purchase of insurance as authorized by subsection (a) of this section, the liability of a county for acts or omissions occurring in the exercise of governmental functions does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. The judge shall hear and determine these issues without resort to a jury, and the jury shall be absent during any motion, argument, testimony, or announcement of findings of fact or conclusions of law relating to these issues unless the defendant requests a jury trial on them. (1955, c. 911, s. 1; 1973, c. 822, s. 1; 1985 (Reg. Sess., 1986), c. 1027, s. 27; 2003-175, s. 2.)

Editor's Note. — Session Laws 2003-175, s. 2, substituted "Article 23 of the General Statute Chapter 58" for "Article 39 of the General Statute of Chapter 58" without engrossing the change per code drafting guidelines. However, because the change conforms the reference to the provisions of Chapter 58 as renumbered by Session Laws 1987-752, s. 9, as amended by Session Laws 1987-975, s. 34, it has been set out as "Article 23 of the General Statute Chapter 58" at the direction of the Revisor of Statutes.

Session Laws 2003-175, s. 3, provides: "Section 1 of Chapter 980 of the 1988 Session Laws and Section 2 of S.L. 1998-200, as amended by S.L. 2002-79, are repealed, but any resolution adopted under those sections and still effective on the effective date of this act shall continue to be valid as if they were adopted under G.S. 153A-435(a) or G.S. 160A-485(a) as amended by this act."

Legal Periodicals. — For article, "Statutory Waiver of Municipal Immunity Upon Purchase of Liability Insurance in North Carolina and the Municipal Liability Crisis," see 4 Campbell L. Rev. 41 (1981).

For comment on the need for reform in North Carolina of local government sovereign immunity, see 18 Wake Forest L. Rev. 43 (1982).

For note as to sheriff's liability for prisoner suicide, in light of Helmly v. Bebber, 77 N.C. App. 275, 335 S.E.2d 182 (1985), see 64 N.C.L. Rev. 1520 (1986).

For note, "North Carolina's New AIDS Discrimination Protection: Who Do They Think They're Fooling?," see 12 Campbell L. Rev. 475 (1990).

For survey of 1996 developments in tort law, see 75 N.C.L. Rev. 2468 (1997).

For comment, "'Inevitable Inequities:' The Public Duty Doctrine and Sovereign Immunity in North Carolina," see 28 Campbell L. Rev. 271 (2006).

CASE NOTES

Editor's Note. *— Many of the cases cited below were decided under corresponding sections of former law.*

Construction with Other Provisions. — The jurisdictional provisions of G.S. 153A-435(b) control whenever they conflict with the jurisdictional provisions of G.S. 143-291(a). Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996), aff'd in part and rev'd in part, 347 N.C. 97, 489 S.E.2d 880 (1997).

Waiver of Immunity by Local Agencies. — Since cities and counties can waive their immunity by purchasing liability insurance, local agencies of the state such as a county ABC Board can likewise waive their immunity by purchasing such insurance. McNeill v. Durham County ABC Bd., 87 N.C. App. 50, 359 S.E.2d 500 (1987), modified on other grounds, 322 N.C. 425, 368 S.E.2d 619, rehearing denied, 322 N.C. 838, 371 S.E.2d 278 (1988).

A governmental entity generally retains immunity from civil liability in its governmental capacity to the extent it does not purchase liability insurance or participate in a local government risk pool pursuant to statute. Kephart v. Pendergraph, 131 N.C. App. 559, 507 S.E.2d 915 (1998).

Waiver of Immunity by Nonprofit Fire Company. — Defendant, a nonprofit fire company employed by the county, was liable for plaintiff's injuries in a nonfire related rescue attempt only to the extent of their insurance coverage, since they had governmental immunity up to their insurance coverages and were engaged in duties other than the suppression of a reported fire. Geiger v. Guilford College Community Volunteer Firemen's Ass'n, 668 F. Supp. 492 (M.D.N.C. 1987).

If a rural fire department was a "fire protection district fire department" subject to the requirements of G.S. 69-25.8 and G.S. 153A-435, the specific and limited immunity provided by G.S. 58-82-5 still applied to an action against the department and one of its firemen for personal injuries received from one of the department's vehicles when the department and the fireman were in the process of responding to and suppressing a fire. Luhmann v. Hoenig, 161 N.C. App. 452, 588 S.E.2d 550, 2003 N.C. App. LEXIS 2187 (2003).

Fire Protection District. — Relationship between a county and a fire department was consistent with a fire protection district, and, therefore, the fire department was entitled to sovereign immunity, but to extent of its insurance coverage, had waived its sovereign immunity and was liable for damages to an individual injured in an accident which happened while the fire department was fighting a fire. Luhmann v. Hoenig, 358 N.C. 529, 597 S.E.2d 763, 2004 N.C. LEXIS 674 (2004).

County Department of Social Services. — Since County Department of Social Services was not a state agency, the Tort Claims act did not apply to claim against the Department. Meyer v. Walls, 347 N.C. 97, 489 S.E.2d 880 (1997).

Waiver of Immunity by County. — A county may waive its immunity by purchasing liability insurance to the extent of the insurance coverage. Marlowe v. Piner, 119 N.C. App. 125, 458 S.E.2d 220 (1995).

County waived sovereign immunity to the extent that an insurance policy it purchased covered negligent acts committed by emergency medical technicians (EMTs) who worked for the county, and the trial court erred by dismissing a lawsuit which claimed that a person died because EMTs employed by the county were negligent. Dawes v. Nash County, 357 N.C. 442, 584 S.E.2d 760, 2003 N.C. LEXIS 829 (2003).

Constituted Waiver of Immunity. — By requiring a security company to obtain an insurance policy and to name the county as an additional insured, the county contracted, within the meaning of this section, to have itself insured and, thus, waived its governmental immunity. Wood v. Guilford County, 143 N.C. App. 507, 546 S.E.2d 641, 2001 N.C. App. LEXIS 307 (2001).

Actions Against Sheriffs. — The legislature has prescribed two ways for a sheriff to be sued in his official capacity, G.S. 58-76-5 and this section. Smith v. Phillips, 117 N.C. App. 378, 451 S.E.2d 309 (1994).

Terminated deputy sheriff clearly alleged in the amended complaint that the sheriff waived his immunity from civil liability through a plan of insurance pursuant to G.S. 153A-435; this allegation of waiver, which the court had to take as true for the purpose of the motion to dismiss, was sufficient to overcome the sheriff's motion to dismiss based on sovereign immunity. Efird v. Riley, 342 F. Supp. 2d 413, 2004

U.S. Dist. LEXIS 22140 (M.D.N.C. 2004).

Inclusion of the sheriff in the county's liability insurance policy did not serve to make the county liable for the sheriff's actions or a proper or necessary defendant in plaintiff's action against the sheriff for illegal seizure of plaintiff's property. Goodwin v. Furr, 25 F. Supp. 2d 713 (M.D.N.C. 1998).

Sheriffs Not Specified as Local Officials. — This section provides for the availability of insurance for county officials sued for negligence in their official capacity, but does not identify the sheriff or his deputies as local officials nor specify judgments against them will be paid by counties. Braswell v. Ellis, 950 F. Supp. 145 (E.D.N.C. 1995).

Local Government Risk Pool. — The county's self-funded loss program was not a "local government risk pool," for purposes of determining whether that program waived the county's governmental immunity, since the county was the sole entity retaining risks and funds under the program. Kephart v. Pendergraph, 131 N.C. App. 559, 507 S.E.2d 915 (1998).

Proof of Waiver of Immunity. — Where plaintiff alleged and offered proof of the county's liability insurance policy, the trial court properly denied defendants' motion to dismiss based upon governmental immunity. Smith v. Phillips, 117 N.C. App. 378, 451 S.E.2d 309 (1994).

Self-funded Loss Program Not Insurance. — The county's self-funded loss program did not constitute insurance for purposes of waiving governmental immunity. Kephart v. Pendergraph, 131 N.C. App. 559, 507 S.E.2d 915 (1998).

Immunity Not Waived by Ambulance Service. — Defendant/county-operated ambulance service did not waive its immunity for claims totaling less than $250,000 since it was only insured for negligence claims equal to or above that amount. McIver v. Smith, 134 N.C. App. 583, 518 S.E.2d 522 (1999).

Immunity Not Waived as to Employees and Premises Not Included in Policy. — A policy of insurance affording protection to a county against liability caused by negligence of named personnel and employees of the county and covering listed and described premises does not waive the county's governmental immunity for negligence in the operation of a public library when the employees of the library and library premises are not included in the policy. Seibold v. City of Kinston, 268 N.C. 615, 151 S.E.2d 654 (1966).

Insurance policy purchased by Chatham County, North Carolina did not allow law enforcement employees to recover damages from the County, and because the County had not waived immunity from suit by law enforcement employees, the trial court properly ruled that a school resource officer (SRO) who worked for a sheriff's department could not sue the sheriff or a chief deputy sheriff in their official capacities. However, the SRO engaged in a protected activity when he cooperated with federal agents who were investigating the sheriff, and the trial court erred when it dismissed a claim for wrongful discharge which the SRO filed against the sheriff in his individual capacity. Phillips v. Gray, 163 N.C. App. 52, 592 S.E.2d 229, 2004 N.C. App. LEXIS 248 (2004), cert. denied, 358 N.C. 545, 599 S.E.2d 406 (2004).

Immunity Not Waived Where Action Excluded from Coverage. — Because an insurance policy did not indemnify the defendant county against the negligent acts alleged in the plaintiff's complaint, the county had not waived its sovereign immunity. Doe v. Jenkins, 144 N.C. App. 131, 547 S.E.2d 124, 2001 N.C. App. LEXIS 350 (2001).

County's purchase of liability insurance was not a waiver of sovereign immunity relating to a claim alleging a failure to properly inspect during a house construction and negligent issuance of permits relating to the property because a policy provision excluded construction defects such as alleged in the complaint. Norton v. SMC Bldg., 156 N.C. App. 564, 577 S.E.2d 310, 2003 N.C. App. LEXIS 206 (2003).

Because the administrators did not waive the sovereign immunity in G.S. 153A-435 through the purchase of a liability insurance policy, that excluded coverage for negligence actions, they were entitled to summary judgment. Patrick v. Wake County Dep't of Human Servs., 188 N.C. App. 592, 655 S.E.2d 920, 2008 N.C. App. LEXIS 197 (2008).

Immunity Not Waived By University. — University's motion to dismiss an employee's state law claims against it pursuant to Fed. R. Civ. P. 12(b)(1) was granted because the university, as a state agency, enjoyed the protection of Eleventh Amendment immunity from liabilities that had to be paid from public funds; therefore, because North Carolina had not explicitly waived immunity from state court proceedings with regard to torts by state employees under G.S. 143-291, the university did not waive its immunity through removal to federal court, nor did the university waive its immunity under G.S. 153A-435(a) by purchasing liability insurance since there was not a plain and unmistakable mandate from the General Assembly to waive immunity in these circumstances. Alston v. N.C. A&T State Univ., 304 F. Supp. 2d 774, 2004 U.S. Dist. LEXIS 1725 (M.D.N.C. 2004).

Liability Not Waived Where Action Excluded from Coverage. — Because county liability insurance policy excluded libel action from coverage, the county did not waive its governmental immunity as to this action by purchasing the policy. Dickens v. Thorne, 110

N.C. App. 39, 429 S.E.2d 176 (1993).

Failure to Plead Waiver of Immunity. — Lienholder that sought damages from a county, based on its claim that the county was liable for negligent acts committed by its tax collector, did not state a valid claim for recovery because it failed to allege that the county had waived governmental immunity. Oakwood Acceptance Corp., LLC v. Massengill, 162 N.C. App. 199, 590 S.E.2d 412, 2004 N.C. App. LEXIS 118 (2004).

Liability for Injury on Public Walk Within Courthouse Grounds. — The liability of a county for injuries sustained by a pedestrian falling on a public walk within the courthouse grounds is no more extensive than the liability of a city to a pedestrian falling upon a public sidewalk maintained by the city. Cook v. County of Burke, 272 N.C. 94, 157 S.E.2d 611 (1967).

Failure to Protect Minors. — For case reversing summary judgment in favor of defendants county and social worker in case alleging their tort liability for failure to protect minors from harm, see Coleman v. Cooper, 89 N.C. App. 188, 366 S.E.2d 2, cert. denied, 322 N.C. 834, 371 S.E.2d 275 (1988).

Superior Court Jurisdiction. — Where sovereign immunity is waived by the purchase of liability insurance, subject matter jurisdiction is statutorily vested in the superior court. Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996), aff'd in part and rev'd in part, 347 N.C. 97, 489 S.E.2d 880 (1997).

Jurisdiction of Federal Courts. — Former G.S. 153-9(44), similar to this section, providing that the injured person could sue "in any court of competent jurisdiction in such county," did not attempt to limit jurisdiction to a State court in such county, nor to a court of such county; the United States District Court was a court of competent jurisdiction in the county. Moreover, even if the legislative intent was to deprive the federal court of jurisdiction, it could not do so, as federal jurisdiction cannot be defeated by a State statute prescribing the court in which an action is to be brought. Knighton v. Johnston County, 330 F. Supp. 652 (E.D.N.C. 1971).

Allegations of Complaint. — It is appropriate for the complaint to contain allegations regarding liability insurance and waiver of governmental immunity. Wilkie v. Henderson County, 1 N.C. App. 155, 160 S.E.2d 505 (1968).

When suing a county or its officers, agents or employees, the complainant must allege waiver of immunity by a county contracting to insure itself in order to recover. Absent an allegation to the effect that immunity has been waived, the complaint fails to state a cause of action against the county. Clark v. Burke County, 117 N.C. App. 85, 450 S.E.2d 747 (1994).

Trial court properly denied motions filed by a county, the county department of social services (DSS), DSS supervisory employees, and social workers to dismiss a father's claims against them in their official capacities because if they purchased liability insurance as the father alleged, they could be liable for negligent or intentional actions carried out in the performance of their duties. Christmas v. Cabarrus County, — N.C. App. —, 664 S.E.2d 649, 2008 N.C. App. LEXIS 1532 (2008).

Protection against prejudice is afforded by providing that no part of the pleadings relating to liability insurance shall be read or mentioned in the presence of the trial jury. Wilkie v. Henderson County, 1 N.C. App. 155, 160 S.E.2d 505 (1968).

Where a county is covered by a policy of liability insurance, the question of governmental immunity from suit from injuries caused by alleged negligence does not arise with reference to the validity of a judgment of nonsuit. Cook v. County of Burke, 272 N.C. 94, 157 S.E.2d 611 (1967).

As a county, a county social service agency, and agency employees in their official capacities were covered by general liability and public officials liability policies with respect to a claim of negligent supervision of a juvenile which was asserted by a decedent's estate administrator, they were not entitled to governmental immunity under G.S. 153A-435(a); the administrator alleged that due to the lack of supervision of the juvenile, who had a history of violence and psychiatric problems, the juvenile fatally stabbed the decedent, who lived next to the juvenile's grandmother. Fulford v. Jenkins, — N.C. App. —, 672 S.E.2d 759, 2009 N.C. App. LEXIS 147 (2009).

Public duty doctrine did not bar a negligent home inspection claim and a liability insurance covering law officers did not waive sovereign immunity as building inspectors were not officers; summary judgment for the county was proper. Kennedy v. Haywood County, 158 N.C. App. 526, 581 S.E.2d 119, 2003 N.C. App. LEXIS 1174 (2003).

Damage Limitations. — Where government entities waive the defense of sovereign immunity by their purchase of liability insurance, recoverable damages are capped at policy limits. Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996), aff'd in part and rev'd in part, 347 N.C. 97, 489 S.E.2d 880 (1997).

Inmate, who successfully obtained a jury verdict in the amount of $49,500 against a deputy sheriff, was precluded from recovering the verdict he obtained against the county as a result of an assault and battery on the part of the deputy sheriff; the amount of damage did not exceed the county's self-insured amount and the county did not waive sovereign immunity under G.S. 153A-435(a). Cunningham v. Riley, — N.C. App. —, — S.E.2d —, 2005 N.C.

App. LEXIS 511 (Mar. 15, 2005).

In a wrongful death action arising from an incident at a county jail, although the sheriff claimed that sovereign immunity entitled him to summary judgment as a matter of law to the extent plaintiffs — the decedent's mother and the administrator of his estate, sought to recover damages in excess of the sheriff's official bond under G.S. 162-8 and G.S. 58-76-5, plaintiffs' claims were not barred by exclusions in the county's liability insurance under G.S. 153A-435; although the policy excluded coverage for claims arising from criminal behavior and plaintiffs claimed the sheriff was negligent by violating G.S. 153A-224 — a Class 1 misdemeanor, other grounds were alleged for the sheriff's negligence. Myers v. Bryant, 188 N.C. App. 585, 655 S.E.2d 882, 2008 N.C. App. LEXIS 215 (2008).

Cited in Sides v. Cabarrus Mem. Hosp., 287 N.C. 14, 213 S.E.2d 297 (1975); Vaughn v. County of Durham, Durham County Dep't of Social Servs., 34 N.C. App. 416, 240 S.E.2d 456 (1977); Casey v. Wake County, 45 N.C. App. 522, 263 S.E.2d 360 (1980); Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 88 N.C. App. 495, 364 S.E.2d 179 (1988); Hare v. Butler, 99 N.C. App. 693, 394 S.E.2d 231 (1990); Parham v. Iredell County Dep't of Social Servs., 127 N.C. App. 144, 489 S.E.2d 610 (1997); Paschal v. Myers, 129 N.C. App. 23, 497 S.E.2d 311 (1998); Lovelace v. City of Shelby, 351 N.C. 458, 526 S.E.2d 652, 2000 N.C. LEXIS 237 (2000); Paquette v. County of Durham, 155 N.C. App. 415, 573 S.E.2d 715, 2002 N.C. App. LEXIS 1619 (2002); Word of Faith Fellowship, Inc. v. Rutherford County Dep't of Soc. Servs., 329 F. Supp. 2d 675, 2004 U.S. Dist. LEXIS 10638 (W.D.N.C. 2004); Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

§ 153A-436. Photographic reproduction of county records.

(a) A county may provide for the reproduction, by photocopy, photograph, microphotograph, or any other method of reproduction that gives legible and permanent copies, of instruments, documents, and other papers filed with the register of deeds and of any other county records. The county shall keep each reproduction of an instrument, document, paper, or other record in a fire-resistant file, vault, or similar container. If a duplicate reproduction is made to provide a security-copy, the county shall keep the duplicate in a fire-resistant file, vault, or similar container separate from that housing the principal reproduction.

If a county has provided for reproducing records, any custodian of public records of the county may cause to be reproduced any of the records under, or coming under, his custody.

(b) If a county has provided for reproducing some or all county records, the custodian of any instrument, document, paper, or other record may permit it to be removed from its regular repository for up to 24 hours in order to be reproduced. An instrument, document, paper or other record may be removed from the county in order to be reproduced. The board of commissioners may permit an instrument, document, paper, or other record to be removed for longer than 24 hours if a longer period is necessary to complete the process of reproduction.

(c) The original of any instrument, document, or other paper received by the register of deeds and reproduced pursuant to this Article shall be filed, maintained, and disposed of in accordance with G.S. 161-17 and G.S. 121-5. The original of any other county record that is reproduced pursuant to this Article may be kept by the county or disposed of pursuant to G.S. 121-5.

(d) If an instrument, document, or other paper received by the register of deeds is reproduced pursuant to this Article, the recording of the reproduction is a sufficient recording for all purposes.

(e) A reproduction, made pursuant to this Article, of an instrument, document, paper, or other record is as admissible in evidence in any judicial or administrative proceeding as the original itself, whether the original is extant or not. An enlargement or other facsimile of the reproduction is also admissible in evidence if the original reproduction is extant and available for inspection under the direction of the court or administrative agency.

(f) The provisions of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. Nonerasable, computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department. (1945, c. 286, ss. 1-7; c. 944; 1951, c. 19, ss. 1-6; 1953, c. 675, ss. 23, 24; 1957, c. 330, s. 3; 1973, c. 822, s. 1; 1999-131, s. 4; 1999-456, s. 47(d).)

§ 153A-437. Assistance to historical organizations.

(a) A county or city may appropriate revenues not otherwise limited as to use by law to a local historical or preservation society, museum, or other similar organization. Before such an appropriation may be made, the recipient organization shall adopt and present to the county or city a resolution requesting the funds and describing the intended use of the funds. The funds may be used for preserving historic sites, buildings, structures, areas, or objects; for recording and publishing materials relating to the history of the area; for establishing or maintaining historical museums or projects; for paying salaries of personnel employed in such museums or projects; for the costs of acquiring, recording, and maintaining materials and equipment; and for any other purposes that are approved by the county or city and that contribute to the preservation of historic sites, buildings, structures, areas, or objects, or historic materials. The ordinance making the appropriation shall state specifically what the appropriation is to be used for, and the governing board of the county or city shall require that the recipient account for the appropriation at the close of the fiscal year.

(b) A county or city, a board of education, or the board of trustees of a public library may make available space in a building under its control to a local historical society, historical museum, or other historical organization.

(c) This section is supplemental to and does not supersede any other law. (1955, c. 371, ss. 1-4; 1957, c. 398; 1973, c. 822, s. 1.)

Legal Periodicals. — For article discussing legal issues of historic preservation for local government in North Carolina, see 17 Wake Forest L. Rev. 707 (1981).

§ 153A-438. Beach erosion control and flood and hurricane protection works.

A county may appropriate revenues not otherwise limited as to use by law to finance the acquisition, construction, reconstruction, extension, maintenance, improvement, or enlargement of groins, jetties, dikes, moles, walls, sand dunes, vegetation, or other types of works or improvements that are designed for controlling beach erosion, for protection from hurricane floods, or for preserving or restoring facilities and natural features that afford protection to the beaches and other land areas of the county and to the life and property of the county. (1965, c. 307, s. 1; 1971, c. 1159, s. 3; 1973, c. 822, s. 1.)

CASE NOTES

Cited in Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

§ 153A-439. Support of extension activities; personnel rules for extension employees.

(a) A county may support the work of the North Carolina Cooperative Extension Service and for these purposes may appropriate revenues not otherwise limited as to use by law.

(b) The policies adopted by the Board of Trustees of North Carolina State University for the employees of the North Carolina Cooperative Extension Service shall govern the employment of employees exempted from certain provisions of Chapter 126 of the General Statutes pursuant to G.S. 126-5(c1)(9a). The policies adopted by the University of North Carolina Board of Governors and the employing constituent institution shall govern the employment of employees of the North Carolina Cooperative Extension Service exempted from certain provisions of Chapter 126 of the General Statutes pursuant to G.S. 126-5(c1)(8). (1911, c. 1; C.S., s. 1297; 1957, c. 1004, s. 5; 1973, c. 822, s. 1; 2007-195, s. 3.)

§ 153A-440. Promotion of soil and water conservation work.

A county may cooperate with and support the work of the Federal Soil Conservation Service and the State and local soil and water conservation agencies and districts and for these purposes may appropriate revenues not otherwise limited as to use by law. (1959, c. 1213; 1961, cc. 266, 290, 301, 579, 581, 582, 584, 656, 693, 705, 809, 1126; 1963, cc. 290, 701; 1965, cc. 531, 702; 1967, c. 319; 1969, c. 64, s. 1; c. 174, s. 1; c. 1003, s. 1; 1973, c. 822, s. 1.)

§ 153A-440.1. Watershed improvement programs; drainage and water resources development projects.

(a) A county may establish and maintain a county watershed improvement program pursuant to G.S. 139-41 or 139-41.1 and for these purposes may appropriate funds not otherwise limited as to use by law. A county watershed improvement program or project may also be financed pursuant to G.S. 153A-301, G.S. 153A-185 or by any other financing method available to counties for this purpose.

(b) A county may establish and maintain drainage projects and water resources development projects (as those projects are defined by G.S. 153A-301) and for these purposes may appropriate funds not otherwise limited as to use by law. A county drainage project or water resources development project may also be financed pursuant to G.S. 153A-301, G.S. 153A-185, or by any other financing method available to counties for this purpose. (1981, c. 251, s. 2; 1983, c. 321, ss. 5, 6.)

§ 153A-441. County surveyor.

A county may appoint a person registered as a land surveyor pursuant to Chapter 89 as county surveyor. (Const., art. 7, s. 1; Rev., s. 4296; C. S., s. 1383; 1959, c. 1237, s. 1; 1973, c. 822, s. 1.)

Editor's Note. — Chapter 89, referred to in this section, was rewritten by Session Laws 1975, c. 681, s. 1, and has been recodified as Chapter 89C.

§ 153A-442. Animal shelters.

A county may establish, equip, operate, and maintain an animal shelter or may contribute to the support of an animal shelter, and for these purposes may appropriate funds not otherwise limited as to use by law. The animal shelters shall meet the same standards as animal shelters regulated by the Department of Agriculture pursuant to its authority under Chapter 19A of the General Statutes. (1973, c. 822, s. 1; 2004-199, s. 39(a).)

§ 153A-443. Redesignation of site of "courthouse door," etc.

If a county determines that the traditional location of the "courthouse," the "courthouse door," the "courthouse bulletin board" or the "courthouse steps" has become inappropriate or inconvenient for the doing of any act or the posting of any notice required by law to be done or posted at such a site, the county may by ordinance designate some appropriate or more convenient location for the site. The board of commissioners shall cause such an ordinance to be published at least once within 30 days after the day it is adopted and shall cause a copy of it to be posted for 60 days at the traditional location. (1973, c. 822, s. 1.)

§ 153A-444. Parks and recreation.

A county may establish parks and provide recreational programs pursuant to Chapter 160A, Article 18. (1973, c. 822, s. 1.)

§ 153A-445. Miscellaneous powers found in Chapter 160A.

(a) A county may take action under the following provisions of Chapter 160A:

(1) Chapter 160A, Article 20, Part 1. — Joint Exercise of Powers.
(2) Chapter 160A, Article 20, Part 2. — Regional Councils of Governments.
(3) G.S. 160A-487. — Financial support for rescue squads.
(4) G.S. 160A-488. — Art galleries and museums.
(5) G.S. 160A-492. — Human relations programs.
(6) G.S. 160A-497. — Senior citizens programs.
(7) G.S. 160A-489. — Auditoriums, coliseums, and convention and civic centers.
(8) G.S. 160A-498. — Railroad corridor preservation.

(b) This section is for reference only, and the failure of any section of Chapter 160A to appear in this section does not affect the applicability of that section to counties. (1973, c. 822, s. 1; 1975, c. 19, s. 61; 1979, 2nd Sess., c. 1094, s. 3; 1981, c. 692, s. 3; 1989, c. 600, s. 6.)

Cross References. — As to authority of counties, cities and towns to appropriate money for payment to the North Carolina Association of County Commissioners and the North Carolina League of Municipalities for the purpose of financing a local government center in the City of Raleigh, see G.S. 160A-495.

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1094, which added subdivision (6) of subsection (a), provided in s. 6: "This act is effective upon ratification. All contracts which would be permissible under this act which were entered into on or after April 20, 1979, are hereby validated." The act was ratified on June 17, 1980.

The preamble to Session Laws 1979, 2nd Sess., c. 1094, cited as the reason for the enactment the case of Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979), requiring statutory authority for third-party contracts.

§ 153A-446. County may offer reward for information as to persons damaging county property.

The board of county commissioners is authorized to offer and pay rewards in an amount not exceeding five hundred dollars ($500.00) for information leading to the arrest and conviction of any person who willfully defaces, damages or destroys, or commits acts of vandalism or larceny of any county property. The amount necessary to pay said rewards shall be an item in the current expense budget of the county. (1975, c. 258.)

§ 153A-447. Certain counties may appropriate funds to Western North Carolina Development Association, Inc.

(a) The board of county commissioners of the counties hereafter named are authorized to appropriate funds to the Western North Carolina Development Association, Inc., for the public good and welfare of said counties. The amount to be expended by each county shall be determined in the discretion of the board of commissioners.

(b) This section shall apply to the counties of Avery, Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey. (1979, c. 674, ss. 1, 2.)

§ 153A-448. Mountain ridge protection.

Counties may enact and enforce mountain ridge protection ordinances pursuant to Article 14 of Chapter 113A of the General Statutes, and in such enactment and enforcement shall comply with all applicable provisions of Article 14 unless the county has removed itself from the coverage of Article 14 through the procedure provided by law. (1983, c. 676, s. 2.)

Legal Periodicals. — For article, "The Evolution of Modern North Carolina Environmental and Conservation Policy Legislation," see 29 Campbell L. Rev. 535 (2007).

§ 153A-449. Contracts with private entities.

A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in. (1985, c. 271, s. 2.)

§ 153A-450. Contracts for construction of satellite campuses of community colleges.

(a) Boards of county commissioners may enter into contracts for the construction of satellite campuses of community colleges, to be located in their counties.

(b) The board of county commissioners of the county in which a satellite campus of a community college is to be constructed shall submit the plans for the satellite facility's construction to the board of trustees of the community college that will be operating the facility for its approval prior to entering into any contract for the construction of the satellite facility.

(c) A satellite facility may be used only as a satellite facility of the community college that operates it and for no other purpose except as approved by the board of trustees of the community college that has been assigned the county where the satellite facility is located as a service delivery area either by an act of the General Assembly or by the State Board of Community Colleges. (1985, c. 757, s. 148(b), (d), (e); 1987, c. 564, ss. 11, 12.)

§ 153A-451. Reimbursement agreements.

(a) A county may enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the county's Capital Improvement Plan and serves the developer or property owner. For the purpose of this act, municipal infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

(b) A county shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

(c) A county may provide for such reimbursements to be paid from any lawful source.

(d) Reimbursement agreements authorized by this section shall not be subject to Article 8 of Chapter 143 of the General Statutes, except as provided by this subsection. A developer or property owner who is party to a reimbursement agreement authorized under this section shall solicit bids in accordance with Article 8 of Chapter 143 of the General Statutes when awarding contracts for work that would have required competitive bidding if the contract had been awarded by the county. (2005-426, s. 8(b).)

Editor's Note. — Session Laws 2005-426, s. 11, made this section effective January 1, 2006.

Session Laws 2005-41, effective May 16, 2005, enacts similar provisions for the Towns of Apex, Broadway, Cary, Goldston, Holly Springs, Pittsboro, and Siler City, to the City of Sandford, to all municipalities located wholly or partially within Cabarrus County, and to Cabarrus, Chatham, Durham, and Lee Counties, but as to the Town of Broadway only applies as to municipal infrastructure located in Lee County.

§ 153A-452. Restriction of certain forestry activities prohibited.

(a) The following definitions apply to this section:

(1) Development. — Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forest management plan. — A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(3) Forestland. — Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(4) Forestry. — The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(5) Forestry activity. — Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A county shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a county to:

(1) Regulate activity associated with development. A county may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:

a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought.

b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the county regulations.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under Article 18 of this Chapter. (2005-447, s. 1.)

Editor's Note. — Session Laws 2005-447, s. 1, enacted this section as G.S. 153A-451. The section was redesignated as G.S. 153A-452 at the direction of the Revisor of Statutes.

§ 153A-453. Quarterly reports by Mental Health, Developmental Disabilities, and Substance Abuse Services area authority or county program.

Quarterly reports by the area director and finance officer of Mental Health, Developmental Disabilities, and Substance Abuse Services area authorities or county programs shall be submitted to the county finance officer as provided under G.S. 122C-117(c). (2006-142, s. 3(b).)

Editor's Note. — Session Laws 2006-142, s. 8, made this section effective July 19, 2006.

§ 153A-454. Stormwater control.

(a) A county may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. A county may adopt a stormwater management ordinance pursuant to this Chapter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a county stormwater control ordinance unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that applies to the project. A county may take enforcement action to compel a State or local government agency to comply with a stormwater control ordinance that implements the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued to the county. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a county may take enforcement action to compel a federal government agency to comply with a stormwater control ordinance.

(c) A county may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A county that holds a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance to establish the stormwater control program necessary for the county to comply with the permit. A county may adopt an ordinance that bans illicit discharges. A county may adopt an ordinance that requires (i) deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity and (ii) financial arrangements to ensure that adequate funds are available for the maintenance and replacement costs of the project. (2006-246, s. 17(a).)

Editor's Note. — Session Laws 2006-246, s. 20, made this section retroactively effective July 1, 2006.

Implementation of Federal Phase II Stormwater Management Requirements and Protection of Water Quality, as Recommended by Environmental Review Commission. — For requirements necessitated by temporary implementation of federal Phase II Stormwater Management and the Stormwater Management Rules, see notes regarding Session Laws 2006-246 under G.S. 143-214.7.

Improvements in the Management of Stormwater in the Coastal Counties in Order to Protect Water Quality — Supercession of Rule. — See notes regarding Session Laws 2008-211, as amended by Session Laws 2008-198, ss. 5 and 6(a), under G.S. 143-214.7.

§ 153A-455. Revolving loan program for energy improvements.

(a) Purpose. — The General Assembly finds it is in the best interest of the citizens of North Carolina to promote and encourage renewable energy and energy efficiency within the State in order to conserve energy, promote economic competitiveness, and expand employment in the State. In furtherance of this purpose, a county may establish a program to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property.

(b) Revolving Loan Fund. — A county may establish a revolving loan fund for the purpose of providing loans to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, or other real property. A county may use Energy Efficiency and Conservation Block Grant Funds and its unrestricted revenue to fund the revolving loan fund. The annual interest rate charged for the use of funds from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan application review and origination. The term of any loan originated under this section may not be greater than 15 years.

(c) Definition. — As used in this Article, "renewable energy source" has the same meaning as "renewable energy resource" in G.S. 62-133.8. (2009-522, s. 2.)

Editor's Note. — Session Laws 2009-522, s. 3, made this section effective August 26, 2009.

§§ 153A-456 through 153A-470: Reserved for future codification purposes.

Article 24.

Unified Government.

§ 153A-471. Unified government.

(a) Except as provided in this section, the powers, duties, functions, rights, privileges, and immunities of a city are vested with any county that has either:

(1) No portion of an incorporated municipality located within its boundaries; or

(2) One incorporated municipality located within the county, but the land area of that municipality is located primarily in another county and consists of less than 100 acres within the county exercising powers under this Article.

(b) All of the following shall apply to any county exercising the powers, duties, functions, rights, privileges, and immunities of a city under this Article:

(1) It may not exercise any such powers, duties, functions, rights, privileges, and immunities outside the boundaries of the county.

(2) Article 4A of Chapter 160A of the General Statutes (Extension of Corporate Limits) does not apply.

(3) Article 5 of Chapter 160A of the General Statutes (Form of Government) does not apply.

(4) Article 7 of Chapter 160A of the General Statutes (Administrative Offices) does not apply.

(5) Article 13 of Chapter 160A of the General Statutes (Law Enforcement) does not apply.

(6) G.S. 153A-340(b) (Zoning of Bona Fide Farms) shall apply to all areas within the county boundaries.

(7) The provisions of Chapter 163 of the General Statutes relating to municipal elections do not apply except to the extent they applied to the county absent this Article.

(8) If the county is subject to this Article under subdivision (a)(2) of this section, it may not exercise any such powers, duties, functions, rights, privileges, and immunities within the corporate limits of the municipality located partly within the county.

(c) The board of commissioners may by ordinance provide that this Article does not confer the power, duty, function, right, privilege, or immunity of a city upon the county as to a specific power, duty, function, right, privilege, or immunity, and as to such specified power, duty, function, right, privilege, or immunity it shall not be considered as a city.

(d) If the board of commissioners exercises any power, duty, function, right, privilege, or immunity authorized under both Chapter 153A and Chapter 160A of the General Statutes, and those statutes conflict, the board of commissioners shall state in their minutes under which Chapter the power, duty, function, right, privilege, or immunity is being exercised. (2005-35, s. 1; 2005-433, s. 10(a).)

§ 153A-472. Definitions.

For the purposes of this Article, any statutory reference to:

(1) A city shall be construed as a reference to a county.

(2) A city council or governing board shall be construed as a reference to the board of commissioners.

(3) The mayor shall be construed as a reference to the chair of the board of commissioners.
(4) Any other city official shall be construed as a reference to the equivalent county official. (2005-35, s. 1.)

§ 153A-472.1. Property tax levy.

If a county is subject to this Article under G.S. 153A-471(a)(2), it may not levy property taxes on the entire county for any function authorized by this Article but not otherwise authorized by law for counties. Instead, the county may establish a county service district under Part 1 of Article 16 of this Chapter, to consist of the entire area of the county not in an incorporated municipality. (2005-433, s. 10(a).)

§ 153A-473. Applicability.

This Article only applies to a county if approved by the qualified voters of the county in a referendum called by the board of commissioners in accordance with G.S. 163-287. The referendum shall be conducted by the county board of elections in accordance with the provisions of law generally applicable to special elections. The ballot question shall be determined by the board of commissioners after consultation with the county attorney as to form. (2005-35, s. 1.)

[illegible]

ARTICLE 24.

Unified Government.

[illegible]

(1) the portion of an incorporated municipality [illegible] areas of [illegible]

(2) One incorporated municipality located partly in the county if the area of that municipality is located primarily in another county and [illegible]

[illegible]

(2) Article 4A of Chapter 160A of the General Statutes (Extension of Corporate Limits) does not apply.

(3) Article 5 of Chapter 160A of the General Statutes (Form of Government) does not apply.

(4) Article 7 of Chapter 160A of the General Statutes (Administrative Offices) does not apply.

(5) Article 13 of Chapter 160A of the General Statutes (Law Enforcement) does not apply.

(6) G.S. 153A-340(b) (Zoning of Bona Fide Farms) shall apply to all areas within the county boundaries.

(7) The provisions of Chapter 163 of the General Statutes relating to municipal elections do not apply except to the extent they applied to the county absent this Article.

(8) If the county is subject to this Article under subdivision (a)(2) of this section, it may not exercise any such powers, duties, functions, rights, privileges, and immunities within the corporate limits of the municipality located partly within the county.

(c) The board of commissioners may by ordinance provide that this Article does not confer the power, duty, function, right, privilege, or immunity of a city upon the county as to a specific power, duty, function, right, privilege, or immunity, and as to such specified power, duty, function, right, privilege, or immunity it shall not be considered as a city.

(d) If the board of commissioners exercises any power, duty, function, right, privilege, or immunity authorized under both Chapter 153A and Chapter 160A of the General Statutes, and those statutes conflict, the board of commissioners shall state in their minutes under which Chapter the power, duty, function, right, privilege, or immunity is being exercised. (2005-35, s. 1; 2005-433, s. 10(a).)

§ 153A-472. Definitions.

For the purposes of this Article, any statutory reference to:

(1) A city shall be construed as a reference to a county.

(2) A city council or governing board shall be construed as a reference to the board of commissioners.

Chapter 153B.
Mountain Resources Planning Act.

Sec.
153B-1. Short title; findings; purpose.
153B-2. Definitions.
153B-3. Mountain Resources Commission.
153B-4. Mountain Area Resources Technical Advisory Council.

§ 153B-1. Short title; findings; purpose.

(a) Short Title. — This Chapter shall be known and may be cited as the "Mountain Resources Planning Act."

(b) Findings. — The General Assembly finds that:

(1) The beauty and abundant natural resources of the mountain region of Western North Carolina are prized by all North Carolinians. Millions of tourists travel to the mountain region of Western North Carolina to see and experience the natural beauty of the mountains, including the vistas near national parks, national forests, State parks, and State forests. This tourism is vitally important to the economy of Western North Carolina.

(2) The United States Congress has recognized the natural abundance and cultural heritage of the mountain region of Western North Carolina by creating the Blue Ridge National Heritage Area, which, in turn, has established a precedent for successful collaborative planning in the stewardship of important mountain resources.

(3) The same beauty and natural abundance that is valued by North Carolina residents, tourists, and the United States Congress is being adversely affected by land-use practices that are negatively impacting the public's enjoyment of the important mountain resources of the mountain region of Western North Carolina, including publicly owned lands. The mountain region of Western North Carolina is subject to challenges and pressures specific to the topography and environment of the mountains. The mountain region of Western North Carolina has experienced accelerating trends that are adversely affecting important mountain resources, and local governments face challenges as they adapt to new and difficult changes to the landscape.

(c) Purpose. — It is the purpose of this Chapter to encourage quality growth and development while preserving the natural resources, open spaces, and farmland of the mountain region of Western North Carolina. (2009-485, s. 1.)

Editor's Note. — Session Laws 2009-485, s. 2, made this Chapter effective August 26, 2009.

§ 153B-2. Definitions.

The following definitions apply in this Article [Chapter]:

(1) Commission. — The Mountain Resources Commission created by this Chapter.

(2) Council. — The Mountain Area Technical Advisory Council.

(3) Important mountain resources. — The natural and cultural resources of the mountain region of Western North Carolina, including, but not limited to, State and federal public lands, wildlife habitat, farms, forestland and rural landscapes, mountain vistas, mountain streams and rivers, mountain lakes, and historical and archeological resources.

(4) Mountain region of Western North Carolina. — The area encompassed by the counties of Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Cleveland, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey in the State.

(5) Secretary. — The Secretary of the Department of Environment and Natural Resources. (2009-485, s. 1.)

Editor's Note. — In the introductory paragraph, the bracketed reference to "Chapter" was added at the direction of the Revisor of Statutes.

§ 153B-3. Mountain Resources Commission.

(a) Creation. — The Mountain Resources Commission is hereby established. The Commission is a permanent body corporate of the State composed of members from the mountain region of Western North Carolina. The Commission shall be located administratively in the Department of Environment and Natural Resources but shall exercise its statutory powers and duties independently of the Department of Environment and Natural Resources. The Commission shall meet in Western North Carolina. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year.

(b) Purpose. — The purposes and functions of the Mountain Resources Commission are to do all of the following:

(1) Identify and evaluate issues affecting important mountain resources and recommend policies and programs to address those issues.

(2) Coordinate with existing local and regional efforts to address threats to important mountain resources and work undertaken by councils of government and the jurisdictions they serve in the mountain region of Western North Carolina.

(3) Provide a forum for discussion of issues affecting important mountain resources.

(4) Promote communication, coordination, and education among stakeholders within the mountain region of Western North Carolina.

(5) Collect research and information from North Carolina and other states and jurisdictions regarding State and regional approaches to coordinating (i) provision of infrastructure for the protection of important mountain resources and (ii) efforts to encourage quality growth to protect such important mountain resources.

(6) Determine whether new strategies or tools would be helpful to address pressures on important mountain resources and whether and how such strategies or tools should be implemented to protect such resources.

(7) Provide guidance and make recommendations to local, State, and federal legislative and administrative bodies and to others as it considers necessary and appropriate for the use, stewardship, and enhancement of important mountain resources.

(c) Authority. — To achieve its purposes, the Commission shall have all of the following powers and duties:

(1) To develop rules and procedures for the conduct of its business or as may be necessary to perform its duties and carry out its objectives, including, but not limited to, calling meetings and establishing voting procedures. Rules and procedures developed pursuant to this subsection shall be effective upon an affirmative vote by a majority of the Commission members.

(2) To establish standing and ad hoc committees. The Commission shall determine the purpose of each standing or ad hoc committee.

(3) To seek, apply for, accept, and expend gifts, grants, donations, services, and other aid from public or private sources. The Commission may accept or expend funds only after an affirmative vote by a majority of the members of the Commission.

(4) To exercise the powers of a body corporate, including the power to sue and be sued, and adopt and use a common seal and alter the same.

(5) To enter into contracts and execute all instruments necessary or appropriate to achieve the purposes of the Commission.

(6) To designate a fiscal agent.

(7) To perform any lawful acts necessary or appropriate to achieve the purposes of the Commission.

(d) Membership. — The Commission shall consist of 17 members as follows:

(1) Two representatives from the public at large who are residents of the mountain region of Western North Carolina appointed by the Speaker of the House of Representatives.

(2) Two representatives from the public at large who are residents of the mountain region of Western North Carolina appointed by the President Pro Tempore of the Senate.

(3) Six representatives from the public at large who are residents of the mountain region of Western North Carolina appointed by the Governor, including:

a. Four who shall at the time of appointment be actively connected with or have experience in local government within the mountain region of Western North Carolina.

b. One who shall at the time of appointment be actively associated with a land trust organization working in Western North Carolina.

c. One who shall at the time of appointment have experience in tourism or tourism development in the mountain region of Western North Carolina.

(4) One member to represent the North Carolina National Parks, Parkway and Forests Development Council.

(5) Five members to represent each of the following regional councils of government as appointed by those councils: the Southwestern North Carolina Planning and Economic Development Commission, the Isothermal Planning and Development Commission, the High Country Council of Governments, the Western Piedmont Council of Governments, and the Land of Sky Regional Council.

(6) One representative appointed by the board of the Blue Ridge National Heritage Area.

The members of the Commission shall elect a chair, vice-chair, and any other officers they consider necessary and shall determine the length of the term of office, not to exceed two years, of each officer. A majority of the Commission shall constitute a quorum. Each member appointed to the Commission shall be appointed to serve a four-year term. Any vacancy on the Commission shall be filled by the original appointing authority for the remainder of the unexpired term. Initial terms commence September 1, 2009.

(e) Salary; Expenses. — Members of the Commission shall receive no salary for their service on the Commission but may receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. All expenses shall be paid from funds available to the Commission through the Mountain Area Resources Fund, but no expenses shall be paid if the Mountain Area Resources Fund lacks the necessary funds.

(f) Staff Support. — The Department of Environment and Natural Resources shall provide staff support and facilities to the Commission within the existing programs of the agency. Additional staff may be hired or contracted by the Commission through funds raised by or provided to it. The duties and compensation of any additional staff shall be determined and fixed by the Commission within available resources.

(g) State Agency Cooperation. — All agencies of the State of North Carolina shall cooperate with the Commission and, upon request, shall assist the Commission in fulfilling its responsibilities. The Secretary of Environment and Natural Resources or the Secretary's designee shall serve as the liaison between the Secretary's agency and the Commission. The Commission may obtain information and data upon request from all officers, agents, agencies, and departments of the State of North Carolina or of local governments while in discharge of its duties.

(h) The Commission shall work in partnership with the Blue Ridge National Heritage Area to protect the important mountain resources across the mountain region of Western North Carolina.

(i) The role of the Commission is advisory in nature and in no way shall the Commission be construed to have regulatory authority. No action of the Commission supercedes any decision of any local planning board. (2009-485, s. 1.)

§ 153B-4. Mountain Area Resources Technical Advisory Council.

(a) Creation. — There is hereby created a council to be known as the Mountain Area Resources Technical Advisory Council.

(b) The Council shall consist of not more than 13 members appointed by the Mountain Resources Commission to include environmental, engineering, planning, and State and local government professionals with expertise and experience to contribute to the work of the Commission.

(c) Functions and Duties. — The Council shall assist the Commission in an advisory capacity. The Council shall meet on such schedule and provide such assistance as may be requested of it by the Commission.

(d) Members; Multiple Offices. — Membership on the Mountain Area Resources Technical Advisory Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices (except the office of Commission member) in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(e) Chairman and Vice-Chairman. — A chairman and vice-chairman shall be elected annually by the Council.

(f) Compensation. — The members of the Advisory Council who are not State employees may receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. All expenses shall be paid from funds available to the Commission through the Mountain Area Resources Fund, but no expenses shall be paid if the Mountain Area Resources Fund lacks the necessary funds. (2009-485, s. 1.)

Chapter 154.

County Surveyor.

§§ 154-1, 154-2: Repealed by Session Laws 1973, c. 822, s. 5.

Cross References. — For present provisions as to county surveyors, see G.S. 153A-441.

Editor's Note. — Session Laws 1973, c. 822, ss. 9 through 12, provided:

"Sec. 9. No provision of this act is intended, nor may any be construed, to affect in any way a right or interest, public or private:

(a) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to a provision of law repealed by this act; or

(b) Derived from or which might be sustained or preserved in reliance upon, action (including the adoption of orders, resolutions, or ordinances) taken before the effective date of this act pursuant to or within the scope of a provision of law repealed by this act.

"Sec. 10. No law repealed, expressly or by implication, before the effective date of this act and no law granting authority that has been exhausted before the effective date of this act is revived by:

(a) The repeal in this act of any act repealing such a law; or

(b) Any provision of this act that disclaims an intention to repeal or affect enumerated, designated, or described laws.

"Sec. 11. No provision of this act is intended, nor may any be construed, to impair the obligation of any bond, note, or coupon outstanding on the effective date of this act.

"Sec. 12. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act is abated or otherwise affected by the adoption of this act."

§ 154-3: Repealed by Session Laws 1969, c. 1003, s. 8.

Chapter 154
County Surveyor

§§ 154-1, 154-2: Repealed by Session Laws 1973, c. 822, s. 8.

Cross References. — For present provisions as to county surveyors, see G.S. 153A-441.

Editor's Note. — Session Laws 1973, c. 822, ss. 9 through 12, provided:

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(a) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to a provision of law repealed by this act, or

(b) Derived from or which might be sustained or preserved in reliance upon, action (including the adoption of orders, resolutions, or ordinances) taken before the effective date of this act pursuant to or within the scope of a provision of law repealed by this act.

"Sec. 10. No law repealed, expressly or by implication, before the effective date of this act and no law granting authority that has been exhausted before the effective date of this act is revived by:

(a) The repeal in this act of any act repealing such a law, or

(b) Any provision of this act that disclaims an intention to repeal or affect enumerated, designated, or described laws.

"Sec. 11. No provision of this act is intended, nor may any be construed, to impair the obligation of any bond, note, or other evidence of indebtedness outstanding on the effective date of this act.

"Sec. 12. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act is abated or otherwise affected by the adoption of this act."

§ 154-3: Repealed by Session Laws 1989, c. 1003, s. 8.

Chapter 155.

County Treasurer.

§§ 155-1 through 155-8: Repealed by Session Laws 1971, c. 780, s. 34.

§ 155-9: Repealed by Session Laws 1953, c. 973, s. 3.

§§ 155-10 through 155-14: Repealed by Session Laws 1971, c. 780, s. 34.

§ 155-15: Repealed by Session Laws 1953, c. 973, s. 3.

§§ 155-16 through 155-18: Repealed by Session Laws 1971, c. 780.

Chapter 156.

Drainage.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

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156-47. Rights of infant owners protected.
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156-59. Board of viewers appointed by clerk.
156-60. Attorney for petitioners.
156-61. Estimate of expense and manner of payment; advancement of funds and repayment from assessments.
156-62. Examination of lands and preliminary report.
156-63. First hearing of preliminary report.
156-64. Notice of further hearing.
156-65. Further hearing, and district established.
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156-83. Superintendent of construction.
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156-94. Total cost for three years ascertained.
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156-96. Failure to pay deemed consent to bond issue.
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156-124. No drainage assessments for original object may be levied on property when once paid in full.
156-124.1. [Repealed.]

Article 9.

Adjustment of Delinquent Assessments.

Sec.
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156-138.1. Acquisition and disposition of lands; lease to or from federal or State government or agency thereof.
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SUBCHAPTER IV. DRAINAGE BY COUNTIES.

Article 12.

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156-139. Cleaning and draining of streams, etc., under supervision of governmental agencies.
156-140. Tax levy.
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SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

Article 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-1. Supplemental proceeding.

The proceedings initiated under this Chapter may be, to the extent practicable, supplemented by the procedures of Chapter 40A. (Code, s. 1324; Rev., s. 4028; C.S., s. 5260; 1981, c. 919, s. 23.)

Local Modification. — Alexander, Little River Drainage District: Pub. Loc. 1927, c. 484; Iredell: Pub. Loc. 1937, c. 591; Pasquotank: Pub. Loc. 1923, c. 181; Pub. Loc. 1927, c. 264; Pub. Loc. 1929, c. 471; Robeson: Pub. Loc. 1927, c. 197; Rowan: Pub. Loc. 1937, cc. 591, 592; Tyrrell: Pub. Loc. 1927, c. 336; city of Washington: Pr. 1921, c. 149.

Editor's Note. — Session Laws 1981, c. 919, s. 23, effective January 1, 1982, rewrote this section, which formerly provided that the proceeding under this Subchapter should be as prescribed in Article 2 of the Chapter Eminent Domain.

Legal Periodicals. — For note on disposition of diffused surface waters in North Carolina, see 47 N.C.L. Rev. 205 (1968).

CASE NOTES

As to the constitutionality of this Chapter, see Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910); Forehand v. Taylor, 155 N.C. 353, 71 S.E. 433 (1911).

This Chapter comes within the police power of the State. Winslow v. Winslow, 95 N.C. 24 (1886). See also, Porter v. Armstrong, 139 N.C. 179, 51 S.E. 926, petition for rehearing dismissed, 137 N.C. 703, 51 S.E.2d 1036 (1905).

Various Statutes Harmonized. — While the various statutes for the drainage of swamplands in eastern North Carolina have not the same provisions in all respects, they have been collected and are to be found in this Chapter, and should be construed to harmonize, and constitute, with such variations, a system of drainage laws for the State. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908); Sawyer Canal Co. v. Keys, 234 N.C. 360, 67 S.E.2d 259 (1951).

Foundation of Right to Condemn. — The right of the State to condemn land for drains rests on the same foundation as its right in cases of public roads, mills, railroads, schoolhouses, etc. Norfleet v. Cromwell, 70 N.C. 634 (1874).

The right to drain through the banks of a natural watercourse is exactly similar in character to the right to construct dykes or levees to keep their excessive waters from overflowing the adjacent lands, a right which has been recognized in the legislation of all countries from the most ancient times. Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910).

Flexible Procedure Provided. — The statutes authorizing the creation, maintenance and improvements of drainage districts provide flexible procedure which may be modified and molded by decrees from time to time to promote the beneficial objects sought by the creation of the district, subject to the restrictions that there should be no material change nor any change that would impose additional costs upon landowners except to the extent of benefits to them. In re Lyon Swamp Drainage & Levee Dist., 228 N.C. 248, 45 S.E.2d 130 (1947).

The correct procedure to secure additional authority for proper maintenance and improvements in a drainage district is by motion or petition in the original cause. In re Lyon Swamp Drainage & Levee Dist., 228 N.C. 248, 45 S.E.2d 130 (1947).

Power to Issue Bonds and Make Assessments Applicable Only to Section of District Benefited. — Where proposed improvements and repairs will primarily benefit lands embraced in one section of a drainage district and would be of no substantial benefit to landowners in another section thereof, the drainage commissioners have power under statutory authority to issue bonds and make assessments applicable only to the section benefited. In re Lyon Swamp Drainage & Levee Dist., 228 N.C. 248, 45 S.E.2d 130 (1947).

Cited in Sawyer Canal Co. v. Keys, 232 N.C.

664, 62 S.E.2d 67 (1950); Chappell v. Winslow, 258 N.C. 617, 129 S.E.2d 101 (1963); Taylor v. Askew, 17 N.C. App. 620, 195 S.E.2d 316 (1973).

§ 156-2. Petition filed; commissioners appointed.

Any person owning pocosin, swamp, or flatlands, or owning lowlands subject to inundation, which cannot be conveniently drained or embanked so as to drain off or dam out the water from such lands, except by cutting a canal or ditch, or erecting a dam through or upon the lands of other persons, may by petition apply to the superior court of the county in which the lands sought to be drained or embanked or some part of such lands lie, setting forth the particular circumstances of the case, the situation of the land to be drained or embanked, to what outlet and through whose lands he desires to drain, or on what lands he would erect his dam, and who are the proprietors of such lands; whereupon a summons shall be served on each of the proprietors, and, on the hearing of the petition the court shall appoint three persons as commissioners, who shall be duly sworn to do justice between the parties. (1795, c. 436, P.R.; 1852, c. 57, ss. 1, 2; R.C., c. 40, s. 1; Code, s. 1297; Rev., s. 3983; C.S., s. 5261.)

CASE NOTES

Clerk of the superior court has jurisdiction of a proceeding to obtain a right of drainage over the land of an adjoining landowner and to assess damages, etc. Durden v. Simmons, 84 N.C. 555 (1881).

This Chapter and the amendments thereto are the charts which should guide the commissioners, and their decisions, findings and report should conform thereto. Porter v. Armstrong, 139 N.C. 179, 51 S.E. 926, petition for rehearing dismissed, 137 N.C. 703, 51 S.E. 1036 (1905).

This Chapter applies only to artificial outlets made over the land of another to reach a natural watercourse. Mizell v. McGowan, 129 N.C. 93, 39 S.E. 729 (1901).

Readjustment. — When the rights and duties of adjoining landowners as to drainage in a certain canal have been determined under this Chapter, and judgment entered, proceedings subsequently brought for the purpose of readjustment, owing to change of ownership and partition, etc., are in effect a motion in the cause, in which the judgment, unlike a final judgment, is not conclusive; and the cause can be brought forward from time to time, upon notice to the parties, and further decrees made to conform to the exigencies and changes which may arise. Staton v. Staton, 148 N.C. 490, 62 S.E. 596 (1908); Sawyer Canal Co. v. Keys, 234 N.C. 360, 67 S.E.2d 259 (1951).

Joint Petition. — Two or more separate proprietors cannot sustain a joint petition for a ditch to drain their lands, without alleging that a common ditch would drain the lands of all the petitioners. Shaw v. Burfoot, 53 N.C. 344 (1861).

Landowner Must Be Made Party. — An order by the county commissioners (now superior court) appointing appraisers to assess the value of the benefits and damages which would accrue to the owner of land on account of a certain canal sought to be cut through his land, upon the petition of other parties, filed under the provisions of this Chapter, is void, unless said landowner is made a party to the petition. Gamble v. McCrady, 75 N.C. 509 (1876).

Where separate owners have derived their lands subject to a drainage system placed upon the entire tract by the original owner, each one using the system must bear the costs of maintenance and repair required by the portion of the system on his own premises. Lamb v. Lamb, 177 N.C. 150, 98 S.E. 307 (1919).

Water may not be diverted from its natural course so as to damage another, but it may be increased and accelerated. Hocutt v. Wilmington & W.R.R., 124 N.C. 214, 32 S.E. 681 (1899); Mizell v. McGowan, 125 N.C. 439, 34 S.E. 538 (1899); Lassiter v. Norfolk & C.R.R., 126 N.C. 509, 36 S.E. 48 (1900); Mizell v. McGowan, 129 N.C. 93, 39 S.E. 729 (1901); Barcliff v. Norfolk S.R.R., 168 N.C. 268, 84 S.E. 290 (1915).

The owners of swamps, whose waters naturally flow into natural watercourses, may make such canals as are necessary to drain them of the water naturally flowing therein, although in doing so the flow of water in the natural watercourse is increased and accelerated so that the water is discharged on the land of an abutting owner. Mizell v. McGowan, 120 N.C. 134, 26 S.E. 783 (1897).

Liability for Damages from Diversion. — Where a person diverts water from a stream by cutting a channel from it, and at a point lower down the stream turns it back into the old channel, and by its own momentum it is carried on to the lands of an adjoining owner, he is liable for damages. Briscoe v. Young, 131 N.C. 386, 42 S.E. 893 (1902).

One is liable for damages caused to the lands of another by his diverting the natural flow of surface water thereto. Roberts v. Baldwin, 151 N.C. 407, 66 S.E. 346 (1909).

Surface waters should be drained so as to be carried off in the due course of nature. The upper proprietor is liable in damages to the land of the lower proprietor caused by water diverted by his ditches and not carried to a natural waterway. Briscoe v. Parker, 145 N.C. 14, 58 S.E. 443 (1907).

Landowner's Remedies. — When the lands of the lower proprietor are damaged by the improper drainage of the upper proprietor, he may elect to bring an action for damages or proceed under this and the following sections. Briscoe v. Parker, 145 N.C. 14, 58 S.E. 443 (1907).

Artificial Waterway Constructed for Temporary Purposes. — When an upper proprietor of lands constructs and maintains for his own use and advantage an artificial waterway or structure affecting the flow of water, without invading the rights of the lower proprietor, for a temporary purpose or a specific purpose which he may at any time abandon, the upper proprietor comes under no obligation to maintain the structure, though the incidental effect has been to confer a benefit on the lower tenant. Lake Drummond Canal & Water Co. v. Burnham, 147 N.C. 41, 60 S.E. 650 (1908).

Setting Aside Former Judgment. — If a former judgment in a similar proceeding has not been pleaded in an action for drainage of lands, as an estoppel or res adjudicata, before final judgment, the party relying thereon must move the court within one year to set the judgment aside for excusable mistake or inadvertence. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908).

As to jury questions, see Heirs at Law of Collins v. Heirs at Law of Haughton, 26 N.C. 420 (1844).

Appeal. — An order in a drainage proceeding directing matters proper for the determination of the commissioners to be referred to a jury is appealable. Porter v. Armstrong, 134 N.C. 447, 46 S.E. 997 (1904).

Formerly the law required the appointment of disinterested freeholders as commissioners in a proceeding to obtain a right of drainage over the lands of an adjoining landowner. Durden v. Simmons, 84 N.C. 555 (1881).

Cited in In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949); Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-3. Duty of commissioners.

The commissioners, or a majority of them, on a day of which each proprietor of land aforesaid is to be notified at least five days, shall meet on the premises and view the lands to be drained or embanked, and the lands through or on which the drain is to pass or the embankment to be erected, and shall determine and report whether the lands of the petitioner can be conveniently drained or embanked except through or on the lands of the defendants or some of them; and if they are of opinion that the same cannot be conveniently done except through or on such lands, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth or height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage or embankment of the water from the petitioner's land, and also securing the defendant's lands from inundation, and every other injury to which the same may be probably subjected by such canal, ditch, or embankment; and they shall assess, for each of the defendants, such damage as in their judgment will fully indemnify him for the use of his land in the mode proposed; but in assessing such damages, benefits shall be deducted. (1795, c. 436, P.R.; 1852, c. 57, ss. 1, 2; R.C., c. 40, s. 2; Code, s. 1298; Rev., s. 3984; C.S., s. 5262.)

CASE NOTES

Effect of § 156-16. — Section 156-16, concerning the drainage of lowlands, does not expressly repeal this section, but leaves in operation such of its provisions as are not repugnant to such section. Worthington v. Coward, 114 N.C. 289, 19 S.E. 154 (1894).

Cited in Porter v. Armstrong, 134 N.C. 447, 46 S.E. 997 (1904); In re Atkinson-Clark Canal

Co., 231 N.C. 131, 56 S.E.2d 442 (1949); Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-4. Report and confirmation; easement acquired; exceptions.

The commissioners shall report in writing, under their hands, the whole matter to the court, which shall confirm the same, unless good cause be shown to the contrary; and on payment of the damages and cost of the proceedings the court shall order and decree that the petitioner may cut the canal or ditch, or raise the embankment in the manner reported and determined by the commissioners; and thereupon the petitioner shall be seized in fee simple of the easement aforesaid: Provided, that, without the consent of the proprietor, such canal, ditch, or embankment shall not be cut or raised through or on his yard or curtilage, nor be allowed when the same shall injure any mill, by cutting off or stopping the water flowing thereto; nor shall such dam be allowed so as to create a nuisance by stagnant water, or cut off the flow of useful springs or necessary streams of water, or stop any ditches of such proprietor when there is no freshet. (1795, c. 436, s. 2, P.R.; 1835, c. 7; 1852, c. 57, ss. 1, 2; R.C., c. 40, s. 3; Code, s. 1299; Rev., s. 3985; C.S., s. 5263.)

CASE NOTES

Conclusive Effect of Commissioners' Report. — The report of commissioners appointed to condemn lands and assess damages for the purpose of drainage is, like the verdict of a jury, conclusive of the facts therein ascertained, until set aside. Norfolk S.R.R. v. Ely, 101 N.C. 8, 7 S.E. 476 (1888).

Power of Judge to Set Aside Report. — On appeal from the judgment of the clerk upon the report of commissioners appointed to lay off a ditch for drainage of lowlands, the judge could set aside the report either for cause or in his discretion, if in his opinion the ends of justice could be subserved by that course. Worthington v. Coward, 114 N.C. 289, 19 S.E. 154 (1894).

Setting Aside of Commissioners' Report Not Reversed on Appeal. — Where judge set aside commissioners' report because it did not comply with the statute, and further found as a fact in his order that two of the commissioners had been guilty of gross indiscretion, the Supreme Court would not reverse his order, whether the report conformed to the statute or not. Porter v. Armstrong, 139 N.C. 179, 51 S.E. 926, petition for rehearing denied, 137 N.C. 703, 51 S.E. 1036 (1905).

Jury to Settle Issues of Fact. — Upon an application to condemn lands for the purpose of drainage, the issue of fact raised by the pleadings should be framed and settled by a jury, and cannot be raised or considered upon exceptions to the report of the commissioners appointed to assess damages. Norfolk S.R.R. v. Ely, 101 N.C. 8, 7 S.E. 476 (1888).

Acquisition of Title in Lands Condemned. — Where, upon the petition of one or more parties, under this section, leave was granted by the county court to cut a canal across the land of another for the purposes of drainage, the petitioners and their assignees, upon the report of the jury provided for in the statute being confirmed, acquired not merely an easement, but title in fee to the land condemned. Norfleet v. Cromwell, 70 N.C. 634 (1874).

Cited in In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949); Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-5. Width of right-of-way for repairs.

The commissioners, when they may deem it necessary, shall designate the width of the land to be left on each side of the canal, ditch, or dam, to be used for the protection and reparation thereof, which land shall be altogether under the control and dominion of the owner of the canal, ditch, or dam, except as aforesaid: Provided, that in no case shall a greater width of land on both sides, inclusive of a dam, be taken than five times the base of such dam. (R.C., c. 40, s. 6; Code, s. 1302; Rev., s. 3985a; C.S., s. 5264.)

CASE NOTES

Remand When Unnecessary Amount of Land Condemned. — Where, upon appeal from the report of the commissioners, the jury found that the amount of land condemned by the commissioners for the purpose of the protection and reparation of the ditches was unnecessary, it was proper for the court to remand the cause, with directions to constitute another commission. Winslow v. Winslow, 95 N.C. 24 (1886).

§ 156-6. Right of owner to fence; entry for repairs.

Any proprietor, through or on whose land such canal or ditch may be cut or embankment raised, may put a fence or make paths across the same, provided the usefulness thereof be not impaired; and the owner of the canal, ditch, or dam, his heirs and assigns, shall at all times have free access to the same for the purpose of making and repairing them; doing thereby no unnecessary damage to the lands of the proprietors. (1795, c. 436, s. 2, P.R.; 1835, c. 7; 1852, c. 57, ss. 1, 2; R.C., c. 40, s. 4; Code, s. 1300; Rev., s. 3986; C.S., s. 5265.)

§ 156-7. Earth for construction of dam; removal of dam.

The earth necessary for the erection of a dam may be taken from either side of it, or wherever else the commissioners may designate and allow. And such dam may be removed by the proprietor of the land, his heirs or assigns, to any other part of his lands, and he may adjoin any dam of his own thereto, if allowed by the court on a petition and such proceedings therein as are provided in this Chapter, as far as the same may apply to his case: Provided always, that the usefulness of the dam will not be thereby impaired or endangered. (R.C., c. 40, s. 5; Code, s. 1301; Rev., s. 3987; C.S., s. 5266.)

§ 156-8. Earth from canal removed or leveled.

The earth excavated from the canal or ditch shall be removed away or leveled as nearly as may be with the surface of the adjacent land, unless the commissioners shall otherwise specially allow. (R.C., c. 40, s. 7; Code, s. 1303; Rev., s. 3988; C.S., s. 5267.)

§ 156-9. No drain opened within 30 feet.

The proprietor of any swamp or flatlands through which a canal or ditch passes shall not have a right to open or cut any drain within 30 feet thereof but by the consent of the owner. Such proprietor, however, and other persons may cut into such canal or ditch in the manner hereinafter provided. (R.C., c. 40, s. 8; Code, s. 1304; Rev., s. 3989; C.S., s. 5268.)

§ 156-10. Right to drain into canal.

Any person desirous of draining into the canal or ditch of another person as an outlet may do so in the manner hereinbefore provided, and in addition to the persons directed to be made parties, all others shall be parties through whose lands, canals, or ditches the water to be drained may pass till it shall have reached the furthest artificial outlet. And the privilege of cutting into such canal or ditch may be granted under the same rules and upon the same conditions and restrictions as are provided in respect to cutting the first canal or ditch: Provided, that no canal or ditch shall be allowed to be cut into another if thereby the safety or utility of the latter shall be impaired or endangered: Provided, further, that if such impairing and danger can be avoided by imposing on the petitioner duties or labor in the enlarging or deepening of such canal or ditch, or otherwise, the same may be done; but no absolute decree for cutting such second canal or ditch shall pass till the duties or work so imposed shall be performed and the effect thereof is seen, so as to enable the commissioners to determine the matter whether such second canal or ditch ought to be allowed or not: Provided, that any party to the proceeding may appeal from the judgment of the court rendered under this section to the superior court of the county, where a trial and determination of all issues raised in the pleadings shall be had as in other cases before a judge and jury. (R.C., c. 40, s. 9; Code, s. 1305; 1887, c. 222; Rev., s. 3990; C.S., s. 5269; 1973, c. 108, s. 94.)

CASE NOTES

In a proceeding by plaintiff drainage corporation to levy assessments against the lands of respondents for the proportionate part of the expense for making necessary improvements, upon allegations that such lands drained into the corporation's canals and would be greatly benefited by the improvements, where it appeared that respondents' predecessor in title cut a large canal through his lands draining into the lands of the corporation, it would be presumed that respondents' predecessor in title acquired the right to cut into the canal of plaintiff pursuant to the provisions of this section, and the petition would be considered as a motion in that cause for the proper adjudication of the rights of the parties. Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

Cited in Brooks v. Tucker, 61 N.C. 309 (1867); In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949); Sawyer Canal Co. v. Keys, 234 N.C. 360, 67 S.E.2d 259 (1951).

§ 156-11. Expense of repairs apportioned.

Besides the damages which the commissioners may assess against the petitioner for the privilege of cutting into such canal or ditch, they shall assess and apportion the labor which the petitioner and defendants shall severally contribute towards repairing the canal or ditch into or through which the petitioner drains the water from his lands, and report the same to court; which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors and administrators, heirs and assigns. (R.C., c. 40, s. 10; Code, s. 1306; Rev., s. 3991; C.S., s. 5270.)

CASE NOTES

Report Failing to Assess and Apportion Labor Fatally Defective. — A commissioners' report under this section which fails to assess and apportion that part of the labor which is to be contributed by the defendants is fatally defective. Brooks v. Tucker, 61 N.C. 309 (1867).

Applied in Worthington v. Coward, 114 N.C. 289, 19 S.E. 154 (1894).

Cited in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-12. Notice of making repairs.

Whenever the canals or ditches for the reparation of which more than one person shall be bound under the provisions of G.S. 156-11 shall need to be repaired, any of the persons so bound may notify the others thereof, and of the time he proposes to repair the same; and thereupon each of the persons shall jointly work on the same and contribute his proportion of labor till the same be repaired or the work cease by consent. (R.C., c. 40, s. 11; Code, s. 1307; Rev., s. 3992; C.S., s. 5271.)

CASE NOTES

Cited in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-13. Judgment against owner in default; lien.

In case the person so notified shall make default, any of the others may perform his share of labor and recover against him the value thereof, on a notice to be issued for such default, in which shall be stated on oath made before the clerk the value of such labor, and unless good cause to the contrary be shown on the return of the notice, the court shall render judgment for the same with interest and costs; which judgment shall be a lien upon the lands from the date of the performance of the work. (R.C., c. 40, s. 12; Code, s. 1308; 1899, c. 396; Rev., s. 3993; C.S., s. 5272.)

CASE NOTES

Right of Landowner to Notice and Hearing. — Before any specific amount may be adjudged against a landowner as a lien on his land, he is entitled to be heard, after notice, as to whether the assessment made by the commissioners was unjust or oppressive. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908).

Cited in Craft & Bergeson v. John L. Roper Lumber Co., 181 N.C. 29, 106 S.E. 138 (1921); Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-14. Subsequent owners bound.

All persons to whom may descend, or who may otherwise own or occupy lands drained by any canal or ditch, for the privilege of cutting which any labor for repairing is assessed, shall contribute the same, and shall be bound therefor to all intents and purposes, and in the same manner and by the same judgment as the original party himself would be if he occupied the land. (R.C., c. 40, s. 13; Code, s. 1309; Rev., s. 3994; C.S., s. 5273.)

CASE NOTES

Applied in Norfleet v. Cromwell, 70 N.C. 634 (1874); Craft & Bergeson v. John L. Roper Lumber Co., 181 N.C. 29, 106 S.E. 138 (1921).

Cited in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-15. Amount of contribution for repair ascertained.

Whenever there shall be a dam, canal, or ditch, in the repairing and keeping up of which two or more persons shall be interested and receive actual benefit therefrom, and the duties and proportion of labor which each one ought to do and perform therefor shall not be fixed by agreement or by the mode already in this Subchapter provided for assessing and apportioning such labor, any of the parties may have the same assessed and apportioned by applying to a magistrate, who shall give all parties at least three days' notice, and shall summon two disinterested freeholders who, together with the magistrate, shall meet on the premises and assess the damages sustained by the applicant, whereupon the magistrate shall enter judgment in favor of the applicant for damages or for work done on such ditch or lands. (R.C., c. 40, s. 14; Code, s. 1310; 1889, c. 101; Rev., s. 3995; C.S., s. 5274; 1973, c. 108, s. 95.)

CASE NOTES

Constitutionality. — This section is constitutional and valid. Forehand v. Taylor, 155 N.C. 353, 71 S.E. 433 (1911).

A proceeding under this section is in effect a motion in the cause which can be brought forward from time to time, upon notice to all the parties to be affected, for orders in the cause, to promote the objects of the proceeding, the whole matter remaining in the control of the court. Staton v. Staton, 148 N.C. 490, 62 S.E. 596 (1908); Sawyer Canal Co. v. Keys, 234 N.C. 360, 67 S.E.2d 259 (1951).

Procedure for Enlarging or Deepening Canal. — The method by which the user of a canal by prescriptive right may enlarge or deepen it with an apportionment of the costs is provided by this section. Armstrong v. Spruill, 182 N.C. 1, 108 S.E. 300 (1921).

Liability for Damages. — Where the users of a canal by prescriptive right enlarge the same, and thereby place water upon the lower proprietor to his damage, they are liable therefor, and upon conflicting evidence, the issue should be submitted to the jury. Armstrong v. Spruill, 182 N.C. 1, 108 S.E. 300 (1921).

Action Dismissed for Noncompliance with Statute Not Bar to Second Action. — When damages were sought in an action before a justice of the peace (now magistrate) relating to drainage districts, etc., and the action was dismissed because there had been no contract or agreement between the parties and the requirements of the statute had not been met, the plaintiff was not thereby barred from proceeding to have the damages assessed and from bringing another action therefor, as the former judgment did not bar the second one. Forehand v. Taylor, 155 N.C. 353, 71 S.E. 433 (1911).

Applied in Porter v. Durham, 98 N.C. 320, 3 S.E. 832 (1887).

Cited in Craft & Bergeson v. John L. Roper Lumber Co., 181 N.C. 29, 106 S.E. 138 (1921).

§ 156-16. Petition by servient owner against dominant owner.

Any person owning lands lying upon any creek, swamp, or other stream not navigable, which are subject to inundation and which cannot be conveniently drained or embanked on account of the volume of water flowing over the same from lands lying above, and by draining the same the lands above will be benefited and better drained, such person may by petition apply to the superior court of the county in which the lands sought to be drained or embanked, or some part of such lands, lie, setting forth the particular circumstances of the case, the valuation of the lands to be drained or embanked, and what other lands above would be benefited, and who are the proprietors of such lands; whereupon a summons shall be served upon each of the proprietors, who are not petitioners, requiring them to appear before the court at a time to be named in the summons, which shall not be less than 10 days from the service thereof, and upon such day the petition shall be heard and the court shall appoint three persons as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1889, c. 253; Rev., s. 4016; C.S., s. 5275.)

Local Modification. — Lenoir: 1891, c. 73; Rev., s. 4016.

CASE NOTES

Effect on § 156-3. — This section does not repeal G.S. 156-3, but leaves in operation such of its provisions as are not repugnant to it. Worthington v. Coward, 114 N.C. 289, 19 S.E. 154 (1894).

For case holding that the procedure under this and the following sections is analogous to the general drainage law, that the proceedings are regarded as being kept alive for further orders without being retained on the docket, and that in the case at issue the original assessment did not constitute a bar to the motion to vacate and the assessment was properly set aside on the facts found, see Spence v. Granger, 204 N.C. 247, 167 S.E. 805 (1933).

Judgment Not Set Aside. — In an action brought for the drainage of lands under this and the following sections, the judgment upon motion thereafter would not be set aside merely upon the ground that a similar proceeding had been prosecuted to judgment between several of the parties. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908).

§ 156-17. Commissioners to examine lands and make report.

The commissioners, or a majority of them, on a day of which each proprietor is to be notified at least five days, shall meet on the premises and view the land to be drained and the lands affected thereby, and shall determine and report whether the lands of the petitioner or petitioners ought to be drained exclusively by him or them, and if they are of the opinion that the same ought not to be drained exclusively at the expense of the petitioner or petitioners, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth and height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage of the petitioner's land, and the protection and benefit of the defendant's lands; and they shall apportion the labor to be done or assess the amount to be paid by each of the owners of the lands affected by such canal, ditch, or embankment, towards the construction and keeping the same in repair, and report the same to the court, which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors, administrators, heirs and assigns. (1889, c. 253, s. 2; Rev., s. 4017; C.S., s. 5276.)

Local Modification. — Beaufort, Lenoir: 1891, c. 73, s. 2; Rev., s. 4017; Pub. Loc. 1911, c. 545.

CASE NOTES

Cost of Work Not Required to Be Set Out in Report. — The cost of the work to be done in the drainage of lands is not required under this section, and cannot, for its uncertainty of amount, be set out in the report of the commissioners appointed. It is a compliance with the statutes when the portion of the work to be done by the landowners is set out. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908).

§ 156-18. Cost of repairs enforced by judgment.

Whenever any such ditch, canal, or embankment shall need repairs or cleaning out, and any of the parties interested therein refuse to perform the labor apportioned to them, or refuse to contribute the amount assessed against them, the same shall be enforced in the manner hereinbefore provided for the joint repair of canals and ditches. (1889, c. 253, s. 3; Rev., s. 4018; C.S., s. 5277.)

§ 156-19. Obstructing canal or ditch dug under agreement.

Where two or more persons have dug a canal or ditch along any natural drain or waterway under parol agreement, or otherwise, wherein all the parties shall have contributed to the digging thereof, if any servient or lower owner shall fill up or obstruct said canal or ditch without the consent of the higher owners and without providing other drainage for the higher lands, he shall be guilty of a Class 3 misdemeanor. (1899, c. 255; Rev., s. 3375; C.S., s. 5278; 1993, c. 539, s. 1070; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

This section applies only where all the parties contributed under a valid agreement to the lawful digging of a ditch or canal. Porter v. Armstrong, 129 N.C. 101, 39 S.E. 799 (1901).

§ 156-20. Right of dominant owner to repair.

In the absence of any agreement for maintaining the efficiency of such ditch or canal, or should the servient owner neglect or refuse to clean out or aid in cleaning out the same through his lands, it shall be lawful for the dominant or higher owner, after giving three days' notice to the servient owner, to enter along such canal and not more than 12 feet therefrom and clean out or remove obstructions or accumulated debris therefrom at his own personal expense or without cost to the servient owner. (1899, c. 255, s. 2; Rev., s. 4025; C.S., s. 5279.)

CASE NOTES

Where a person enlarges a canal on the lands of another, under a void proceeding, he is a trespasser, and cannot claim credit for money spent thereon. Porter v. Armstrong, 129 N.C. 101, 39 S.E. 799 (1901).

Cited in Elder v. Barnes, 219 N.C. 411, 14 S.E.2d 249 (1941).

§ 156-21. Canal maintained for seven years presumed a necessity; drainage assessments declared liens.

After a canal has been dug along any natural depression or waterway and maintained for seven years, it shall be prima facie evidence of its necessity, and upon application to the clerk of the superior court of any landowner who is interested in maintaining the same, it shall be the duty of the clerk of the superior court to appoint and cause to be summoned three disinterested and discreet freeholders, who, after being duly sworn, shall go upon the lands drained or intended to be drained by such canal, and after carefully examining the same and hearing such testimony as may be introduced touching the question of cost of canal, the amount paid, and the advantages and disadvantages to be shared by each of the parties to the action, shall make their report in writing to the clerk of the superior court stating the facts and apportioning the cost of maintaining such canal among the parties to the action, and the cost of the action shall be divided in the same ratio; and their report when approved shall be properly registered by the clerk and the said report or reports shall, when filed in the office of the clerk of the superior court, be a lien upon each tract of land embraced in said report or reports to the extent of the proportionate part of the costs stipulated in said report or reports as a charge against same, and shall have the effect and force of a judgment thereon, and such judgments shall be subject to execution and collection as in cases of other judgments. (1899, c. 255, s. 3; Rev., s. 4026; 1917, c. 248, s. 1; C.S., s. 5280; 1931, c. 227, s. 1.)

CASE NOTES

Section to Be Construed to Carry Out Its Purposes. — The provisions of this section are necessary for the cultivation and improvements of lowlands required to be drained, and should be construed to carry into effect its beneficent purposes, when practicable. Ange & Forest v. Atlantic C.L.R.R., 159 N.C. 547, 75 S.E. 796 (1912).

In Connection with Other Sections of this Chapter. — This section should be construed in connection with the other sections of the Chapter relating to the drainage of lowlands. Ange & Forest v. Atlantic C.L.R.R., 159 N.C. 547, 75 S.E. 796 (1912).

"Ditch" and "Canal" Used Interchangeably. — In the Chapter relating to the drainage of lowlands, the terms "ditch" and "canal" are used indiscriminately to designate an artificial drain. Ange & Forest v. Atlantic C.L.R.R., 159 N.C. 547, 75 S.E. 796 (1912).

Artificial Drain as "Canal." — An artificial drain in some places from 3 to 5 feet wide and from 2 to 5 feet deep, made for the purpose of cultivating and improving lowlands by draining them, is a "canal" within the meaning of this section. Ange & Forest v. Atlantic C.L.R.R., 159 N.C. 547, 75 S.E. 796 (1912).

Contribution to Original Construction Not Prerequisite to Liability for Maintenance. — It is not necessary that the owner of lands lying along a drainage canal, within the meaning of this section, shall have contributed to its original construction to make him liable to assessments for its maintenance under the provisions of the statute. Ange & Forest v. Atlantic C.L.R.R., 159 N.C. 547, 75 S.E. 796 (1912).

Liability of Railroad for Maintenance of Canal. — While a railroad company may not be the absolute owner of lands in fee, it has the proprietorship and control of those constituting its rights-of-way; and when such lands are benefited by a canal which comes within the meaning of this section, the provision of the statute relative to the maintenance of the canal applies. Ange & Forest v. Atlantic C.L.R.R., 159 N.C. 547, 75 S.E. 796 (1912).

Applied in Craft & Bergeson v. John L. Roper Lumber Co., 181 N.C. 29, 106 S.E. 138 (1921).

§ 156-22. Supplemental assessments to make up deficiency; vacancy appointments of assessment jurors.

The freeholders, commissioners or jurors, appointed in any application or proceeding filed or instituted under G.S. 156-21 or any other section of Article 1 of this Chapter, are authorized and empowered during the establishment of and providing for the construction, maintenance and payment therefor, of such ditch, canal or drain, to make other and further assessments for the costs of establishment, construction and expense, when it shall be determined by the clerk of the court that the provisions in the former report for the payment thereof are insufficient, and that such supplementary reports shall be made on the same basis of an equitable and just proportion, as made in the former report, which report or reports shall be filed with the clerk of the superior court and have the same force and effect as the former or original report.

In case of death, resignation, removal or for any other cause there becomes a vacancy as to the freeholders, commissioners or jurors, appointed to carry out the provisions of the sections contained in this Chapter, the clerk of the superior court is authorized to fill such vacancy by the appointment of some disinterested freeholder in the county, and the said person so appointed to fill such vacancy shall qualify before the clerk of the superior court before entering upon his duties. (1931, c. 227, s. 2.)

Local Modification. — Duplin: 1931, c. 227, s. 2.

CASE NOTES

Right of Interested Parties to Notice and Hearing. — Where drainage assessments are levied against lands under this and related sections, either original assessments or additional assessments to cover unforeseen expenses in the construction of the drainage ditch, the parties whose lands are assessed are entitled to notice and an opportunity to be heard. Spence v. Granger, 207 N.C. 19, 175 S.E. 824 (1934).

§ 156-23. Easement of drainage surrendered.

If any persons, or those claiming through or under them, who have cut any ditch or canal into which any other person has been permitted to drain land under any proceeding authorized in this Subchapter, shall desire to surrender their easement or right in such ditch or canal and be discharged from any judgment rendered and existing under such proceedings, such persons may on motion have such proceeding reinstated for hearing and file a petition therein setting forth such fact or any other grounds for relief thereunder, and upon proof satisfactory to the court that such petitioners have cut another ditch or canal which drains their lands formerly drained by the first ditch or canal, and have abandoned the use of it for any purpose of drainage, the court shall adjudge the easement or right of the petitioners surrendered and determined, and from that time the petitioners and their land shall forever be discharged and released from the judgment heretofore rendered in such former proceedings: Provided, however, that all parties then having an easement or right in such ditch or canal shall be served with notice of such petition 20 days before the hearing thereof. (1887, c. 222, s. 3; Rev., s. 4027; C.S., s. 5281.)

§ 156-24. Obstructing drain cut by consent.

If any person shall stop or in any way obstruct the passage of the water in any ditch or canal having been cut through lands of any person by consent of the owner of said land, before giving the interested parties a reasonable time to comply with the mode of proceedings provided for the drainage of lowlands, he shall be guilty of a Class 3 misdemeanor. (1891, c. 434; Rev., s. 3376; C.S., s. 5282; 1993, c. 539, s. 1071; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 156-25. Protection of canals, ditches, and natural drains.

If any person shall fell any tree in any ditch, canal, or natural drainway of any farm, unless he shall remove the same and put such ditch, canal, or natural drainway in as good condition as it was before such tree was so felled; or if any person shall stop up or fill in such ditch, canal, or drainway and thereby obstruct the free passage of water along the said ditch, canal, or drainway, unless the said person shall first secure the written consent of the landowner, and those damaged by such obstruction in said ditch, canal, or drainway, or unless such person so filling in and stopping up such ditch, canal, or drainway shall, upon the demand of the person so damaged, clean out and put the said ditch, canal, or drainway in as good condition as the same was before such filling in and stopping up of the said ditch, canal, or drainway happened, he shall be guilty of a Class 3 misdemeanor. (1901, c. 478; Rev., s. 3382; C.S., s. 5283; 1993, c. 539, s. 1072; 1994, Ex. Sess., c. 24, s. 14(c).)

Part 2. Petition under Agreement for Construction.

§ 156-26. Procedure upon agreement.

(a) Agreement; Names Filed. — Whenever a majority of the landowners or the persons owning three fifths of all the lands in any well-defined swamp or lowlands shall, by a written agreement, agree to give a part of the land situated in such swamp or lowlands as compensation to any person, firm, or corporation who may propose to cut or dig any main drainway through such swamp or lowlands, or shall, by written agreement, contract with any person, firm or corporation to cut or dig any main drainway through such swamp or lowlands, then the person, firm, or corporation so proposing to cut or dig such main drainway shall file with the clerk of the superior court of the county, or, if there be two or more counties, with the clerk of the superior court of either county in or through which the proposed canal or drainway is to pass, the names of the landowners, with the approximate number of acres owned by each to be affected by the proposed drainway who have entered into the written agreement with the person, firm, or corporation, together with a brief outline of the proposed improvement, and in addition thereto shall file with the clerk the names and addresses, as far as can be ascertained, of the landowners, with the number of acres owned by each of them to be affected by the proposed drainway, who have not made any agreement with the person, firm, or corporation proposing to do the improvement.

(b) Notice. — Upon the filing of such names, it shall be the duty of the clerk to forthwith issue a notice which shall be served by the sheriff to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than 10 and not more than 20 days from the service of such notice, or, in lieu of the personal service hereinabove required, it shall be sufficient for the clerk to publish in a newspaper published in the county once a week for four weeks a notice to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than 30 days and not more than 40 days from the first publication of notice, at which time and place the landowners shall state their objections to the proposed improvement, and in addition thereto make an estimate of the amount of damage that might be done to the land owned by each of them on account of the proposed drainway.

(c) Hearing; Viewers. — Upon the hearing it shall be the duty of the clerk of the superior court to forthwith appoint three disinterested persons, none of whom shall own land to be affected by such drainway, if requested by the person, firm, or corporation proposing to do the improvement, whose duty it shall be to familiarize themselves with the proposed improvement, view the premises of the landowners, estimating damages, and make an estimate themselves of the amount of damages that might accrue to the lands of each landowner filing objections on account of the proposed improvement, and report the same to the clerk of the superior court within 15 days from the date of their appointment.

(d) Report; Bond. — Immediately upon the filing of the reports the clerk of the superior court shall forthwith notify the person, firm, or corporation proposing to dig the drainway or canal of the estimated damages contained in the reports, and the person, firm, or corporation shall execute and deliver a bond in a surety company authorized to do business in the State of North Carolina in twice the sum total of the estimated amount of damages, which bond shall be payable to the clerk of the superior court and conditioned upon the payment to the landowners of the amount of damages that may be assessed in the manner hereinafter provided.

(e) Construction Authorized. — Upon the execution and delivery to the clerk of the said bond, the person, firm, or corporation so proposing to cut or dig such main drainway shall be and they are hereby authorized to proceed with the cutting or digging of the drainway through any lands in its proposed course, whether the owners of the land may have consented thereto or not, and the person, firm, or corporation so proposing to cut or dig the drainway shall have the proper and necessary right-of-way for that purpose and for all things incident thereto through any lands or timbers situated in such swamp or lowlands. (1917, c. 273, s. 1; C.S., s. 5284; 1969, c. 1046.)

Editor's Note. — The provisions of this and the following sections under this Article supplant those of Session Laws 1915, Chapter 141. Session Laws 1915, Chapter 141 was held unconstitutional and void in Lang v. Carolina Land & Dev. Co., 169 N.C. 662, 86 S.E. 599 (1915), as a taking of private property without providing for just compensation to the private owners of lands whose consent had not been given.

CASE NOTES

Withdrawal of Petitioners. — Upon the return day set by the clerk of the court for the hearing of the landowners in a proposed drainage district, it may be shown by those opposed to the petition that some of those who signed the petition desired to withdraw, and that after eliminating their names the petitioners would not represent a majority of the landowners in the district, or of persons owning three fifths of the lands, as the statute requires. Armstrong v. Beaman, 181 N.C. 11, 105 S.E. 879 (1921).

OPINIONS OF ATTORNEY GENERAL

As to exemption of housing authority from fees, see opinion of Attorney General to the Honorable F. Crane, Commissioner of Labor, 41 N.C.A.G. 303 (1971).

§ 156-27. Recovery for benefits; payment of damages.

After the drainway herein provided for shall be completed the person, firm, or corporation cutting or digging the same shall be entitled to recover of the landowners owning that part of the land with reference to which no contract for compensating those cutting or digging the drainway may have been made, an amount equal to the benefits to accrue to such lands by reason of the drainway, and shall be required by the clerk of the superior court to pay to any landowner the amount of damages in excess of benefits which may be done to the land to be determined in the manner hereinafter provided: Provided, that the recovery from any owner of the land shall be limited to the benefits to accrue to that land owned by such person, and situated in such swamp or lowlands or adjacent thereto; and provided further, that the amount to be so recovered as herein provided for until fully paid shall be and constitute a lien upon such land, the lien to be in force regardless of who may own the land at the time the amount to be recovered as compensation for digging or cutting the drainway shall be determined. (1917, c. 273, s. 2; C.S., s. 5285.)

§ 156-28. Notice to landowners; assessments made by viewers.

After the completion of the main drainway, upon the application of the person, firm, or corporation, or their heirs or assigns, digging or cutting the same, the clerk of the superior court of the county in which any land through which the drainway may pass is situated shall issue a notice to be served by the sheriff upon any person who may have failed to agree with the person, firm, or corporation digging or cutting such drainway, upon a compensation to be paid by the landowner for the digging or cutting of such drainway, notifying the landowner that on a certain day, which shall be named in the notice and not less than 20 days from the date of the issuing of the notice, the clerk of the superior court will appoint three competent and disinterested persons, one of whom may be a surveyor, and none of whom shall own land to be affected by the drainway, to view the land so drained and for which no compensation for the drainage may have been agreed upon as aforesaid, and report to the clerk of the superior court what amount shall be paid therefor by the various landowners who may have failed to arrange for and agree upon the compensation for the drainage as aforesaid, and the amount of damages in cases where the damages have exceeded the benefits, which shall be paid to the landowners by the person, firm, or corporation cutting or digging such canal or drainway.

In making the appointment of the viewers the clerk of the superior court shall hear any objections which may be advanced by those interested to any of the persons the clerk may consider to be appointed as viewers, but the clerk shall name those whom he considers best qualified. (1917, c. 273, s. 3; C.S., s. 5286.)

§ 156-29. Report filed; appeal and jury trial.

A report signed by two of the persons appointed as viewers shall be entered by the clerk as the report of the viewers. Any landowner affected by the report, and the person, firm, or corporation digging or cutting the drainway, has the right of appeal and the right to have any issue arising upon the report tried by a jury, provided exceptions shall be filed to the report within 20 days after the filing of the report with the clerk, in which exceptions so filed may be a demand for a jury trial. If a jury trial is demanded, the clerk shall transfer the proceedings to the civil-issue docket, and it shall be heard as other civil actions. If no jury trial is demanded, the clerk shall hear the parties upon the exceptions filed, and appeal may be had as in special proceedings except as modified by this section, but no jury trial may be had unless demanded as provided in this section. (1917, c. 273, s. 4; C.S., s. 5287; 1999-216, s. 17.)

Cross References. — As to appeal in special proceedings, see G.S. 1-272 through 1-276 [see now G.S. 1-301.1 et seq.].

CASE NOTES

Jurisdiction of Superior Court. — The superior court, upon certification of the opinion of the Supreme Court, has jurisdiction to retain the cause for hearing upon the appeal from the clerk's order, this section providing that appeals from the clerk in drainage assessment proceedings shall be the same as in special proceedings, and G.S. 1-276 [see now G.S. 1-301.1 et seq.] giving the superior court jurisdiction to hear and determine all matters in controversy upon appeal from the clerk in special proceedings. Spence v. Granger, 207 N.C. 19, 175 S.E. 824 (1934). See also, Flat Swamp, Lock's Creek & Evan's Creek Canal Co. v. McAlister, 74 N.C. 159 (1876).

§ 156-30. Confirmation of report.

Unless an appeal is taken, the clerk of superior court shall confirm the report of the viewers. If exceptions are filed and no jury trial is demanded, the clerk shall hear the exceptions and enter judgment as in other special proceedings. If the report is confirmed by the clerk because no exceptions or demand for a jury trial is filed, the judgment of confirmation is the judgment of the court. Any judgment entered against the person, firm, or corporation cutting or digging the drainway is a judgment against the person, firm, or corporation and against the surety on the bond required by G.S. 156-26. (1917, c. 273, s. 5; C.S., s. 5288; 1999-216, s. 18.)

§ 156-31. Payment in installments.

The amount to be recovered from any person as compensation for digging or cutting the drainway after the amount shall be definitely determined as herein provided for, shall be payable in five equal annual installments, the first payable one year from the filing of the report of the viewers with the clerk of the superior court, and one payment on the same day of each year thereafter until the full amount be paid. The amount to be recovered from the person, firm, or corporation cutting or digging the drainway, on account of any damages in excess of benefits to the lands of any landowner, shall be payable in one installment which shall be due and payable one year from the filing of the report of the viewers with the clerk of the superior court. (1917, c. 273, s. 6; C. S., s. 5289.)

ARTICLE 2.

Jurisdiction in County Commissioners.

§ 156-32. Petition filed; board appointed; refusal to serve misdemeanor.

Upon the petition of three citizens in any county to the county commissioners, petitioning for the draining of any creek, swamp, or branch, either upon the plea of health or to promote and advance the agricultural interest of the farmers who may own lands lying on such creek, swamp, or branch petitioned to be drained, the county commissioners shall within 10 days after the filing of such petition order the county surveyor to summon three disinterested freeholders, good and lawful men of intelligence and discretion, who shall constitute a board, and the county surveyor shall be the chairman of such board; and the chairman shall give all persons who may be interested in having such creek, swamp, or branch drained three days' notice of the time and place of the meeting of the board: Provided, the petitioners shall deposit with the county treasurer the sum of twenty-five dollars ($25.00) for the payment of current expenses not otherwise provided for in this Article. Any person duly summoned by the county surveyor to act as a commissioner for the drainage of any such creek, swamp, or branch, who shall refuse to serve, shall be guilty of a Class 3 misdemeanor. (1887, c. 267; Rev., ss. 3379, 4011; C.S., s. 5290; 1993, c. 539, s. 1073; 1994, Ex. Sess., c. 24, s. 14(c).)

Local Modification. — Hyde: 1901, c. 166.

§ 156-33. Duty of board; refusal to comply with their requirements misdemeanor.

The board provided for in G.S. 156-32 shall meet at the call of the chairman and shall proceed to inspect and examine the lands as described in the petition to be drained, and the board shall have power to summon witnesses, administer oaths, and take testimony, and if the board decides that the lands specified in the petition shall be drained, either upon the plea of health or for the benefit of the farms lying on or contiguous to such watercourse, then the board shall select a place at which the ditch shall be begun. They shall also decide the depth and width of the ditch to be dug, and shall proceed to survey, locate, lay off, and mark the course of the ditch, and the board shall assign to the landowners the amount of the labor to be performed and the amount of money to be paid for the purpose of defraying the necessary expenses by each landowner in proportion to the amount of lands drained or pro rata benefits received by the drainage of such lands, and the board shall specify the time in which the work so assigned shall be completed: Provided, no one shall be required to commence on the work assigned to him until the person next below him shall have completed his work in accordance with the specifications of the board. If any person shall refuse to comply with any of the requirements of the board he shall be guilty of a Class 1 misdemeanor. (1887, c. 267, ss. 2, 7; Rev., ss. 3377, 4012; C.S., s. 5291; 1993, c. 539, s. 1074; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 156-34. Report filed.

The board shall make a written report to the county commissioners showing all the acts and decisions of the board as to the length, depth, and width of the ditch, the names of all the owners of the lands that will be drained, and the amount of work to be performed and the amount of money to be paid by each person benefited by such drainage. But in case the board determines that the lands described in the petition shall not be drained, then the expenses of the board shall be paid out of the funds deposited with the county treasurer by the petitioners. (1887, c. 267, s. 3; Rev., s. 4013; C.S., s. 5292.)

§ 156-35. Owners to keep ditch open.

All persons whose lands shall be drained under the provisions of this Article shall keep the ditch on their lands clear of all rafts of logs, brush, or any trash that will obstruct the flow of water through the ditch. (1887, c. 267, s. 4; Rev., s. 4014; C.S., s. 5293.)

§ 156-36. Compensation of board.

The compensation of the board shall be as follows: The county surveyor shall receive three dollars ($3.00) per day and the other members shall receive one dollar and fifty cents ($1.50) per day while engaged in the duties imposed in this Chapter. (1887, c. 267, s. 5; Rev., s. 4015; C.S., s. 5294.)

SUBCHAPTER II. DRAINAGE BY CORPORATION.

Article 3.

Manner of Organization.

§ 156-37. Petition filed in superior court.

Any proprietor in fee of swamplands, which cannot be drained except by cutting a canal through the lands of another or other proprietor in fee, situated at a lower level and which would also be materially benefited by the cutting of such canal, who desires that such canal be cut on the terms on which it is hereinafter allowed, may apply by petition, setting forth the facts, to the superior court of the county in which any of the lands through which the canal will pass may lie. (1868-9, c. 164, s. 2; Code, s. 1311; Rev., s. 3996; C.S., s. 5295.)

CASE NOTES

Evidence Held Insufficient to Show Establishment of Drainage Corporation. — Where petitioners showed only the granting of an easement in response to a petition by an individual to be allowed to drain into an existing canal on the lands of another under the provisions of G.S. 156-2, 156-3 and 156-10, such evidence was insufficient to show the establishment of a drainage corporation under this section. In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

Burden of Proof Where Drainage Assessment Challenged. — When the validity of a drainage assessment is challenged, the burden is upon the drainage district or corporation to show that it was created in substantial compliance with the applicable statutes and that the assessments were levied pursuant to and in compliance with the statutory provisions. In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

Cited in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-38. Commissioners appointed; report required.

On the establishment by the petitioner of his allegations, the court shall appoint three persons as commissioners who, having been duly sworn, shall examine the premises and inquire and report:

(1) Whether the lands of the petitioner can be conveniently drained otherwise than through those of some other person.

(2) Through the lands of what other persons a canal to drain the lands of the petitioner would properly pass, considering the interests of all concerned.

(3) A description of the several pieces of lands through which the canal would pass, and the present values of such portions of the pieces of lands as would be benefited by it, and the reasons for arriving at the conclusion as to the benefit.

(4) The route and plan of the canal, including its breadth, depth, and slope, as nearly as they can be calculated, with all other particulars necessary for calculating its cost.

(5) The probable cost of the canal and of a road on its bank, and of such other work, if any, as may be necessary for its profitable use.

(6) The proportion of the benefit (after a deduction of all damages) which each proprietor would receive by the proposed canal and a road on its bank if deemed necessary and in which each ought, in equity and justice, to pay toward their construction and permanent support.

(7) With their report they shall return a map explaining, as accurately as may be, the various matters required to be stated in their report. (1868-9, c. 164, s. 3; Code, s. 1312; Rev., s. 3997; C.S., s. 5296.)

CASE NOTES

Constitutionality of Assessments. — An assessment made under the provisions of this Subchapter is constitutional and valid. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

Collateral Attack on Assessment. — In an action to enforce payment of an assessment, when the assessment does not appear to be void on its face, it may not be collaterally attacked by defendant landowner. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

Confirmation of Report as to Those Not Objecting. — Report of the commissioners, assessing persons for benefits accruing to their lands from the operations of plaintiff canal company, should have been confirmed by the court as to those defendants who did not object; but as to those who did object, the court should have proceeded to try the issues involved in the controversy. Lock's Creek Canal Co. v. McKeithan, 89 N.C. 52 (1883).

Right of Landowners to Notice. — Landowners whose interests might be affected under proceedings under the provisions of this Chapter are entitled to notice. Gamble v. McCrady, 75 N.C. 509 (1876).

Notice Held Sufficient. — It was immaterial whether or not landowner had notice of a meeting at which a committee was appointed to assess the lands in the district and determine the amount of each assessment, when the assessment was accordingly made, and was duly ratified and confirmed at a subsequent meeting regularly called and held in accordance with the statute, of which he had notice. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

Cited in In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

§ 156-39. Surveyor employed.

The commissioner may employ a surveyor to prepare the map required to accompany their report. (1868-9, c. 164, s. 4; Code, s. 1313; Rev., s. 3998; C.S., s. 5297.)

§ 156-40. Confirmation of report.

If it appear that the lands on the lower level will be increased in value twenty-five percent (25%) or upwards by the proposed improvement, within one year after the completion thereof, and that the cost of making such improvement will not exceed three fourths of the present estimated value of the land to be benefited, and that the proprietors of at least one half in value of the land to be affected consent to the improvement, the court may confirm such report, either in full or with such modifications therein as shall be just and equitable. (1868-9, c. 164, s. 5; Code, s. 1314; Rev., s. 3999; C.S., s. 5298.)

CASE NOTES

Prerequisites to Establishment of Drainage Corporation. — In order to establish a drainage corporation, it is necessary that a petition in conformity with G.S. 156-37 be filed, that commissioners be appointed and that they file a report in conformity with G.S. 156-38, and that there be an adjudication and confirmation of the report. It is only after such confirmation that the corporation may be declared to exist and may proceed to organize and levy assessments. In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

§ 156-41. Proprietors become a corporation.

Upon a final adjudication, confirming the report, the proprietors of the several pieces of land adjudged to be benefited by the improvement shall be declared a corporation, of which the capital stock shall be double the estimated cost of the improvements, and in which the several owners of the land adjudged to be benefited shall be corporators, holding shares of stock in the proportions in which they are adjudged liable for the expense of making and keeping up the improvement. (1868-9, c. 164, s. 6; Code, s. 1315; Rev., s. 4000; C.S., s. 5299.)

CASE NOTES

Cited in In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

§ 156-42. Organization; corporate name, officers and powers.

The clerk of the court of the county in which the proceeding is pending or any corporator, who is a petitioner, may call a meeting of the corporators, at which meeting the corporators shall choose a name for the corporation, unless the commissioners selected the name, elect a president, vice-president, secretary and treasurer, but said officers shall be chosen or elected from the corporators who are petitioners in the proceeding; and they shall also choose or elect a board of directors and they shall be chosen or elected from the corporators who are petitioners in the proceeding. The corporators shall also make all bylaws and regulations, not contrary to law, which may be necessary and proper for effecting the purpose of the corporation, but said duty may be delegated to the board of directors. They shall fix the number of shares of stock, and assign to each proprietor or corporator his proper number, but this duty and right may be delegated to and done by the board of directors. The board of directors shall have such powers as are generally given to directors under the corporation law of the State; and they shall assess the sums or amount which shall be paid by each proprietor or corporator in conformity with and in compliance with the report of the commissioners on which the corporation is based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which such proceeding was instituted, the same shall be passed upon by the clerk of court and when approved by the clerk, said assessments shall become judgments against the several proprietors, corporators and owners so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also have power, if they deem it proper, to fix and prescribe the time, mode and manner of payment; and do such other things as are necessary for the construction, enlargement and keeping up or maintaining said canal and improvement. In every meeting of the corporators or stockholders, each proprietor or corporator shall have one vote for each share of stock owned by him. (1868-9, c. 164, s. 7; Code, s. 1316; Rev., s. 4001; C.S., s. 5300; 1939, c. 180, s. 1.)

CASE NOTES

Cited in In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949); In re Atkinson-Clark Canal Co., 234 N.C. 374, 67 S.E.2d 276 (1951).

§ 156-43. Incorporation of canal already constructed; commissioners; reports.

Whenever the proprietors of any canal already cut shall desire to become incorporated, any number of the proprietors, not less than one third in number, may file their petition before the clerk of the superior court of the county in which the canal is located, or in either county, where the canal may be located in more than one county, setting forth the names of the proprietors, the length and size of the canal, the names of the owners of land draining in such canal, and the quantity of land tributary thereto. And upon filing the petition, summons shall issue to all parties having an easement in the canal, returnable as in other special proceedings; upon the return thereof, or upon a day fixed by the clerk for hearing same, all owners of the canal may become corporators therein, and upon failure of any to avail themselves of that right, they shall not be entitled to become corporators, except under such bylaws and regulations as such corporation shall make and declare. But those who fail to avail themselves of the benefit of this Subchapter shall not be deprived of their easement in the canal, but shall enjoy the same upon payment to the corporation of the assessment made upon them pro rata with the corporators; such assessment shall be made on the land tributary to the canal and apportioned pro rata to each owner thereof; it shall be made by the corporation on 10 days' notice to each owner of the land, under such rules and regulations as the bylaws may prescribe; but any person dissatisfied therewith shall have the right to appeal to a jury at the regular term of the superior court of the county, and the amount of damages assessed shall be a first lien on the land of the owner against whom judgment shall be rendered.

Upon the return date of the summons or on the hearing by the clerk as provided in this section, the clerk of the court may appoint three persons as commissioners, who having been duly sworn shall examine the premises and inquire and report:

(1) The route and plan of the canal, including the breadth, depth and slope as nearly as they can be calculated, with all other particulars necessary for calculating the cost of enlarging and improving said canal.

(2) The probable cost of the improvement and enlargement of said canal.

(3) The proportion which each proprietor or corporator ought in equity and justice to pay toward the enlargement, improvement and permanent support and upkeep of said canal.

(4) With their report they shall return a map explaining as accurately as may be, the various matters required and necessary in aid or explanation of their report.

(5) The said report shall be heard and determined as other reports in special proceedings, and if approved by the clerk, such proprietors shall become a body corporate or a corporation.

(6) A meeting of the corporators may be called by the clerk of court or by any corporator or proprietor who is a petitioner in the proceeding, and at such meeting a president, vice-president, secretary and treasurer shall be elected from the proprietors or corporators who are petitioners; and also a board of directors shall be elected from the proprietors or corporators who are petitioners in the proceeding.

(7) The board of directors shall assess the sum or amount which shall be paid by each proprietor or corporator in conformity and compliance with the report of the commissioners on which the corporation was based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which said proceeding was pending and instituted, the same shall be passed upon by the clerk of court, and when approved by the clerk, said assessments shall become judgments against the several proprietors or corporators so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also, if they deem it proper, fix and prescribe the time, manner and mode of payment. (1889, c. 380; 1901, c. 670; Rev., s. 4008; C.S., s. 5301; 1939, c. 180, s. 2.)

CASE NOTES

Statutory provisions determine the property liable to drainage assessment. Hence, to constitute a valid assessment the particular land against which it is levied must come within the meaning of this section. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

Assessment to Be Levied Only on Property Benefited. — The general rule is well settled that a special assessment for the purpose of drainage can be levied only upon property benefited by the improvement. It is said that the legal theory underlying drainage assessments is one of benefit increasing the value of the land and justifying its assessment. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

Relief Where Tract Not Benefited by Inclusion in District. — Where it clearly appears that a canal will neither drain a particular tract of land nor render it more accessible, there is no valid reason for including it in the district, and if it is nevertheless arbitrarily made a part thereof, the owner may obtain relief. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

Meaning of "Land Tributary to the Canal". — As used in this section, the phrases "land tributary thereto" and "land tributary to the canal" mean land from which water drains or flows into the canal. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

Burden of Proof on Appeal. — This section gives to any person dissatisfied with an assessment the right to appeal to a jury at a regular term of the superior court of the county. In such event, it would seem that the authority undertaking to establish the assessment would still have the burden of proving the provisions of the statute essential to the creation of a valid assessment. It may be that the order of the clerk of the superior court approving and confirming the assessment as proposed by the commissioners and the board of directors of the corporation creates a prima facie case. But a prima facie case, or prima facie evidence, does not change the burden of proof. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

In order to constitute a valid drainage assessment, it is necessary that the land assessed drain or flow into the canal, and therefore on appeal to the superior court on a landowner's exceptions to the order of the clerk confirming assessments as proposed by the commissioners, the drainage district has the burden of proving the number of acres of land owned by the exceptor which drain into the canal, and what amount said land should be assessed per acre. The fact that the exceptor first introduced evidence, presumably on the theory that the order of the clerk made out a prima facie case, does not alter the rule as to the burden of proof. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

Finality of Judgment of Clerk of Superior Court. — A judgment entered by a clerk of the superior court in a special proceeding under this section will stand as a judgment of the court, if not excepted to and reversed or modified on appeal, as allowed by law. In re Atkinson-Clark Canal Co., 234 N.C. 374, 67 S.E.2d 276 (1951).

Where the clerk's decision was erroneous, and the petitioner undertook to appeal therefrom, but the appeal was dismissed in the superior court, and notice of appeal was given to the Supreme Court, but the appeal was not perfected, the judgment of the clerk of the superior court was as final and effective as if no appeal therefrom had been attempted. In re Atkinson-Clark Canal Co., 234 N.C. 374, 67 S.E.2d 276 (1951).

In an action to compel corporate defendant to purchase property from plaintiffs in accordance with purchase contract, where defendant alleged that a judgment creating a canal corporation created a lien on the subject property which constituted an encumbrance unsatisfactory to it and rendered plaintiffs' title unmarketable, the trial court erred in directing a verdict in defendant's favor on this ground, since the judgment creating a canal corporation was not entered into evidence at trial; there was no indication in the record on appeal that the trial court took judicial notice of the judgment; a copy of the judgment was not included in the record on appeal; and there was thus no evidence of a canal constituting an encumbrance on the subject property. Waters v. North Carolina Phosphate Corp., 50 N.C. App. 252, 273 S.E.2d 517, cert. denied, 302 N.C. 402, 279 S.E.2d 357 (1981).

ARTICLE 4.

Rights and Liabilities in the Corporation.

§ 156-44. Shares of stock annexed to land.

The ownership of the shares of stock is indissolubly annexed to the ownership of the pieces of land adjudged to be benefited by the improvement; and such shares, or a part thereof proportionate to the area of such land that may descend or be conveyed for any longer time than three years, shall, upon such descent or conveyance, descend and pass with the land, even although such shares be not mentioned in the deed of conveyance, and although their transfer be forbidden by such deed so that every owner of such land in possession, except a tenant for a term of years, not exceeding three, and every owner in reversion or remainder after a term not exceeding three years, shall, during his ownership, be entitled to all the rights and privileges and be subject to all the obligations and burdens of a corporator. Every attempted sale of shares otherwise than as annexed to the land shall be void. (1868-9, c. 164, s. 8; Code, s. 1317; Rev., s. 4002; C.S., s. 5302.)

CASE NOTES

Cited in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-45. Shareholders to pay assessments.

Every corporator shall be bound to obey the lawful bylaws of the company, and pay all dues lawfully assessed on him: Provided, he shall in no case pay more than his proportion of the expenses as fixed by this Subchapter; and such dues may be collected in the corporate name in any court having jurisdiction; and every assessment duly docketed in the county where the land to be affected lies shall be a lien on the lands of the debtor which are connected with the corporation from the date of such docketing. (1868-9, c. 164, s. 9; Code, s. 1318; Rev., s. 4003; C.S., s. 5303.)

Cross References. — As to collection of assessments out of other property of delinquent, see G.S. 156-106.

CASE NOTES

An assessment made upon landowners constitutes a lien upon the lands therein and is enforceable by proceedings in rem in a court having equitable jurisdiction. Personal judgment against the defendant may not be had, as in actions arising ex contractu. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916); Long Creek Drainage Dist. v. Huffstetler, 173 N.C. 523, 92 S.E. 368 (1917).

Which Is Enforceable by Execution. — Assessments made in accordance with the statute become liens on the lands when properly certified by the officers of the corporation and docketed in the office of the superior court of the proper county; and executions may issue directing that such lands be sold to pay the assessments and the costs. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

A justice of the peace (now magistrate) had no jurisdiction over actions to enforce payment of such assessments, and such actions would be dismissed upon motion to nonsuit when brought in a justice's court. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916); Long Creek Drainage Dist. v. Huffstetler, 173 N.C. 523, 92 S.E. 368 (1917).

Review of Assessments by Certiorari. — The courts will review by writ of certiorari the action of the drainage corporation in making illegal assessments and enjoin such assessments as are absolutely void upon their face. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

An assessment that does not appear to be void on its face cannot be attacked collaterally. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

§ 156-46. Payment of dues entitles to use of canal.

Every corporator paying his dues legally assessed without regard to the number of his shares, shall be entitled to the full and free use of the canal for drainage and navigation, and of the road for passage and transportation. Bylaws may be made to regulate these rights, but not so as to produce an inequality. (1868-9, c. 164, s. 10; Code, s. 1319; Rev., s. 4004; C.S., s. 5304.)

§ 156-47. Rights of infant owners protected.

If any proprietor whose lands are adjudged to be benefited by a canal shall be an infant, no process shall be issued against him during his minority, or within 12 months thereafter, to enforce payments of any assessment, and he may, at any time within such 12 months, apply to have any order, judgment, or decree made against him set aside as to him. If the infant or his guardian shall, during his minority, and the 12 months next thereafter, pay the dues assessed on him, he shall have all the rights and privileges of corporator, to be exercised through his guardian. If the infant shall fail to pay, he shall not have any such rights, but if no action to set aside the judgment of the court creating the corporation shall have been brought by him as aforesaid, or upon the decision of such action against him, he shall be entitled to receive his proper share of stock and to possess all the rights and be bound by all the liabilities of a corporator, including a liability for assessments made during his minority, but not for interest on such, nor for any penalty for their prior nonpayment. (1868-9, c. 164, s. 11; Code, s. 1320; Rev., s. 4005; C.S., s. 5305.)

§ 156-48. Compensation for damage to lands.

If any proprietor of lands shall be damaged by any improvement proposed, the commissioners shall so report, and he shall be entitled to be compensated as may be just by the proprietor whose lands are benefited in proportion to the benefit to them respectively; but in estimating such damages the benefit shall be deducted, and such proprietor shall be entitled to all the rights and privileges of a corporator as respects the use of the improvement, but shall not be entitled to a vote, or be bound for the assessment. (1868-9, c. 164, s. 12; Code, s. 1321; Rev., s. 4006; C.S., s. 5306.)

§ 156-49. Dissolution of corporation.

If, from any cause, the canal or other improvement shall become or shall prove to be valueless, any corporator may apply as is provided in other cases of special proceedings, and the court may dissolve the corporation created in connection with it. (1868-9, c. 164, s. 13; Code, s. 1322; Rev., s. 4007; C.S., s. 5307.)

§ 156-50. Laborer's lien for work on canal.

Whenever work or repair shall be done on such canal and any of the parties owning lands liable to be assessed for such work or repairs shall fail or refuse to pay the amount assessed upon their land, then and in that event the laborers performing such work shall have a lien upon such land to the extent of the amount assessed against the same by the corporation, and such lien may be enforced in the same manner as provided by the laws of this State for the enforcement of laborers' lien. (1899, c. 600, s. 2; Rev., s. 4009; C.S., s. 5308.)

§ 156-51. Penalty for nonpayment of assessments.

Whenever any person whose lands have been adjudged liable to contribute to the maintenance or repair of such canal shall fail or refuse to pay the amount assessed against his land for such maintenance or repair for 30 days after such payment has been demanded by the company, then the company may give such person notice in writing of its intention to cut off his right of drainage into the canal, and if such person shall still neglect and refuse to pay such assessment for 30 days after such notice, then the company may proceed to so obstruct and dam up the ditches of such delinquent as will effectually prevent his draining in the canal. (1899, c. 600, s. 3; Rev., s. 4010; C.S., s. 5309.)

CASE NOTES

Applicability of Section. — The provisions of this section providing for a penalty for nonpayment of assessments relate only to the remedy available where incorporators fail and refuse to pay assessments duly levied. Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

In a proceeding by drainage corporations to have lands of respondents assessed for improvements, upon allegations that respondents were not members of the corporation but that nevertheless their lands drained into the canals and would be materially benefited by the improvements, it was held that respondents' contention that the sole remedy of petitioners was under the provisions of this section to construct dams to prevent water from draining from respondents' lands into the canals was untenable, since the provisions of this section were inapplicable to such proceeding, being applicable solely as a remedy where incorporators fail and refuse to pay assessments duly levied. Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

Cited in Sawyer Canal Co. v. Keys, 234 N.C. 360, 67 S.E.2d 259 (1951).

§ 156-52. Corporation authorized to issue bonds.

The corporations organized under this Subchapter are authorized to issue bonds to such an amount and in such denomination as they may elect, payable at such times as may be provided, and to sell the same at not less than par, the proceeds of the sale of such bonds to be used for the payment of the costs of survey and construction and maintenance of the canal. The bonds shall constitute a lien upon the lands drained or improved by the canal as described in the reports of the commissioners. (1908, c. 75, s. 1; C.S., s. 5310.)

§ 156-53. Payment of bonds enforced.

Upon default of the payment of the interest or principal of such bonds, the holders of the bonds of the corporations organized under this Subchapter shall have a right to enforce the lien created by G.S. 156-52 by civil actions in the superior courts of the State. (1908, c. 75, s. 2; C.S., s. 5311.)

SUBCHAPTER III. DRAINAGE DISTRICTS.

Article 5.

Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.

The clerk of the superior court of any county in the State of North Carolina shall have jurisdiction, power and authority to establish levee or drainage districts either wholly or partly located in his county, and which shall constitute a political subdivision of the State, and to locate and establish levees, drains or canals, and cause to be constructed, straightened, widened or deepened, any ditch, drain or watercourse, and to build levees or embankments and erect tidal gates and pumping plants for the purpose of draining and reclaiming wet, swamp or overflowed land; and it is hereby declared that the drainage of swamplands and the drainage of surface water from agricultural lands and the reclamation of tidal marshes shall be considered a public use and benefit and conducive to the public health, convenience and welfare, and that the districts heretofore and hereafter created under the law shall be and constitute political subdivisions of the State, with authority to provide by law to levy taxes and assessments for the construction and maintenance of said public works. (1909, c. 442, s. 1; C.S., s. 5312; 1921, c. 7.)

Cross References. — As to construction of this Subchapter, see G.S. 156-135. As to application to the State Soil and Water Conservation Commission for grants for nonfederal costs relating to certain small watershed projects authorized under federal law, see G.S. 139-53 et seq.

Editor's Note. — For act relating to Scuppernong Drainage District in Washington County, see Session Laws 1947, c. 934.

Legal Periodicals. — For note on disposition of diffused surface waters in North Carolina, see 47 N.C.L. Rev. 205 (1968).

CASE NOTES

Constitutionality. — This and the following sections of this Subchapter are constitutional. Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910); In re Big Cold Water Creek Drainage Dist., 162 N.C. 127, 78 S.E. 14 (1913); Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913); Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915), petition for rehearing denied, 171 N.C. 505, 88 S.E. 754 (1916); Lower Creek Drainage Comm'rs v. Mitchell, 170 N.C. 324, 87 S.E. 112 (1915);

Beaufort County Lumber Co. v. Drainage Comm'rs, 174 N.C. 647, 94 S.E. 457 (1917).

Vested Rights Not Affected by 1921 Act. — The proceeding in forming a drainage district under the original act was judicial and not administrative, and the 1921 amendment could not affect vested rights of landowners acquired under orders, judgments or decrees made in pursuance of the powers conferred by the original act. Broadhurst v. Board of Comm'rs, 195 N.C. 439, 142 S.E. 477 (1928).

Where the rights of landowners in the Mattamuskeet Drainage District were determined in a court having jurisdiction as to assessments in proportion to the benefits conferred, they were not affected by the subsequent amendment of 1921, for such would be to impair the vested rights of those whose property had been assessed by the final judgment. O'Neal v. Mann, 193 N.C. 153, 136 S.E. 379 (1927).

The drainage act, with its various amendments, is a statewide public statute. Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

Public Purposes of Subchapter Recognized. — This Subchapter, authorizing the establishment of certain levee or drainage districts, which presents a scheme for the drainage of lowlands in which the public of the locality is generally interested, which is at once comprehensive, adequate and efficient, and in which the rights of all persons to be affected have been fully considered and protected, is not objectionable on the ground that it is for the benefit of private landowners and not for public purposes. Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910).

This Subchapter adopts a system for the cooperation of landowners in the drainage of lands by forming drainage districts, which are to become quasi-public corporations, for the purpose of improving the health of the district and the fertility of the lands, under which the lands are assessed in proportion to the benefits derived and an organization is effected in each district to execute and maintain a system of drainage. In re Big Cold Water Creek Drainage Dist., 162 N.C. 127, 78 S.E. 14 (1913).

Basis of Legislative Authority. — The authority of the legislature to provide for the creation of levee and drainage districts is based upon the police power, the right of eminent domain and the taxing power. Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913).

The drainage of swamps and of surface water from agricultural lands in a drainage district is of public benefit and conducive to the public health, etc., thus falling within the police power; and proceedings thereunder are in the exercise of the right of eminent domain. Taylor v. Richardson, 176 N.C. 217, 96 S.E. 1027 (1918).

Clerk's Authority Not a Delegation of Legislative Power. — The authority and powers conferred by this Subchapter upon the clerk of the court do not constitute a delegation of legislative power and duty to the judicial department of the State prohibited by the Constitution, the powers and duties conferred being of a judicial nature in relation to the prescribed proceedings to be instituted for the establishment of drainage districts. Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910).

Drainage districts created pursuant to this Subchapter are quasi-municipal corporations. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

And Can Alter Their Boundaries Only as Permitted by Statute. — Municipal or quasi-municipal corporations created and having their boundaries fixed by statutory formula can alter their boundaries only as permitted by statute. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

Drainage District Subject to Open Meetings Requirements. — As a political subdivision of the state, organized pursuant to the provisions of this section with quasi-judicial and administrative authority, plaintiff drainage district was subject to the open meetings requirements of G.S. 143-318.10. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988), modified on other grounds, 326 N.C. 742, 392 S.E.2d 352 (1990).

Pendency of Proceedings as Notice as to All Lands in District. — The pendency of a proceeding to lay off a drainage district under the provisions of the act is notice as to all the lands embraced in the district. Newby & White v. Board of Drainage Comm'rs, 163 N.C. 24, 79 S.E. 266 (1913).

Map Held Sufficient Notice to Subsequent Purchasers. — Where, in a proceeding in Beaufort County, a drainage district comprising lands in both Beaufort and Craven Counties was duly created and organized under this and the following sections, and assessment rolls, showing assessments against each tract of land in the district, were made and filed in each county, such assessments, as they became due, constituted liens upon the lands within the district to which they related, and it was error for the court to dismiss an action in the nature of a mortgage foreclosure, for the collection of such drainage assessments against lands in Craven County, even where the assessment rolls for Craven County had been removed and there was left in that county no other record relating to the drainage district except a map on which were shown the boundaries of the several tracts of land within the district in Craven County, as the map itself was sufficient notice to a subsequent purchaser of the proceedings, including the assessment rolls filed in Beaufort County. Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

Validity of a district laid off according to the drainage acts cannot be collaterally attacked. Newby & White v. Board of Drainage Comm'rs, 163 N.C. 24, 79 S.E. 266 (1913); Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915), petition for rehearing denied, 171 N.C. 505, 88 S.E. 754 (1916).

Proceedings Upheld. — Proceedings for the establishment of a drainage district under this Article, and bonds to be issued therefor, would not be held as defective because further steps were not taken for several years after they had been commenced, the court holding that they were still pending, and because of the fact that the engineer and viewers did not file a profile map showing the surface of the ground, bottom grades, etc., at the time of the final report, as required by G.S. 156-69, where this was later done upon order of the board of drainage commissioners, and otherwise the provisions of the statutes had been strictly followed. Oden v. Bell, 185 N.C. 403, 117 S.E. 340 (1923).

As to right of receiver to intervene and become party to suit in federal court, see Board of Drainage Comm'rs v. Lafayette Southside Bank, 27 F.2d 286 (4th Cir. 1928).

As to construction of drainage act for Mattamuskeet Lake, see Carter v. Board of Drainage Comm'rs, 156 N.C. 183, 72 S.E. 380 (1911).

Cited in Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-55. Venue; special proceedings.

When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county has the jurisdiction conferred by this Subchapter. Venue is in that county in which the petition is first filed. The law and the rules regulating special proceedings apply in the proceeding, except as modified by this Subchapter. The proceedings may be ex parte or adversary. (1909, c. 42, ss. 2, 38; C.S., s. 5313; 1999-216, s. 19.)

CASE NOTES

Proceedings to form a drainage district under this Subchapter are regarded as proceedings in rem. Staton v. Staton, 148 N.C. 490, 62 S.E. 596 (1908); Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915), petition for rehearing denied, 171 N.C. 505, 88 S.E. 754 (1916); Taylor v. Richardson, 176 N.C. 217, 96 S.E. 1027 (1918).

§ 156-56. Petition filed.

A petition signed by a majority of the resident landowners in a proposed drainage district or by the owners of three fifths of all the land which will be affected or assessed for the expense of the proposed improvements may be filed in the office of the clerk of the superior court of any county in which a part of the lands is located, setting forth that any specific body or district of land in the county and adjoining counties, described in such a way as to convey an intelligent idea as to the location of such land, is subject to overflow or too wet for cultivation, and the public benefit or utility or the public health, convenience or welfare will be promoted by draining, ditching, or leveeing the same or by changing or improving the natural watercourses, and setting forth therein, as far as practicable, the starting point, route, and terminus and lateral branches, if necessary, of the proposed improvement.

The petition will also show whether or not the proposed drainage is for the reclamation of lands not then fit for cultivation or for the improvement of land already under cultivation. It shall also state that, if a reclamation district is proposed to be established, such lands so reclaimed will be of such value as to justify the reclamation. (1909, c. 442, s. 2; C.S., s. 5314; 1921, c. 76; Pub. Loc. 1923, c. 88, s. 2; 1925, c. 85; 1927, c. 98.)

Local Modification. — Edgecombe: 1937, c. 278; 1939, c. 7; Halifax: 1939, c. 227; Hertford: 1939, c. 371; Iredell: 1925, c. 144; Nash: 1939, c. 376; Northampton: 1939, c. 227; Pitt: 1925, c. 205; Robeson: 1925, c. 144; Rowan: 1925, c. 144.

Cross References. — For distinction between reclamation districts and improvement districts, see G.S. 156-62(5).

CASE NOTES

This is a flexible proceeding, and is to be modified and molded by decrees from time to time to promote the objects of the proceeding. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908); Staton v. Staton, 148 N.C. 490, 62 S.E. 596 (1908); In re Lyon Swamp Drainage Dist., 175 N.C. 270, 95 S.E. 485 (1918).

Assent of Statutory Number of Owners Sufficient. — It is not necessary that every owner of land within a drainage district should have assented to its formation when the statutory number thereof have done so. Taylor v. Richardson, 176 N.C. 217, 96 S.E. 1027 (1918).

Property Must Be Described. — One of the essentials of the proceeding is that the property sought to be charged shall be identified by description in the proceedings. Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917).

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

Cited in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-57. Bond filed and summons issued.

Upon filing with the petition a bond for the amount of fifty dollars ($50.00) per mile for each mile of the ditch or proposed improvement, signed by two or more sureties or by some lawful and authorized surety company, to be approved by the clerk of superior court, conditioned for the payment of all costs and expenses incurred in the proceeding in case the court does not grant the prayer of the petition, the clerk, shall at any time thereafter, issue summons to be served on all the defendant landowners, who have not joined in the petition and whose lands are included in the proposed drainage district. The summons may be served by publication as to any defendant who cannot be personally served as provided by law.

The attorney for the petitioners shall certify to the clerk of the superior court, prior to the hearing on the final report of the board of viewers, that due diligence has been used to determine the names of all landowners within the area of the proposed drainage district; and, that summons has been issued for such landowners, so determined, and served either by personal service or by publication for all known and unknown landowners, insofar as could be determined by due diligence. (1909, c. 442, s. 2; C.S., s. 5315; 1967, c. 621.)

Cross References. — See Local Modification under G.S. 156-56.

CASE NOTES

Notice of Summons to Be Given to All Affected Parties. — The drainage laws of North Carolina have been largely copied from the acts in Indiana and Illinois, and following the construction of these acts for the long period of time the acts have been in force, it is essential that notice of summons in all such proceedings be given to all parties who will be affected thereby. Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917).

Requirement That Summons Be Served on Landowners Mandatory. — This section is mandatory in requiring a "summons to be served on all the defendant landowners who have not joined in the petition and whose lands are included in the proposed drainage district." Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917).

What Notice Is Sufficient. — It would interfere with a much-needed public development if, as a prerequisite thereto, and before a final order could be made, all defects of title and mortgages or liens that might be claimed had to be looked up and adjudicated. It is sufficient that summons is served upon the parties in possession under an apparent legal title, and that before final adjudication notice is given in the manner prescribed, in order that parties claiming liens by mortgage or otherwise, or title to the land adversely to those in possession, should have opportunity to come in and oppose confirmation of the final report. Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915), petition for rehearing denied, 171 N.C. 505, 88 S.E. 754 (1916). See also, Drainage Comm'rs v. East Carolina Home & Farm Ass'n, 165 N.C. 697, 81 S.E. 947 (1914).

Subsequent Notification. — The proceedings for forming a drainage district are in rem; and where a valid statute has been complied with therein, and it appears that an owner has not been served with process, it is admissible to notify him, in possession, nunc pro tunc, and to have the lands therein assessed. Taylor v. Richardson, 176 N.C. 217, 96 S.E. 1027 (1918).

Effect of Failure to Serve Summons. — Where a landowner having an interest, within the meaning of the statute, has not been served, and it does not appear that he was an apparent party, an order laying an assessment on his property is void, the proceedings as they relate to him are a nullity, and the assessment may be restrained. Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917), distinguishing Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915), petition for rehearing denied, 171 N.C. 505, 88 S.E. 754 (1916), holding a mortgagee not a necessary party.

The statute requires only landowners to be made parties in drainage proceedings. Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917).

§ 156-58. Publication in case of unknown owners.

If, at the time of the filing of the petition, or at any time subsequent thereto, it shall be made to appear to the court by affidavit or otherwise that the names of the owners of the whole or any share of any tracts of land are unknown, and cannot after due diligence be ascertained by the petitioners, the court shall order a notice in the nature of a summons to be given to all such persons by a publication of the petition, or of the substance thereof, and describing generally the tracts of land as to which the owners are unknown, with the order of the court thereon, in some newspaper published in the county wherein the land is located, or in some other county if no newspaper shall be published in the first-named county, which newspaper shall be designated in the order of the court, and a copy of such publication shall be also posted in at least three conspicuous places within the boundaries of the proposed district, and at the courthouse door of the county. Such publication in a newspaper and by posting shall be made for a period of four weeks. After the time of publication shall have expired, if no person claiming and asserting title to the tracts of land and entitled to notice shall appear, the court in its discretion may appoint some disinterested person to represent the unknown owners of such lands, and thereupon the court shall assume jurisdiction of the tracts of land and shall adjudicate as to such lands to the same extent as if the true owners were present and represented, and shall proceed against the land itself. If at any time during the pendency of the drainage proceeding the true owners of the lands shall appear in person, they may be made parties defendant of their own motion and without the necessity of personal service, and shall thereafter be considered as parties to the proceeding; but they shall have no right to except to or appeal from any order or judgment theretofore rendered, as to which the time for filing exceptions on notice shall have expired. (1911, c. 67, s. 1; C.S., s. 5316; 1953, c. 675, s. 25.)

CASE NOTES

Owners Failing to Oppose Proceeding Are Bound Thereby. — By virtue of the notice required by this section, the owners of land have the opportunity to intervene and assert any right they might have to oppose the proceeding, if deemed contrary to their interest. Not having done so, they are bound by the judgment under which bonds were issued. Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915), petition for rehearing denied, 171 N.C. 505, 88 S.E. 754 (1916).

As Is Mortgagee. — In proceedings to form a drainage district under this statute, notice by publication is given of the filing of the report in the office of the clerk of the superior court, which is open to inspection to the landowner or other interested person, and a mortgagee of lands who does not intervene and assert his rights to oppose the proceedings is bound by the final judgment. Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915), petition for rehearing denied, 171 N.C. 505, 88 S.E. 754 (1916).

Presumption of Regularity of Judgment. — Where publication in accordance with this section has been made, every presumption is in favor of the regularity of the judgment. Taylor v. Richardson, 176 N.C. 217, 96 S.E. 1027 (1918).

§ 156-59. Board of viewers appointed by clerk.

The clerk shall, on the filing of petition and bond, appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the Department of Environment and Natural Resources; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C.S., s. 5317; 1961, c. 614, s. 4; c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(157); 1997-443, s. 11A.123.)

Cross References. — See Local Modification under G.S. 156-56.

CASE NOTES

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-60. Attorney for petitioners.

The petitioners shall select some learned attorney or attorneys to represent them, who shall prosecute the drainage proceeding and advise with the petitioners and board of viewers, and shall agree upon the compensation for his professional services up to the time when the district shall be established and the board of drainage commissioners elected, or as nearly so as the same may be approximated. If the petitioners are unable to agree upon the selection of an attorney or attorneys, the selection may be made by the clerk of the court. The foregoing provision shall not interfere with the right of any individual petitioner in the selection of an attorney to represent his individual interests if he shall deem the same desirable or necessary. (1917, c. 152, s. 1; C.S., s. 5318.)

§ 156-61. Estimate of expense and manner of payment; advancement of funds and repayment from assessments.

The clerk may make an estimate of the aggregate sum of money which shall appear to be necessary to pay all the expenses incident to the performance of the duties by the board of viewers, including the compensation of the drainage engineer and his necessary assistants, and also including the sum for the compensation of the attorney for the district, and such court costs as may probably accrue, which estimates shall embrace the period of services up to and including the establishment of the drainage district and the selection and appointment of the board of drainage commissioners. The clerk shall then estimate the number of acres of land owned or represented by the petitioners, as nearly so as may be practicable without actual survey, and shall assess each acre so represented a level rate per acre, to the end that such assessment will realize the sum of money which he has estimated as necessary to pay all necessary costs of the drainage proceeding up to the time of the appointment of the drainage commissioners, as above provided. The assessment above provided for which has been or may hereafter be levied shall constitute a first and paramount lien, second only to State and county taxes, upon the lands so assessed, and shall be collected in the same manner and by the same officers as county taxes are collected. The board of viewers, including the drainage engineer, shall not be required to enter upon the further discharge of their duties until the amount so estimated and assessed shall be paid in cash to the clerk of the court, which shall be retained by him as a court fund, and for which he shall be liable in his official capacity, and he shall be authorized to disburse the same in the prosecution of the drainage proceeding. Unless all the assessments shall be paid within a time to be fixed by the court, which may be extended from time to time, no further proceedings shall be had, and the proceeding shall be dismissed at the cost of the petitioners. If the entire sum so estimated and assessed shall not be paid to the clerk within the time limited, the amounts so paid shall be refunded to the petitioners pro rata after paying the necessary costs accrued. Nothing herein contained shall prevent one or more of the petitioners from subscribing and paying any sum in addition to their assessment in order to make up any deficiency arising from the delinquency of one or more of the petitioners. When the sum of money so estimated shall be paid, the board of viewers shall proceed with the discharge of their duties, and in all other respects the proceeding shall be prosecuted according to the law. After the district shall have been established and the board of drainage commissioners appointed, it shall be the duty of the board of drainage commissioners to refund to each of the petitioners the amount so paid by them as above provided, out of the first moneys which shall come into the hands of the board from the sale of bonds or otherwise, and the same shall be included in ascertaining the total cost of improvement.

In lieu of the procedures set forth in the preceding paragraph, the board of county commissioners may advance funds, or any part thereof, for the purposes set forth in the preceding paragraph. Such advances shall be made to a county official designated by the commissioners, and shall be disbursed upon such terms as the county commissioners may direct. If the district shall be organized, the funds advanced shall be repaid from assessments thereafter levied. (1917, c. 152, s. 1; C.S., s. 5319; 1941, c. 342; 1961, c. 614, s. 6; c. 662.)

§ 156-62. Examination of lands and preliminary report.

The board of viewers shall proceed to examine the land described in the petition, and other land if necessary to locate properly such improvement or improvements as are petitioned for, along the route described in the petition, or any other route answering the same purpose if found more practicable or feasible, and may make surveys such as may be necessary to determine the boundaries and elevation of the several parts of the district, and shall make and return to the clerk of the superior court within 30 days, unless the time shall be extended by the court, a written report, which shall set forth:

(1) Whether the proposed drainage is practicable or not.
(2) Whether it will benefit the public health or any public highway or be conducive to the general welfare of the community.
(3) Whether the improvement proposed will benefit the lands sought to be benefited.

(4) Whether or not all the lands that are benefited are included in the proposed drainage district.

(5) Whether or not the district proposed to be formed is to be a reclamation district or an improvement district. A reclamation district is defined to be a district organized principally for reclaiming lands not already under cultivation. An improvement district is defined to be a district organized principally for the improvement of lands then under cultivation. The board of viewers shall further report, if the district is a reclamation district within the above definition, whether or not the proposed drainage would be justified by the additional value for agricultural purposes given to land so drained.

They shall also file with this report a map of the proposed drainage district, showing the location of the ditch or ditches or other improvement to be constructed and the lands that will be affected thereby, and such other information as they may have collected that will tend to show the correctness of their findings. (1909, c. 442, s. 3; C.S., s. 5320; 1927, c. 98, s. 2.)

CASE NOTES

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

Cited in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-63. First hearing of preliminary report.

The clerk of the superior court shall consider this report. If the viewers report that the drainage is not practicable or that it will not benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall approve such findings, the petition shall be dismissed at the cost of the petitioners, and such petition shall likewise be dismissed at the cost of the petitioners if it is sought to set up a reclamation district and the viewers report that the cost of reclaiming the land would be so great as not to justify the expense of draining it. Such petition or proceeding may again be instituted by the same or additional landowners at any time after six months, upon proper allegations that conditions have changed or that material facts were omitted or overlooked. If the viewers report that the drainage is practicable and that it will benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall so find, then the court shall fix a day when the report will be further heard and considered. (1909, c. 442, s. 4; C.S., s. 5321; 1927, c. 98, s. 3.)

CASE NOTES

As to setting of date for objections by clerk, see Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913).

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-64. Notice of further hearing.

If the petition is entertained by the court, notice shall be given by publication once a week for at least two consecutive weeks in some newspaper of general circulation within the county or counties, if one shall be published in such counties, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places within the drainage district, that on the date set, naming the day, the court will consider and pass upon the report of the viewers. At least 15 days shall intervene between the date of the publication and the posting of the notices and the date set for the hearing. (1909, c. 442, s. 5; C.S., s. 5322; 1963, c. 767, s. 1.)

CASE NOTES

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

Cited in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-65. Further hearing, and district established.

At the date appointed for the hearing the court shall hear and determine any objections that may be offered to the report of the viewers. If it appear that there is any land within the proposed levee or drainage district that will not be affected by the leveeing or drainage thereof, such lands shall be excluded and the names of the owners withdrawn from such proceeding; and if it shall be shown that there is any land not within the proposed district that will be affected by the construction of the proposed levee or drain, the boundary of the district shall be so changed as to include such land, and such additional landowners shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided. After such change in the boundary is made, the sufficiency of the petition shall be verified, to determine whether or not it conforms to the requirements hereinbefore provided. The efficiency of the drainage or levees may also be determined, and if it appears that the location of any levee or drain can be changed so as to make it more effective, or that other branches or spurs should be constructed, or that any branch or spur projected may be eliminated or other changes made that will tend to increase the benefits of the proposed work, such modification and changes shall be made by the board. The engineer and the other two viewers may attend this meeting and give any information or evidence that may be sought to verify and substantiate their report. If necessary, the petition, as amended, shall be referred by the court to the engineer and two viewers for further report. The above facts having been determined to the satisfaction of the court, and the boundaries of the proposed district so determined, it shall declare the establishment of the drainage or levee district, which shall be designated by a name or number, for the object and purpose as herein set forth.

If any lands shall be excluded from the district because of the court having found that such lands will not be affected or benefited, and the names of the owners of such lands have been withdrawn from such proceeding, but such lands are so situated as necessarily to be located within the outer boundaries of the district, such fact shall not prevent the establishment of the district, and such lands shall not be assessed for any drainage tax; but this shall not prevent the district from acquiring a right-of-way across such lands for constructing a canal or ditch or for any other necessary purpose authorized by law.

The court shall further determine, if it is sought to establish a reclamation district, whether or not the increased value of the particular land should be so great as to justify the cost and expenses of its reclaiming. (1909, c. 442, s. 6; 1911, c. 67, s. 2; C.S., s. 5323; 1927, c. 98, s. 4.)

CASE NOTES

Reason for Conferring Power to Include Lands of Opposing Owners. — It is because of the benefits which accrue to the public from the establishment of a drainage district under the statute that power conferred thereby upon the court to include lands of owners who are unwilling to sign the petition or who oppose the establishment of the district is sustained. O'Neal v. Mann, 193 N.C. 153, 136 S.E. 379 (1927).

What Issues May Be Raised by Minority Landowner. — A minority landowner included in a proposed drainage district to be laid out may not contest the formation of the district, but may only raise the issue as to his benefits therefrom. Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913).

Right of Signer of Original Petition to Object. — Upon the report of the viewers at the final hearing in proceedings to lay off a drainage district, one who signed the original petition and may have ascertained from the information contained in the report, contrary to his previous opinion, that the cost of the improvements and damages would amount to more than the benefits to his land, may then file his objections, and the same procedure is then open to him as if he had not signed the petition. Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913).

Boundaries Must Include All Lands Benefited. — The court has no authority to decree the establishment of a drainage district which does not include within its boundaries all lands benefited by the work to be done. It must enlarge the boundaries to include all such land. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

A smaller drainage district may be laid off within the boundaries of a larger one, theretofore organized, the purposes of each harmonizing with the purposes of the other. Drainage Comm'rs v. East Carolina Home & Farm Ass'n, 165 N.C. 697, 81 S.E. 947 (1914).

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-66. Right of appeal.

Any person owning lands within the drainage or levee district which he thinks will not be benefited by the improvement and should not be included in the district may appeal from the decision of the court to the superior court of such county, in termtime, by filing an appeal, accompanied by a bond conditioned for the payment of the costs if the appeal should be decided against him, for such sum as the court may require, not exceeding two hundred dollars ($200.00), signed by two or more solvent sureties or in some approved surety company to be approved by the court. (1909, c. 442, s. 8; C.S., s. 5324.)

Cross References. — As to appeal from final hearing, see G.S. 156-75.

CASE NOTES

Appeal as Notice to Purchaser of Bonds. — Where the owner of land in a drainage district has duly excepted under this section and again under G.S. 156-75 and has appealed, the purchaser of bonds issued by the district takes with notice of the rights of the complaining party so excepting, and acquires the bonds subject thereto. Drainage Dist. No. 1 v. Parks, 170 N.C. 435, 87 S.E. 229 (1917).

Proceedings upon Appeal. — A petition for the establishment of a drainage district by a majority of the resident landowners or by the owners of three fifths of the land therein, approved by the report of the viewers and affirmed by the clerk, permits a majority owner to raise only the issue of fact for the jury to determine as to the benefit to his lands; and should the jury find in favor of the objector, he is not entitled as a matter of right to have his land excluded, but it is for the judge to decide whether this may be done without injury to the district, and if not, he may order that such land be retained upon payment of damages to be awarded by the jury, as in condemnation of lands; all other matters embodied in the report are subject to approval by the clerk, and review by the judge without the intervention of a jury, being questions of fact. Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913).

Challenge upon Issuance of Additional Bonds Not Permitted After Failure to Appeal. — Appeals are separately provided for under this section when the drainage district has been laid off, and under G.S. 156-75 when the final act is passed upon; and where the complaining owner of land in the district has not entered an exception under either of these two sections, as the statute provides, and bonds have been duly issued on the lands of the district for drainage purposes, and thereafter application has been made by the commissioners for the issuance of additional bonds, in the further proceedings he may not be permitted to go back and challenge the formation of the district and the classification and assessments already made by attacking the reports of the engineers and viewers, and withdraw a large part of his lands from the district theretofore formed. Drainage Dist. No. 1 v. Parks, 170 N.C. 435, 87 S.E. 229 (1917).

Cited in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-67. Condemnation of land.

If it shall be necessary to acquire a right-of-way or an outlet over and through lands not affected by the drainage, and the same cannot be acquired by purchase, then and in such event the power of eminent domain is hereby conferred, and the same may be condemned. The owners of the land proposed to be condemned may be made parties defendant in the manner of an ancillary proceeding, and the procedure shall be, to the extent practicable, supplemented by the provisions of Chapter 40A Eminent Domain and such damages as may be awarded as compensation shall be paid by the board of drainage commissioners out of the first funds which shall be available from the proceeds of sale of bonds or otherwise. (1909, c. 442, s. 7; C.S., s. 5325; 1981, c. 919, s. 24.)

§ 156-68. Complete survey ordered.

After the district is established the court shall refer the report of the engineer and viewers back to them to make a complete survey, plans, and specifications for the drains or levees or other improvements, and fix a time when the engineer and viewers shall complete and file their report, not exceeding 60 days. (1909, c. 442, s. 9; C.S., s. 5326.)

§ 156-69. Nature of the survey; conservation and replacement of fish and wildlife habitat; structures to control and store water.

The engineer and viewers shall have power to employ such assistants as may be necessary to make a complete survey of the drainage district, and shall enter upon the ground and make a survey of the main drain or drains and all its laterals. The line of each ditch, drain, or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made, so that it may be accurately plotted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established among the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the engineer and viewers, other levels may be run to determine the fall from one part of the district to another. If an old watercourse ditch, or channel is being widened, deepened, or straightened, it shall be accurately cross-sectioned so as to compute the number of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records, of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the boundary of any incorporated towns or villages within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain, or watercourse, showing the surface of the ground, the bottom or grade of the proposed improvement, and the number of cubic yards of excavation or fill in each mile or fraction thereof, and the total yards in the proposed improvement and the estimated cost thereof, and plans and specifications, and the cost of any other work required to be done.

The board of viewers shall consider the effect of the proposed improvements upon the habitat of fish and wildlife, and the laws and regulations of the

Commission for Public Health. Their report shall include their recommendations and the estimated cost thereof, as to the conservation and replacement of fish and wildlife habitat, if they shall determine such shall be damaged or displaced by the proposed improvement. The board, to determine their recommendations, may consult governmental agencies, wildlife associations, individuals, or such other sources as they may deem desirable, to assist them in their considerations of and recommendations relating to, the conservation and replacement of fish and wildlife habitat.

The board of viewers shall consider the need for and feasibility of, the construction of structures which will do one or more of the following:

(1) Control the flow of water,
(2) Impound or store water and,
(3) Provide areas for conservation and replacement of fish and wildlife habitat.

If structures are recommended for any one or more of said purposes, their report shall include:

(1) Specifications therefor.
(2) Location thereof together with the description of the area of land needed for the purpose of said structure, i.e., water storage or impoundment, or fish and wildlife habitat.
(3) Estimate of cost thereof.

The report of the board of viewers shall set forth, in regard to the foregoing, the following information:

(1) The areas of land needed for construction and maintenance of:
    a. The canals and drainage system.
    b. Structures to:
        1. To control the water,
        2. Impound or store water and,
        3. To conserve and replace fish and wildlife habitat.
(2) Upon whose land such areas are located.
(3) The area of land necessary to be acquired from each landowner.

The map accompanying the report shall have shown thereon, the location of the areas of land needed for the construction and maintenance of the following:

(1) The canal and drainage system.
(2) Structures to:
    a. Control the flow of water,
    b. Impound or store the water,
    c. Conserve and replace fish and wildlife habitat.

The board of viewers may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of the State of North Carolina whereby such agency will furnish all or a part of the service necessary to obtain the information set forth in the preceding paragraph and in G.S. 156-68.

The board of viewers may accept such information as furnished by such agencies and include such information in their final report to the clerk.

The board of viewers and engineers of the district may use control or semicontrol, mosaic aerial photographs or other sources and stereoscopic or other methods, generally used and deemed acceptable by civil and drainage engineers for the purpose of obtaining the information required in this section and in lieu of a detailed ground survey. In the event a detailed ground survey is not made, only those ground markings need be made as the board of viewers deem necessary. The location of the proposed canals must be shown on the ground prior to actual construction. (1909, c. 442, s. 10; C.S., s. 5327; 1959, c. 597, s. 1; 1961, c. 614, ss. 5, 9; 1965, c. 1143, s. 1; 1973, c. 476, s. 128; 2007-182, s. 2.)

CASE NOTES

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-70. Assessment of damages.

It shall be the further duty of the engineer and viewers to assess the damages claimed by anyone that are justly right and due to him for land taken or for inconvenience imposed because of the construction of the improvement, or for any other legal damages sustained. Such damages shall be considered separate and apart from any benefit the land would receive because of the proposed work, and shall be paid by the board of drainage commissioners when funds shall come into their hands. (1909, c. 442, s. 11; 1915, c. 238; 1917, c. 152, s. 16; C.S., s. 5328.)

CASE NOTES

Pendency of a proceeding to lay off a drainage district under the statute is notice as to all the lands embraced in the district, and the grantees thereof are bound by statutory requirements as to the procedure to recover damages to the lands, as were their grantors who were parties to the proceedings and who owned the lands at the time thereof. Newby & White v. Board of Drainage Comm'rs, 163 N.C. 24, 79 S.E. 266 (1913).

Inclusion of Damages to Timber. — While under the drainage acts no assessments for benefits can be made against the owner of timber interests, only the land itself being liable, the owner of the land and of timber within the district, by the provision of the statute, when made a party to the proceedings and duly notified, is required to present his claim for the entire injury, inclusive of that to his timber, and the damages to the timber should thus be included and allowed in the final judgment in the proceedings. Beaufort County Lumber Co. v. Drainage Comm'rs, 174 N.C. 647, 94 S.E. 457 (1917).

When Independent Action for Damages May Be Maintained. — The principles that conclude parties to proceedings in the formation of drainage districts under the statute by final judgment from a recovery of damages to their lands applies to such as may have accrued in the laying out and establishment of the district under the procedure prescribed, and does not prevent an injured proprietor, within or without the district, from maintaining an independent action to recover damages caused by an unauthorized and substantial departure from the scheme and plan established by the decrees and orders in the cause, nor where the damage complained of is attributable to the negligence of the company or its officers or agents in carrying out the proposed work. Spencer v. Wills, 179 N.C. 175, 102 S.E. 275 (1920).

Permanent Damages Held Recoverable. — Where the whole of plaintiff's land was originally included in a drainage district to be established under the statutory provisions, but the final judgment so restricted and modified the survey, plat and boundaries as to exclude all except a comparatively small potion of the land, but the preliminary survey showed that a canal would go through the land included as well as through the land, or a large part thereof, excluded by the final judgment, and there was no evidence that ancillary proceedings for this outside land by condemnation had been resorted to, the plaintiff, in his independent action, could elect to recover the permanent damages caused to his land. Sawyer v. Camden Run Drainage Dist., 179 N.C. 182, 102 S.E. 273 (1920).

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-70.1. When title deemed acquired for purpose of easements or rights-of-way; notice to landowner; claim for compensation; appeal.

The district shall be deemed to have acquired title for the purpose of easements or rights-of-way to those areas of land identified in the final report of the board of viewers and as shown on the map accompanying said report, at the time said final report is confirmed by the clerk of the superior court.

The board of viewers shall cause notice as to the area or areas of land involved, to be given to each landowner so affected, which notice shall be in writing and mailed to the last known address of the landowner at least seven days prior to the hearing on the final report as provided by G.S. 156-73.

If the landowner desires compensation for the land areas so acquired by the district, claim for the value of the same shall be submitted to the board of viewers on or before the time of the adjudication upon the final report as provided for by G.S. 156-74.

If the board of viewers shall approve the claim, the amount so approved shall be added to the total cost of the district as estimated in said final report and this shall be done by amendment to the final report submitted to the clerk of the superior court on or before the adjudication provided for in G.S. 156-74.

If the board of viewers shall not approve said claim, the clerk of the superior court shall consider the claim and determine what in his opinion is a fair value and the amount so determined shall be shown in the said final report as amended and confirmed by said adjudication. The landowner or the drainage district may appeal from the decision of the clerk of the superior court, to the superior court, upon the question of the value of the land taken and such value shall be determined by a jury. The procedure for the appeal shall be in accordance with the provision of G.S. 156-75. (1959, c. 597, s. 2; c. 1085; 1965, c. 1143, s. 2.)

CASE NOTES

Applied in Taylor v. Askew, 17 N.C. App. 620, 195 S.E.2d 316 (1973).

§ 156-71. Classification of lands and benefits.

It shall be the further duty of the engineer and viewers to personally examine the land in the district and classify it with reference to the benefit it will receive from the construction of the levee, ditch, drain, or watercourse or other improvement. In the case of drainage, the degree of wetness on the land, its proximity to the ditch or a natural outlet, and the fertility of the soil shall be considered in determining the amount of benefit it will receive by the construction of the ditch. The land benefited shall be separated in five classes. The land receiving the highest benefit shall be marked "Class A"; that receiving the next highest benefit, "Class B"; that receiving the next highest benefit, "Class C"; that receiving the next highest benefit, "Class D," and that receiving the smallest benefit, "Class E." The holdings of any one landowner need not be all in one class, but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined. The total number of acres of each class in the entire district shall be obtained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the engineer and viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five mills per acre is assessed against the land in "Class A," four mills per acre shall be assessed against the land in "Class B," three mills per acre in "Class C," two mills per acre in "Class D," and one mill per acre in "Class E." This shall form the basis of the assessment of benefits to the lands for drainage purposes. In any district lands may be included which are not benefited for the agriculture or crop production, or slightly so, but which will receive benefit by improvement in health conditions, and as to such lands the engineer and viewers may assess each tract of land without regard to the ratio and at such a sum per acre as will fairly represent the benefit of such lands.

Villages or towns or parts thereof and small parcels of land located outside thereof and used primarily for residence or other specific purposes, and which require drainage, may also be included in any drainage district which by reason of their improved conditions and the limited area in each parcel under individual ownership, it is impracticable to fairly assess the benefits to each separated parcel of land by the ratio herein provided, and as to such parcels of land the engineer and viewers may assess each parcel of land without regard to the ratio and at a higher rate per acre respectively by reason of the greater benefits. If the streets or other property owned by any incorporated town or village are likewise benefited by such drainage works, the corporation may be assessed in proportion to such benefits, which assessment shall constitute a liability against the corporation and may be enforced as provided by law.

The board of viewers may determine that some areas of the district will receive more benefits than other areas and if such is determined, the varying benefits shall be reflected in the manner of classification of benefits to each area and the tracts of land therein. (1909, c. 442, s. 12; C.S., s. 5329; 1923, c. 217, s. 1; 1961, c. 614, s. 7.)

Cross References. — As to application of this section, see G.S. 156-104.

CASE NOTES

Discretion of Commissioners as to Classification Under Local Act. — The legislature, in authorizing the establishment of a drainage district, may very largely commit to the commissioners the exercise of their judgment as to what should be done in carrying out the general provisions specified by the statute; and the special act of the legislature creating the Gaston County Drainage Commission, c. 427, Public-Local Laws of 1911, thus construed, does not relieve a landowner therein from paying his authorized assessments for benefits solely because the commission failed to strictly and literally divide the lands into the number of classes therein set out. Mitchem v. Gaston County Drainage Comm'n, 182 N.C. 511, 109 S.E. 551 (1921).

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

Cited in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-72. Extension of time for report.

In case the work is delayed by high water, sickness, or any other good cause, and the report is not completed at the time fixed by the court, the engineer and viewers shall appear before the court and state in writing the cause of such failure and ask for sufficient time in which to complete the work, and the court shall set another date by which the report shall be completed and filed. (1909, c. 442, s. 14; C.S., s. 5330.)

§ 156-73. Final report filed; notice of hearing.

When the final report is completed and filed it shall be examined by the court, and if it is found to be in due form and in accordance with the law it shall be accepted, and if not in due form it may be referred back to the engineer and viewers, with instructions to secure further information, to be reported at a subsequent date to be fixed by the court. When the report is fully completed and accepted by the court a date not less than 20 days thereafter shall be fixed by the court for the final hearing upon the report, and notice thereof shall be given by publication in a newspaper of general circulation in the county and by posting a written or printed notice on the door of the courthouse and at five conspicuous places throughout the district, such publication to be made once a week for at least three consecutive weeks before the final hearing. During this time a copy of the report shall be on file in the office of the clerk of the superior court, and shall be open to the inspection of any landowner or other persons interested within the district. (1909, c. 442, s. 15; C.S., s. 5331; 1959, c. 807, ss. 1, 2; 1963, c. 767, s. 2.)

CASE NOTES

Newspaper Publication Held Unnecessary. — It was not fatal to the validity of bonds issued by a drainage district that the notice of the time of hearing objections to the final report was not published in some newspaper of general circulation in the county, when it appeared that no newspaper was published therein or elsewhere which had a general circulation in the county, and that the landowners affected had actual and ample notice of such time and raised no objection. Board of Drainage Comm'rs v. Brett Eng'r Co., 165 N.C. 37, 80 S.E. 897 (1914).

§ 156-74. Adjudication upon final report.

At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs. Provided, that the Department of Environment and Natural Resources may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized.

The court shall, at the time of consideration of said report, determine whether:

(1) The petitioners constitute a majority of the resident landowners, whose lands are adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court; or

(2) The petitioners own three fifths of the land area which is adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court.

If the petitioners do not constitute either a majority of the resident landowners or own three fifths of the land as set out in subdivisions (1) or (2) above, then the proceedings shall be dismissed. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; C.S., s. 5332; 1925, c. 122, s. 4; 1959, c. 1312, s. 1; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(158); 1997-443, s. 11A.123.)

CASE NOTES

Final Decree as Adjudication That Benefits Exceed Burdens. — A final decree in proceedings to lay off a statutory drainage district is an adjudication that the benefits to the land within the district are more than the burdens assessed against it for such purpose.

Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915), petition for rehearing denied, 171 N.C. 505, 88 S.E. 754 (1916).

Failure to Object as Waiver. — The question as to whether an owner of land within a drainage district has realized the benefits anticipated is eliminated when the district is established upon the report; and where such owner remains silent or makes no objection or exception at the proper time as to the proceedings of the board, his silence is a waiver of any right he may have had therein, and an independent remedy by injunction is not open to him. Mitchem v. Gaston County Drainage Comm'n, 182 N.C. 511, 109 S.E. 551 (1921).

Where a drainage district has been duly laid off in conformity with the statute, and a landowner therein has not excepted to either the preliminary or final report, he may not, after appointment of the commissioners, be heard to complain that the benefits he is to receive are not as great as those he had contemplated. Griffin v. Board of Comm'rs, 169 N.C. 642, 86 S.E. 575 (1915).

§ 156-75. Appeal from final hearing.

Any landowner, party petitioner, or the drainage district may, within 10 days after the entry of an order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. The procedures for taking appeal are as provided in Article 27A of Chapter 1 of the General Statutes, except as provided otherwise by this Subchapter. In an appeal to the superior court taken under this section or any other section or provision of the drainage laws of the State, general or local, the appeal has precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the court, in its discretion, determines the order in which they are heard. (1909, c. 442, s. 17; 1911, c. 67, s. 3; C.S., s. 5333; 1923, c. 217, s. 2; 1969, c. 192, s. 1; 1973, c. 108, s. 96; 1999-216, s. 20.)

Cross References. — As to right of appeal, see G.S. 156-66. As to application of this section, see G.S. 156-104.

CASE NOTES

Construction of Section. — This section, providing for an appeal upon exception to the final report by an owner of lands in a drainage district laid off under the provisions of the statute, necessarily refers to the formation of the district and the assessments of the lands embraced in it. Wayne County Drainage Dist. No. 1 v. Parks, 170 N.C. 435, 87 S.E. 229 (1917).

Appeal Only upon Exceptions Filed Below. — An appeal from the final order of the clerk in establishing a drainage district under this section is heard only upon the exceptions thereto filed as to issues of law or fact. In re Big Cold Water Drainage Dist., 162 N.C. 127, 78 S.E. 14 (1913); Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913).

It is sufficient that the clerk has found as a fact that the allegations set out in the petition are true, if these allegations are sufficient, and distinctly and clearly made. In re Big Cold Water Drainage Dist., 162 N.C. 127, 78 S.E. 14 (1913).

Where, by consent of the parties to an action, the court has ordered a referee for hearing and determining "all matters in controversy," and the controversy has arisen upon exceptions taken by a landowner to the final report on the plan and assessments made in forming a drainage district, by this section, the complaining party may not successfully except to the authority of the referee in passing upon questions therein arising which have been referred to him. Wayne County Drainage Dist. No. 1 v. Parks, 170 N.C. 435, 87 S.E. 229 (1917).

Cited in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962); In re Drainage of Ahoskie Creek, 261 N.C. 407, 134 S.E.2d 642 (1964).

§ 156-76. Compensation of board of viewers.

The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation, particularly of the drainage engineer, the clerk shall confer fully with the Department of Environment and Natural Resources and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall be in such amount per day as may be fixed by the clerk of the superior court for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; C.S., s. 5334; 1925, c. 122, s. 4; 1959, c. 288; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(159); 1997-443, s. 11A.123.)

§ 156-77. Account of expenses filed.

The engineer and viewers shall keep an accurate account and report to the court the name and number of days each person was employed on the survey and the kind of work he was doing, and any expenses that may have been incurred in going to and from the work, and the cost of any supplies or material that may have been used in making the survey. (1909, c. 442, s. 13; C.S., s. 5335.)

§ 156-78. Drainage record.

The clerk of the superior court shall provide a suitable book, to be known as the "Drainage Record," in which he shall transcribe every petition, motion, order, report, judgment, or finding of the board in every drainage transaction that may come before it, in such a manner as to make a complete and continuous record of the case. Copies of all the maps and profiles are to be furnished by the engineer and marked by the clerk "official copies," which shall be kept on file by him in his office, and one other copy shall be pasted or otherwise attached to his record book. (1909, c. 442, s. 18; C.S., s. 5336.)

CASE NOTES

Waiver by Failure to Object to Proceedings Noted in Record Book. — Upon the filing of the final report by the viewers, etc., in a proceeding to establish a drainage district under the provisions of the statute, a record is required by the statute to be kept in a book for the purpose, giving all those interested in the proceedings notice of all that has been done materially affecting them; and when they have timely failed to make objection, they have lost their right to object by the delay. Griffin v. Board of Comm'rs, 169 N.C. 642, 86 S.E. 575 (1915).

§ 156-78.1. Municipalities.

(a) Any municipality may participate in drainage district works or projects upon mutually agreeable terms relating to such matters as the construction, financing, maintenance and operation thereof.

(b) Any municipality may contribute funds toward the construction, maintenance and operation of drainage district works or projects, to the extent that such works or projects:

(1) Provide a source of municipal water supply for the municipality, or protect an existing source of such supply, enhance its quality or increase its dependable capacity or quantity, or implement or facilitate the disposal of sewage of the municipality; or

(2) Protect against or alleviate the effects of floodwater or sediment damages affecting, or provide drainage benefits for property owned by the municipality or its inhabitants.

(c) Municipal expenditures for the aforesaid purposes are declared to be for necessary expenses. Municipalities may enter continuing contracts, some portion or all of which may be performed in an ensuing year, agreeing to make periodic payments in ensuing fiscal years to drainage districts in consideration of benefits set forth in subsection (b) (2) of this section, but no such contract may be entered into unless sufficient funds have been appropriated to meet any amount to be paid under the contract in the fiscal year in which the contract is made. The municipal governing body shall, in the budget ordinance of each ensuing fiscal year during which any such contract is in effect, appropriate sufficient funds to meet the amount to be paid under the contract in such ensuing fiscal year. The statement required by G.S. 160-411.1 to be printed, written or typewritten on all contracts, agreements, or requisitions requiring the payment of moneys shall be placed on such a continuing contract only if sufficient funds have been appropriated to meet the amount to be paid under the contract in the fiscal year in which the contract is made.

(d) The provisions of this section are permissive. If a municipality does not participate in accordance with the provisions of this section, then the other provisions of Subchapter III shall apply and be followed. (1961, c. 614, s. 10.)

Cross References. — As to property taxes to provide for drainage projects or programs, see G.S. 160A-209.

Editor's Note. — Section 160-411.1, referred to in this section, was repealed by Session Laws 1971, c. 780, s. 13. See now G.S. 159-28.

ARTICLE 6.

Drainage Commissioners.

§ 156-79. Appointment and organization under original act.

After the drainage district has been declared established, as aforesaid, and the survey and plan therefor approved, the court shall appoint three persons, in the manner set forth in G.S. 156-81, who shall be designated as the board of drainage commissioners. Any vacancy thereafter occurring shall be filled by the clerk or clerks of the superior court in the manner set forth in G.S. 156-81. Such three drainage commissioners, when so appointed, shall be immediately created a body corporate under the name and style of "The Board of Drainage Commissioners of __________ District," with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and a vice-chairman. They shall also elect a secretary, either within or without their body. Such board of drainage commissioners shall adopt a seal, which they may alter at pleasure. The board of drainage commissioners shall have and possess such powers as are herein granted. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C.S., s. 5337; 1947, c. 273; 1963, c. 767, s. 3; 1989 (Reg. Sess., 1990), c. 959, s. 2.)

Local Modification. — Columbus, Chadburn Drainage District: 1939, c. 70; 1953, c. 1020; Hyde, Mattamuskeet Lake District: 1909, c. 509; Pub. Loc. 1927, c. 407; Iredell, Davidson Creek Drainage District: 1933, c. 466; Pitt County Drainage District: 1979, c. 817. See also the note headed "Local Modification" under G.S. 156-56.

CASE NOTES

Individual Acts of Officials Not Binding on District. — A drainage district is a corporation, and as any other corporation, public or private, it cannot be bound by the acts of its officials or agents acting separately or individually. Davenport v. Pitt County Drainage Dist. No. 2, 220 N.C. 237, 17 S.E.2d 1 (1941).

A drainage district is not authorized to enter into a contract that would give special or particular rights or claims to one landowner in the drainage district that are not enjoyed by all landowners similarly situated. Davenport v. Pitt County Drainage Dist. No. 2, 220 N.C. 237, 17 S.E.2d 1 (1941).

As to appointment of commissioners for a particular drainage district established under special act, see State ex rel. Mann v. Gibbs, 156 N.C. 44, 72 S.E. 82 (1911).

Cited in Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-80. Name of districts.

The name of such drainage district shall constitute a part of its corporate name; for illustration, the board of drainage commissioners of Mecklenburg Drainage District, No. 1. In the naming of a drainage district the clerk of the court, notwithstanding the name given in the petition, shall so change the name as to make it conform to the county within which the district, or the main portion of the district, is located, and such district shall also be designated by number, the number to indicate the number of districts petitioned for in the county. For illustration, the first district organized in Mecklenburg County would be Mecklenburg County Drainage District, No. 1; the name of the second would be Mecklenburg County Drainage District, No. 2; the fifth one organized would be Mecklenburg County Drainage District, No. 5: Provided, that so much of this section as provides for numbering the districts in each county shall not apply to districts in which bonds have been issued and sold prior to the fifth day of March, 1917. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C.S., s. 5338.)

§ 156-81. Appointment and organization under amended act.

(a) Method of Appointment. —

The manner of appointment shall be as follows:

(1) If the drainage district shall lie solely within one county, the clerk of superior court for such county shall appoint such commissioners.

(2) If the said district shall lie in more than one county, then such commissioners shall be appointed by unanimous action of the clerks of court for the counties wherein any part of such district lies.

(b) Organization. — Immediately after the appointment of the board of drainage commissioners, the clerk of the court of the county wherein such drainage proceeding is pending shall notify each of the commissioners in writing to appear at a certain time and place within the district and organize. The clerk or clerks of court, as the case may be, shall appoint one of the three members as chairman of the board of drainage commissioners, and in doing so he or they shall consider carefully and impartially the respective qualifications of each of the members for the position.

(c) Term of Office. — The term of service of the members of the board of drainage commissioners so appointed shall begin upon their appointment. Where all three commissioners are appointed at once, one commissioner shall serve for one year, one for two years, and the other for three years, the term to be computed from the first day of October following their organization. The members so serving for one, two, and three years, respectively, shall be unanimously designated by the clerk or clerks of the court. Thereafter each member shall be appointed for three years. The clerk of the court for the county wherein the proceeding is pending shall record in the drainage record the date of appointment, the members appointed, and the beginning and expiration of their term of office.

(d) Vacancies Filled. — If a vacancy shall occur in the office of any commissioner by death, resignation, or otherwise, the remaining two members are to discharge the necessary duties of the board until the vacancy shall be filled; and if the vacancy shall be in the office of chairman or secretary, the two remaining members may elect a secretary, and the clerk or clerks, as the case may be, shall appoint one of the two remaining members to act as chairman to hold until the vacancy in the board shall be filled. The clerk of the county wherein the proceeding is pending shall keep a similar record of any appointment to fill vacancies. The person appointed to fill the vacancy shall be appointed in the manner set forth in subsection (a) of this section and shall serve until the expiration of the term of his predecessor. The secretary of the board of drainage commissioners shall promptly notify the appropriate clerk or clerks of the superior court of any vacancy in the board.

(e) Failure to Appoint. — If for any reason the clerk or clerks of the court shall fail to provide for the appointment of drainage commissioners prior to the expiration of a term, the incumbents shall continue to hold their office as commissioners until their successors are appointed and qualified. The term of office of boards of drainage commissioners heretofore elected and appointed shall expire immediately upon the appointment of new commissioners pursuant to subsection (a) of this section.

(f) Meetings. — The board shall meet once each month at a stated time and place during the progress of drainage construction, and more often if necessary. After the drainage work is completed, or at any time, the chairman shall have the power to call special meetings of the board at a certain time and place. The chairman shall also call a meeting at any time upon the written request of the owners of a majority in area of the land in the district.

(g) Compensation. — The chairman of the board of drainage commissioners shall receive compensation and allowances as fixed by the clerk of the superior court. In fixing such compensation and allowances, the clerk shall give due consideration to the duties and responsibilities imposed upon the chairman of the board. The other members of the board shall receive a per diem not to exceed twenty-five dollars ($25.00) a day, while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The secretary of the board shall receive such compensation and expense allowances as may be determined by the board.

The chairman and members of the board of drainage commissioners shall also receive their actual travel and subsistence expenses while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The compensation and expense allowances as herein set out shall be paid from the assessments made annually for the purpose of maintaining the canals of the drainage district, or from any other funds of the district.

(h) Application of Section. — The provisions of this section shall apply to all drainage districts now or hereafter existing in this State, without regard to the date of organization.

(i) Repealed by Session Laws 1989 (Regular Session, 1990), c. 959, s. 3. (1917, c. 152, s. 5; 1919, cc. 109, 217; C.S., s. 5339; 1947, c. 935; 1949, c. 956, ss. 1-3; 1957, c. 912, s. 1; 1975, c. 494; 1989 (Reg. Sess., 1990), c. 959, s. 3.)

Local Modification. — Hyde, Mattamuskeet Drainage District: C.S. 5339; Pitt: 1935, c. 469, s. (4a); 1939, c. 350; Pitt, Drainage District No. 1: 1965, c. 746, s. 1.

CASE NOTES

Unconstitutional Delegation of Legislative Powers. — Discretion provided by subsections (a) and (i) of this section to the clerks of superior court to determine whether drainage commissioners should be elected or appointed is an unconstitutional delegation of legislative powers. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

Where one of three drainage commissioners dies, the two surviving commissioners have authority, until the election and qualification of their successors, to levy an additional assessment against the lands of the district necessary to discharge the obligations of the district. Peoples Loan & Sav. Bank v. King, 212 N.C. 349, 193 S.E. 663 (1937).

Landowners in Drainage District Prohibited from Voting Deprived of Equal Protection of the Laws. — Where some landowners who lived in a drainage district could vote for the clerk who appointed the commissioners of the drainage district and some landowners could not, the defendant nonvoters had been deprived of a fundamental right; furthermore, plaintiff drainage district failed to show that the classification of voters in this case was necessary to promote a compelling governmental interest; therefore, defendants were deprived equal protection of the laws in violation of N.C. Const., Art. I, § 19. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-81.1. Treasurer.

The appointing authority as determined by G.S. 156-81 shall appoint a treasurer for the drainage district for a term not to exceed 12 months. The treasurer so appointed may be a member of the board of commissioners of the district or some other person deemed competent, and shall furnish bond as may be required by the said clerk of the superior court. The treasurer shall continue in office until a successor has been appointed and qualified.

All references in Subchapter III of Chapter 156 of the General Statutes of North Carolina, to "treasurer" or "county treasurer" or "county auditor" are hereby amended to refer exclusively to the treasurer appointed as hereinbefore provided. (1963, c. 767, s. 4; 1989 (Reg. Sess., 1990), c. 959, s. 6.)

Local Modification. — Hyde: 1967, c. 1010.

§ 156-82. Validation of election of members of drainage commission.

All irregularities caused by failure of any officer whose duty it was to provide for the election of a member or members of board of drainage commissioners of any drainage district, or the failure of any candidate to make a deposit as may be required by law, shall not invalidate such election where the following facts appear affirmatively:

(1) That said election was held at the time and place prescribed by law.
(2) That a ballot box was provided for the ballots cast for drainage commissioner.
(3) That the ballots were canvassed and the results declared by the judge of the general election.
(4) That the candidate receiving the greatest number of votes was declared elected.
(5) That no candidate for election as a member of board of drainage commissioners made any deposit as prescribed by law.
(6) That the candidate receiving the majority votes at said election has already qualified and is acting as such drainage commissioner.

This section shall not apply to any election contested before March 9, 1921. (1921, c. 210; C.S., s. 5339(a).)

§ 156-82.1. Duties and powers of the board of drainage commissioners.

(a) The board of drainage commissioners shall proceed with the levying of assessments, issuance of bonds and construction of canals, water retardant structures and other improvements and acquisition of equipment as approved by the court in the adjudication upon the final report of the board of viewers, either in the creation of the district or in subsequent proceedings authorized by Article 7B.

(b) The commissioners shall maintain the canals, water retardant structures, and all other improvements and equipment of the district.

(c) The commissioners, with the approval of the clerk of the superior court, may use surplus funds in such manner as they deem best for (i) the maintenance of the improvements, (ii) construction or enlargement of canals and water retardant structures, or other improvements or equipment, (iii) replacement or acquisition of equipment or structures, and (iv) for payment of any or all operating expenses including salaries, fees and costs of court.

The term "surplus funds" is defined to mean any funds remaining after the payment of those items set forth specifically in the certificate of assessment, as well as funds provided in said certificate for maintenance and contingencies, and also, shall include maintenance and any other funds which the said commissioners may have on hand and which are not necessary for the payment of the bonds and interest thereon which have been issued by the said district.

(d) The board of commissioners may agree, or contract, with any agency of the government of the United States or of North Carolina for such engineering or other services as may be provided by such agency.

(e) The board of commissioners may, in its discretion, release areas taken for rights-of-way if it determines, after the construction of the canals, that such are not needed for the purpose of the district. The release must be approved by the clerk of the superior court and such release shall be filed in the proceedings by virtue of which the district was created.

(f) The board of drainage commissioners shall have all the duties and powers as set forth and imposed upon them by the various sections of this Subchapter and all others which are necessary to promote the purposes of the district.

(g) The board of commissioners may authorize the use of stored or impounded water for recreational purposes. They may acquire title, by gift or purchase, but not by condemnation, of land to be used in conjunction with the stored and impounded water, for the development of recreational facilities.

The said commissioners are not authorized to use funds obtained from assessments upon the lands within the drainage district, for the purposes of the acquisition and development of recreational facilities. They are authorized to issue revenue bonds or notes, for the acquisition of land and construction and development of recreational facilities. The funds received from the use of the said recreational facilities, may be pledged for the payment of said revenue bonds and notes.

The terms and conditions of the issuance and payment of the said revenue bonds or notes, must be approved by the clerk of the superior court who has jurisdiction of the said drainage district.

The commissioners are authorized to enter into a contract with persons, association of persons or municipal or private corporations, for the operation of recreational facilities, owned by the drainage district. The contract may be entered into by negotiation or by award to the highest bidder at a public rental to be advertised as directed by the clerk of the superior court. The terms of the contract must be approved by the clerk of the superior court who has jurisdiction of the said drainage district.

(h) The commissioners may enter into a contract with a municipality or other nonprofit organizations, for the joint use of a facility for the impoundment or storage of water. The contract must be approved by the clerk of the superior court who has jurisdiction of the drainage district.

(i) All improvements constructed and acquired under the provisions of this Subchapter shall be under the control and supervision of the board of drainage commissioners. It shall be their duty to keep all improvements in good repair. (1961, c. 614, s. 2; 1965, c. 1143, s. 3.)

§ 156-82.2. Appointment of drainage commissioners.

Notwithstanding any other provision of law (including, where applicable, any special acts or local modification of general law), the General Assembly hereby appoints all sitting drainage district commissioners and drainage commission treasurers, as of the date of ratification of this section, as commissioners, officers, and treasurers of their respective districts. Said commissioners, officers, and treasurers shall continue in office until such time as appointments shall be made as provided in G.S. 156-81 and G.S. 156-81.1, which appointments shall be made by the clerk or clerks of the superior court not later than January 1, 1991. (1989 (Reg. Sess., 1990), c. 959, s. 1.)

§ 156-82.3. Validation of previous actions.

(a) All expenditures heretofore incurred, and all actions heretofore taken, by a drainage district for purposes authorized by this Chapter are hereby validated notwithstanding any defect in the selection of any or all of its commissioners or any other defect.

(b) The provisions of this section are expressly made applicable to any and all bonds and other financial obligations of any such district. No action based on the alleged invalidity of the assessments heretofore made or of any such bonds or other obligations of a district shall lie after January 1, 1991, to enjoin or contest the enforceability of any such assessment, bond, or other obligation. (1989 (Reg. Sess., 1990), c. 959, s. 5.)

ARTICLE 7.

Construction of Improvement.

§ 156-83. Superintendent of construction.

The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the Department of Environment and Natural Resources, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same manner.

The board of drainage commissioners may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of North Carolina whereby such agency may furnish the service required of the superintendent of construction. If this is done by the board, any reference in this Chapter to the superintendent of construction and/or his duties shall include or be exercised by the said agency subject to the approval of the board of commissioners. (1909, c. 442, s. 20; C.S., s. 5340; 1923, c. 217, s. 3; 1925, c. 122, s. 5; 1959, c. 597, s. 3; 1961, c. 1198;

1963, c. 767, s. 5; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(160); 1997-443, s. 11A.123.)

Local Modification. — Hyde: 1957, c. 714.

Cross References. — As to application of this section, see G.S. 156-104.

§ 156-84. Letting contracts.

The board of drainage commissioners shall cause notice to be given of the letting of the contract. The notice shall be posted at the courthouse door in the county wherein the district was organized. Notice shall be posted no less than 15 days prior to the opening of the bids and shall be published at least once a week for two consecutive weeks immediately prior to the opening of the bids, in some newspaper published in the county wherein such improvement is located, if such there be, and such additional publication elsewhere as they may deem expedient, of the time and place of letting the work of construction of such improvement, and in such notice they shall specify the approximate amount of work to be done and the time fixed for the completion thereof; and on the date appointed for the letting they, together with the superintendent of construction, shall convene and let to the lowest responsible bidder, either as a whole or in sections, as they may deem most advantageous for the district, the proposed work. No bid shall be entertained that exceeds the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. They shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by doing so. The successful bidder shall be required to enter into a contract with the board of drainage commissioners and to execute a bond for the faithful performance of such contract, with sufficient sureties, in favor of the board of drainage commissioners for the use and benefit of the levee or drainage district, in an amount equal to no less than 25 nor more than one hundred per centum (100%) of the estimated cost of the work awarded to him. In canvassing bids and letting the contract, the superintendent of construction shall act only in an advisory capacity to the board of drainage commissioners. The contract shall be based on the plans and specifications submitted by the viewers in their final report as confirmed by the court, the original of which shall remain on file in the office of the clerk of the superior court and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under the authority of the board of drainage commissioners and on the day theretofore appointed for opening the bids. The drainage commissioners shall have power to correct errors and modify the details of the report of the engineer and viewers if, in their judgment, they can increase the efficiency of the drainage plan and afford better drainage to the lands in the district without increasing the estimated cost submitted by the engineer and viewers and confirmed by the court. (1909, c. 442, s. 21; 1911, c. 67, s. 4; C.S., s. 5341; 1959, c. 806; 1963, c. 767, s. 6.)

CASE NOTES

Discretionary Power of Commissioners. — This section directs that the levee or drainage commissioners shall convene with the superintendent of construction and let the work contemplated to the "lowest responsible bidder," thereby conferring a discretionary power in adjudging the responsibility of the bidder, in all respects, with which the courts will not interfere in the absence of undue influence or a procurement by fraud. Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910).

Acceptance of Work by Commissioners. — The acceptance of the work of the contractors as a compliance on their part with the contract is a judicial act of the board of commissioners and cannot be questioned except for fraud or collusion, and then only to make the commissioners personally and individually liable. Craven v. Board of Comm'rs, 176 N.C. 531, 97 S.E. 470 (1918).

Only Minor Changes in Report Authorized. — The authority given by this section to correct errors and modify the details of the report contemplates only such minor changes of detail as may occur in carrying out the plans, etc., specified in the final report and not a substantial departure therefrom. Griffin v. Board of Comm'rs, 169 N.C. 642, 86 S.E. 575 (1915).

§ 156-85. Monthly estimates for work and payments thereon; final payment.

The superintendent in charge of construction shall make monthly estimates of the amount of work done, and furnish one copy to the contractor and file the other with the secretary of the board of drainage commissioners; and the commissioners shall, within five days after the filing of such estimate, meet and direct the secretary to draw a warrant in favor of such contractor for ninety per centum (90%) of the work done, according to the specifications and contracts; and upon the presentation of such warrant, properly signed by the chairman and secretary, to the treasurer of the drainage fund, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the drainage fund as before provided. (1909, c. 442, s. 22; C.S., s. 5342.)

§ 156-86. Failure of contractors; reletting.

If any contractor to whom such work has been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the board of drainage commissioners against such contractor and his bond in the superior court for damages sustained by the levee or drainage district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting. (1909, c. 442, s. 23; 1911, c. 67, s. 5; C.S., s. 5343.)

§ 156-87. Right to enter upon lands; removal of timber.

In the construction of the work the contractor shall have the right to enter upon the lands necessary for this purpose and the right to remove private or public bridges or fences and to cross private lands in going to or from the work. In case the right-of-way of the improvement is through timber the owner thereof shall have the right to remove it, if he so desires, before the work of construction begins, and in case it is not removed by the landowner it shall become the property of the contractor and may be removed by him. (1909, c. 442, s. 24; C.S., s. 5344.)

CASE NOTES

Constitutionality. — Objection that this section constitutes an unconstitutional taking of the owner's timber, giving it to the contractor without compensation, cannot be maintained. Beaufort County Lumber Co. v. Drainage Comm'rs, 174 N.C. 647, 94 S.E. 457 (1917).

Purpose of Section. — The drainage acts contemplate that all damages to the owner of lands shall be assessed, including the taking of his timber necessary to carry out its plans, this section being designed to give the owner of the timber the privilege of taking such timber if he so elects. Beaufort County Lumber Co. v. Drainage Comm'rs, 174 N.C. 647, 94 S.E. 457 (1917).

OPINIONS OF ATTORNEY GENERAL

Time for Removal of Timber. — Provision in this section that the owner of timber shall have the right to remove it "before the work of construction begins" means when work is begun on a particular landowner's tract. See opinion of Attorney General to Colonel Paul S. Denison, Army Corps of Engineers, 40 N.C.A.G. 197 (1969).

§ 156-88. Drainage across public or private ways.

Where any public ditch, drain or watercourse established under the provisions of this Subchapter crosses or, in the opinion of the board of viewers, should cross a public highway under the supervision of the Department of Transportation the actual cost of constructing the same across the highway shall be paid for from the funds of the drainage district, and it shall be the duty of the Department of Transportation, upon notice from the court, to show cause why it should not be required to repair or remove any old bridge and/or build any new bridge to provide the minimum drainage space determined by the court; whereupon the court shall hear all evidence pertaining thereto and shall determine whether the Department of Transportation shall be required to do such work, and whether at its own expense or whether the cost thereof should be prorated between the Department of Transportation and the drainage district. Either party shall have the right of appeal from the clerk to the superior court and thence to the appellate division, and should the court be of the opinion that the cost should be prorated then the percentage apportioned to each shall be determined by a jury.

Whenever the Department of Transportation is required to repair or remove any old bridge and/or build any new bridge as hereinbefore provided, the same may be done in such manner and according to such specifications as it deems best, and no assessment shall be charged the Department of Transportation for any benefits to the highway affected by the drain under the same, and such bridge shall thereafter be maintained by and at the expense of the Department of Transportation.

Where any public ditch, drain, or watercourse established under the provisions of this Subchapter crosses a public highway or road, not under the supervision of the Department of Transportation, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the funds of the drainage district. Whenever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land, to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the commissioners of the county where the road is located, of the amount of such assessment, and the county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a public highway or road not under the supervision of the Department of Transportation, by reason of enlarging any watercourse, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the official board or authority which by law is required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private roads; provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the Department of Transportation or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; C.S., s. 5345; 1947, c. 1022; 1953, c. 675, s. 26; 1957, c. 65, s. 11; 1969, c. 44, s. 78; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

§ 156-89. Drainage across railroads; procedure.

Whenever the engineer and the viewers in charge shall make a survey for the purpose of locating a public levee or drainage district or changing a natural watercourse, and the same would cross the right-of-way of any railroad company, it shall be the duty of the owner in charge of the work to notify the railroad company, by serving written notice upon the agent of such company or its lessee or receiver, that they will meet the company at the place where the proposed ditch, drain, or watercourse crosses the right-of-way of such company, the notice fixing the time of such meeting, which shall not be less than 10 days after the service of the same, for the purpose of conferring with the railroad company with relation to the place where and the manner in which such improvement shall cross such right-of-way. When the time fixed for such conference shall arrive, unless for good cause more time is agreed upon, it shall be the duty of the viewers in charge and the railroad company to agree, if possible, upon the place where and the manner and method in which such improvement shall cross such right-of-way. If the viewers in charge and the railroad company cannot agree, or if the railroad company shall fail, neglect, or refuse to confer with the viewers, they shall determine the place and manner of crossing the right-of-way of the railroad company, and shall specify the number and size of openings required, and the damages, if any, to the railroad company, and so specify in their report. The fact that the railroad company is required by the construction of the improvement to build a new bridge or culvert or to enlarge or strengthen an old one shall not be considered as damages to the railroad company. The engineer and viewers shall also assess the benefits that will accrue to the right-of-way, roadbed, and other property of the company by affording better drainage or a better outlet for drainage, but no benefits shall be assessed because of the increase in business that may come to the road because of the construction of the improvement. The benefits shall be assessed as a fixed sum, determined solely by the physical benefit that its property will receive by the construction of the improvement, and it shall be reported by the viewers as a special assessment, due personally from the railroad company as a special assessment; it may be collected in the manner of an ordinary debt in any court having jurisdiction. (1909, c. 442, s. 26; C.S., s. 5346.)

CASE NOTES

Mandamus Against County Commissioners Upheld. — A judgment in proceedings seeking mandamus against county commissioners to compel them to pay an assessment of a drainage district for benefit to the public roads therein, that the defendants pay the same, with interest and costs, out of the first moneys coming into their hands and not otherwise appropriated, was valid and not in violation of the Constitution or statutes relating to taxation. Cabarrus County Drainage Dist. No. 2 v. Board of Comm'rs, 174 N.C. 738, 94 S.E. 530 (1917).

§ 156-90. Notice to railroad.

The clerk of the superior court shall have notice served upon the railroad company of the time and place of the meeting to hear and determine the final report of the engineer and viewers, and the railroad company shall have the right to file objections to the report and to appeal from the findings of the board of commissioners in the same manner as any landowner. But such an appeal shall not delay or defeat the construction of the improvement. (1909, c. 442, s. 27; C.S., s. 5347.)

§ 156-91. Manner of construction across railroad.

(a) Duty of Railroad. — After the contract is let and the actual construction is commenced, if the work is being done with a floating dredge, the superintendent in charge of construction shall notify the railroad company of the probable time at which the contractor will be ready to enter upon the right-of-way of such railroad and construct the work thereon. It shall be the duty of the railroad to send a representative to view the ground with the superintendent of construction and arrange the exact time at which such work can be most conveniently done. At the time agreed upon the railroad company shall remove its rails, ties, stringers, and such other obstructions as may be necessary to permit the dredge to excavate the channel across its right-of-way. The work shall be so planned and conducted as to interfere in the least possible manner with the business of the railroad.

(b) Utilities Commission to Settle. — If the superintendent of construction and the railroad company shall not be able to agree as to the exact time at which such work can be done, including the time of beginning and the time to be consumed in such work, either party may give written notice thereof to the chairman of the Utilities Commission of the State, and thereupon the Utilities Commission shall cause an investigation to be made, and, after hearing both parties, shall fix the time of beginning such work and the time to be consumed in the work of construction, and the final determination of the Utilities Commission thereon shall be binding upon the superintendent of construction representing the district and the railroad company, and the work shall be done in such time as may be fixed by the Utilities Commission.

(c) Penalty for Delay. — In case the railroad company refuses and fails to remove its track and allow the dredge to construct the work on its right-of-way, it shall be held as delaying the construction of the improvement, and such company shall be liable to a penalty of twenty-five dollars ($25.00) per day for each day of delay, to be collected by the board of drainage commissioners for the benefit of the drainage district as in the case of other penalties. Such a penalty may be collected in any court having jurisdiction, and shall inure to the benefit of the drainage district.

(d) Payment of Expense. — Within 30 days after the work is completed an itemized bill for actual expenses incurred by the railroad company for opening its tracks shall be made and presented to the superintendent of construction of the drainage improvement. Such bill, however, shall not include the cost of putting in a new bridge or strengthening or enlarging an old one. The superintendent of construction shall audit this bill and, if found correct, approve the same and file it with the secretary of the board of drainage commissioners. The commissioners shall deduct from this bill the cost of the excavation done by the dredge on the right-of-way of the railroad company at the contract price, and pay the difference, if any, to the railroad company. (1909, c. 442, s. 28; 1911, c. 67, s. 7; C.S., s. 5348; 1933, c. 134, s. 8; 1941, c. 97, s. 1.)

§ 156-92. Control and repairs by drainage commissioners.

Whenever any improvement constructed under this Subchapter is completed it shall be under the control and supervision of the board of drainage commissioners. It shall be the duty of the board to keep the levee, ditch, drain, or watercourse in good repair, and for this purpose they may levy an assessment on the lands benefited by the maintenance or repair of such improvement in the same manner and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain, or watercourse in perfect order: Provided, however, that if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs, or other stock of such owner, employee, or agent, then the cost thereof shall be assessed and levied against the lands of the owner alone, to be collected by proper suit instituted by the drainage commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence, or floodgate in such a way as to injure or damage any levee, ditch, drain, or watercourse constructed or improved under the provisions of this Subchapter, and any person causing such injury shall be guilty of a Class 3 misdemeanor, and upon conviction thereof may only be fined in any sum not exceeding twice the damage or injury done or caused. (1909, c. 442, s. 29; C.S., s. 5349; 1947, c. 982, s. 1; 1993, c. 539, s. 1075; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to improvement, renovation, etc., of canals, structures and boundaries, see G.S. 156-93.2 et seq.

CASE NOTES

Amendment by Implication. — Public Laws 1923, c. 231, which added former G.S. 156-118 and G.S. 156-123, had the effect of amending this section. This section authorizes the drainage commissioners to levy an assessment upon the lands in the district for the purpose of keeping up the drainage. The amending statutes provided that the commissioners could issue bonds instead of levying an assessment. In re Perquimans County Drainage Dist. No. Four, 254 N.C. 155, 118 S.E.2d 431 (1961), decided prior to the repeal of §§ 156-118 through 156-120.

Assessments Authorized on Properties Benefited by Repairs. — It is the duty of the commissioners to keep the drains and works of the districts in good repair. For this purpose they are authorized to levy assessments on the properties within the district benefited by the repairs. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

Provision Limiting Assessments. — A provision in the petition limiting the amount of assessments to be made on lands within a drainage district being formed under the provisions of the statute, which was not inserted in the final judgment rendered in due course, could not at a subsequent term be supplied by amendment, being also contrary to the statutory provisions and invalid. Mann v. Mann, 176 N.C. 353, 97 S.E. 175 (1918).

Under the statute creating the Mattamuskeet Drainage District, control thereof, after its completion, is continued in the board of drainage commissioners for the purpose of its maintenance, and authority is given it to levy assessments therefor on the lands benefited in the same manner and in the same proportion as the "original assessments" were made, and collected by the same officers as those by whom the State and county taxes are collected. It was held that the term "original assessments" refers to those made for construction work on bonds issued therefor, and the assessments for maintenance should be collected by the sheriff of the county for the purpose of maintenance, as taxes for general county purposes are to be collected by him. Drainage Comm'rs of Mattamuskeet Dist. v. Davis, 182 N.C. 140, 108 S.E. 506 (1921).

Cited in Robeson County Drainage Dist. No. 4 v. Bullard, 229 N.C. 633, 50 S.E.2d 742 (1948).

§ 156-93. Construction of lateral drains.

The owner of any land that has been assessed for the cost of the construction of any ditch, drain, or watercourse, as herein provided, shall have the right to use the ditch, drain, or watercourse as an outlet for lateral drains from such land; and if the land be of such elevation that the owner cannot secure proper drainage through and over his own land, or if the land is separated from the ditch, drain, or watercourse by the land of another or others, and the owner thereof shall be unable to agree with such others as to the terms and conditions on which he may enter their lands and construct the drain or ditch, he may file his ancillary petition in such pending proceeding to the court, and the procedure shall be as now provided by law. (1909, c. 442, s. 30; 1915, c. 43, s. 1; 1917, c. 152, s. 3; C.S., s. 5350.)

ARTICLE 7A.

Maintenance.

§ 156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations; water-retardant structures; borrowing in anticipation of revenue.

(a) The board of drainage commissioners may annually levy maintenance assessments in the same ratio as the existing classification of the lands within the district. The amount of these assessments shall be determined by the board of drainage commissioners of the district. The proceeds of these assessments shall be used for the purpose of maintaining canals of the drainage district in an efficient operating condition and for the necessary operating expenses of the district. Notice of the meeting at which the board of drainage commissioners determines the amount of the annual levy shall be mailed to the owners, as shown on the county tax records, of all property subject to assessment, or shall be published once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be sent or published not more than 30 days nor less than 10 days prior to the meeting, and shall state the time, place, and purposes of the meeting. Any interested person has the right to be heard at the meeting prior to the drainage commissioners taking any action on the proposed assessment. In the event that any interested and aggrieved party disagrees with the said assessment, he may, within 20 days of the mailing of the notice of the assessment, file with the clerk for the county wherein the proceeding is pending, a notice specifically setting forth his objection. The Secretary of the District shall file in the records of the proceeding a certification setting forth the date of the mailing of the notice of the annual maintenance assessments. The clerk shall thereupon notify the senior resident superior court judge of such district who shall set the objection down for hearing at the earliest possible time. The court shall hear the matter upon the objections duly set forth in the notice of objection.

The board of drainage commissioners shall have the authority to employ engineering assistance, construction equipment, superintendents and operators for the equipment necessary for the efficient maintenance of the canals, or the maintenance may be done by private contract made after due advertisement as required for the original construction work.

(b) The board of drainage commissioners of a drainage district may join with the commissioners of one or more districts for the purpose of employing engineering assistance, equipment, superintendents and equipment operators for the maintenance of the canals in the several districts desiring to coordinate their maintenance operations and the drainage districts desiring to coordinate a common maintenance force may have a common office with the necessary employees for the furtherance of the joint operations for maintenance. The districts may coordinate their work without regard to county lines.

(c) The board of commissioners of a drainage district may, individually or jointly with the commissioners of other drainage districts, purchase, lease, rent, sell, or otherwise dispose of at public or private sale, equipment for the original construction or maintenance of the canals in the individual or joint districts or the said drainage districts may make contracts with private construction firms for the maintenance and construction of their canals. Contracts made with private construction companies are to be advertised as provided for the contract for the original construction of the canals.

The drainage districts may use the equipment owned by them for the purpose of maintenance of the canals and the construction of extensions to the system of canals in the individual or several drainage districts.

(d) The drainage districts desiring to consolidate their maintenance services and equipment may set up a board composed of one member from each district for the purpose of control and use of the personnel and equipment employed on a joint basis, and in all matters coming before the joint board, the representative of each district shall have a voting strength equal to the proportionate acreage of his drainage district as compared with the total acreage of the combined districts.

(e) The collection of the annual maintenance assessments shall be made by the county tax collector. The board of county commissioners of the county in which a drainage district is located shall upon the request of the board of drainage commissioners of the said district cause to be shown on the tax statement or notice issued by the county to its taxpayers the amount due the drainage district by the landowners in the same manner as other special assessments are shown thereon. This amount shall be collected by the county tax collector in the same manner as county taxes and deposited to the credit of the district in which the land is located.

(f) The provisions for maintenance as set forth in this Article and elsewhere in this Subchapter III shall include water-retardant structures and the operation of such.

(g) The board of commissioners may borrow money in anticipation of revenue from maintenance assessments, as hereinbefore provided for, from which assessments the loan shall be repaid. The amount which the commissioners may borrow shall not be limited to the revenues anticipated for any one year. The terms and provisions of such loan shall be approved by the clerk of the superior court which approval shall be requested in the form of a petition and order in the proceeding by virtue of which the district was organized. The proceeds of said loan shall be used only for purposes set forth in Article 7A of Chapter 156. (1949, c. 1216; 1959, c. 597, s. 4; 1961, c. 614, s. 8; 1989 (Reg. Sess., 1990), c. 959, s. 4; 1991, c. 634, s. 1.)

Local Modification. — Beaufort: 1963, c. 142.

CASE NOTES

The land clause of the Constitution of North Carolina is violated insofar as G.S. 156-138.3 dispenses with notice and an opportunity to be heard before imposing maintenance assessments on landowners within the drainage district; the imposition of these assessments was not a matter of mathematical computation, but rather, it involved some discretion on the part of the commissioners. Northampton County Drainage Dist. Number

One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

Cited in In re Perquimans County Drainage Dist. No. Four, 254 N.C. 155, 118 S.E.2d 431 (1961).

ARTICLE 7B.

Improvement, Renovation, Enlargement and Extension of Canals, Structures and Boundaries.

§ 156-93.2. Proceedings for improvement, renovation and extension of canals, structures and equipment.

The board of commissioners may construct, renovate, improve, enlarge and extend the drainage systems and water-retardant structures and any equipment of the district, by complying with the following provisions:

(1) The commissioners shall file with the clerk of the superior court in the county in which the district was organized, a petition which sets forth the need for the improvements requested and a general description of the proposed improvements.

(2) Upon the filing of the petition, the clerk shall then appoint a board of viewers with the same composition and qualifications as is required by G.S. 156-59. He shall direct the board of viewers to consider the proposals of the board of commissioners and report to him (i) whether or not the improvement proposed will benefit the lands sought to be benefited and (ii) whether or not the proposed improvement is practicable.

The board of viewers shall make their report to the clerk within 30 days after their appointment unless the time shall be extended by the court upon the showing of a meritorious cause for the extension.

(3)a. If the board of viewers shall report (i) that none of the improvement proposed will benefit the lands sought to be benefited, or (ii) that it is not practicable, the petition of the board of commissioners shall be dismissed and shall not be submitted again within six months thereafter.

b. If the board of viewers shall report (i) that part or all the improvement proposed will benefit the lands sought to be benefited and (ii) the proposed improvement is practicable, then the clerk shall fix a time and place for a hearing upon said report. The said hearing shall be no less than 20, nor more than 30, days after the filing of said report.

(4) Notice of said hearing shall be given as follows:

a. Posting and publication:

1. Posting at the courthouse door of the county in which the proceeding is pending;
2. Posting at five conspicuous places within the district;
3. The notice shall be posted at least 20 days prior to said hearing;
4. Publication in a newspaper with general circulation within the area once a week for three successive weeks.

b. Contents:

1. The notice shall state the time and place for the hearing;
2. Describe in general terms the improvements proposed;
3. That the court will consider and adjudicate the report of the board of viewers.

(5) At the date appointed for the hearing the clerk shall hear and determine any objections that may be offered to the said report. The

clerk may make such modifications and changes which tend to increase the benefits of the proposed work or improvement.

(6)a. If the clerk shall adjudicate that (i) none of the improvements proposed will benefit any of the lands sought to be benefited or (ii) that none of the improvements are practicable, he shall dismiss the proceedings and the petition shall not be submitted again within six months thereafter.

b. If the clerk shall approve the said report, he shall then direct the board of viewers to prepare a further and detailed report which shall include the following:

1. Specific plans and profiles together with estimates of the cost of the work recommended by the said board of viewers and an estimate of all other costs including those incurred by the board of viewers;
2. If directed by the clerk, a new property map of the district which shall show thereon the general location of each tract of land which will be benefited by the proposed work;
3. A statement showing the classification of benefits to be received by the several tracts of lands. This classification shall be determined and shown in the same manner as is provided for in G.S. 156-71. The board of viewers may adopt the original classification. Only those lands to be benefited by the proposed work shall be classified for assessment.

The board of viewers shall have, insofar as applicable, the same powers and duties as relate to the final report as are required and provided in Article 5 by G.S. 156-69, 156-70, 156-70.1 and 156-71.

The board of viewers shall make their report to the clerk within 60 days after their appointment. The clerk may extend this time upon the showing of meritorious cause for the extension.

The expense of the board of viewers, their assistants, and all costs incurred by them shall be paid from any surplus funds of the district, as defined in this Subchapter, or if such are not sufficient, by the same means of financing as are available for such purposes when the district is originally organized. The estimate of the expenditures shall be shown in its report and all amounts of money expended shall be reimbursed when funds are available.

(7) Upon the filing of the said report, the clerk shall fix a time and a place for a hearing thereupon.

(8) The notice of the hearing upon said report shall be given in the same manner as required for the notice of the proposed work as required by the preceding subdivision (4) which relates to the preliminary hearing.

Also, a notice of said hearing shall be mailed at least 10 days prior to the hearing, to those landowners as their names appear upon the statement of classification of benefits filed with the report of the board of viewers and whose names and addresses are shown on the tax scrolls of the county wherein their land is situated. The attorneys for, or commissioners of, the district shall use due diligence to determine the said names and addresses from the tax scrolls.

The filing with the clerk of the superior court of a certificate by the attorney for, or the commissioners of, the district, that due diligence has been used to obtain the names and addresses from the tax scrolls and that notice has been mailed to those persons at the address shown, shall be sufficient showing that this provision has been complied with. The certificate shall state the names, addresses and dates to whom such notice was mailed.

(9) At the date set for the hearing any landowner may appear in person, or by counsel, and file his objections in writing to the report of the board of viewers. It shall be the duty of the clerk to carefully review the report of the board of viewers and the objections filed thereto and make such changes as are necessary to render substantial and equal justice to all landowners in the district.

If the clerk shall adjudicate that the benefits which will accrue to the lands affected are greater than the cost of the improvements, the report of the board of viewers shall be confirmed. The clerk shall then direct the commissioners of the district to proceed with the improvements as approved.

If, however, the clerk finds that the cost of the improvements is greater than the resulting benefits that will accrue to the lands affected, the clerk shall dismiss the proceedings.

(10) Any landowner, party petitioner, or the drainage district may, within 10 days after the entry of the order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. The procedures for taking appeal under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. All of the terms and provisions of G.S. 156-75 apply to the appeal. (1961, c. 614, s. 1; 1969, c. 192, s. 2; 1999-216, s. 21.)

CASE NOTES

Purpose of Article. — The legislature, when it enacted Subchapter III, authorizing the establishment of drainage districts, made no provision for an alteration and enlargement of the boundaries subsequent to the date of creation, for the simple reason that the boundaries as finally determined had to include all lands benefited by the improvement, and the lands so benefited were required to be assessed for the benefits accruing, and hence no assessment could be levied either for original construction or for cost of maintenance on lands beyond the boundaries. However, the 1961 legislature, recognizing that lands not originally expected to receive benefit from works to be performed by a drainage district might, by changing conditions and the modification or enlargement and maintenance of the drains, receive benefits from work subsequently proposed to be done, made provision for the enlargement of the boundaries of drainage districts. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-93.3. Extension of boundaries.

The boundaries of a drainage district may be extended upon compliance with the requirements and procedures as follows:

(1) The request for extension shall be made by the board of commissioners of the district, in the form of a petition in the name of the drainage district, to the clerk of the superior court of the county wherein the district was originally organized. The proceeding may be ex parte or adversary.

(2) The area proposed to be included within the boundaries of the district must be either:

a. Located upstream and adjacent to the existing boundary of the district and must have as its only source of drainage either:

1. The canals of the district; or
2. Natural or artificial drain ways which empty into or are benefited by the canals of the district; and
3. Must be within the watershed of the existing district; or

b. Adjacent to the existing boundary of the district and have a common outfall with the existing district.

(3)a. In the event the area meets the requirements of (2)a, it shall only be necessary for the petition to be filed by the board of commissioners of the district.

b. In the event the area meets the requirement of (2)b of this section, the owners of fifty percent (50%) or more of the land area which it is proposed to include or forty percent (40%) or more of the resident landowners who will be benefited within such area, must join with and be petitioners with the commissioners of the existing district, asking for the extension of boundaries and inclusion of land within the existing district.

Should the area proposed to be included within the boundary of the enlarged district embrace one or more existing drainage districts, the commissioners of any such district or districts may join in a petition to the court asking for the extension of boundaries of the existing district.

The joinder in the petition by the commissioners of such drainage district in the name of the district shall have the effect of including in the petition all of the land within said existing drainage district to the same extent as if the petition had been signed individually by each landowner of the district. The total acreage in such district or districts shall be included as land in the petition in determining whether or not the requirements under this section have been complied with.

(4) Upon filing of the petition for extension of the boundaries, the clerk of the superior court shall appoint a board of viewers with the same composition and qualifications as is required by G.S. 156-59. The board of viewers shall examine the area proposed to be included within the boundaries of the district to determine whether or not, in their opinion, it is feasible and equitable to include said area within the boundaries of the district, and report their finding to the court. The report must be made within 30 days after the appointment of said board of viewers. The time for filing said report may be extended by the clerk upon a showing of a meritorious cause for the extension.

(5) If the board of viewers shall report that the proposed extension of boundary is not feasible or equitable, the petition shall be dismissed and shall not be submitted again until after six months from date of dismissal.

(6)a. If the board of viewers shall report that the proposed extension of boundary is feasible and equitable, then the clerk of the superior court shall order the board of viewers to make a further and detailed report which shall include a map of the area that is proposed to be annexed which shall show:

1. Boundaries of the existing district;
2. Boundaries of the proposed extension;
3. A general location of each individual tract of land which will be benefited.

b. In the event no additional work is proposed, the board of viewers shall report the following:

1. The allocation of benefits derived from the existing canals, structures or other improvements, between the existing district and the area to be included within the boundaries of the existing district, which shall be a percentage figure and shall be the major factor for the determination of the requirements set forth in the succeeding paragraphs 2 and 3;
2. The amount of money, if any, which the owners of the land to be included within the district should pay for the use of the canals, structures or other improvements of the district;

3. The percent of the cost of maintenance and operating expenses which the owners of the land to be included, should pay;
4. Classification of the additional lands as to benefits derived from the existing canals, structures or other improvements of the district which shall be in accordance with the provisions of G.S. 156-71. The area of the existing district shall not be classified, unless directed by the clerk of the superior court;
5. The names and addresses of the landowners within the areas proposed to be included insofar as may be determined from the tax records of the county;
6. Such other information as may be appropriate or as may be directed by the clerk of the superior court.

c. In the event additional work is proposed, the report of the board of viewers shall also contain the information required in G.S. 156-93.2, as it applies to the final report of the board of viewers.

(7) The board of viewers shall file their detailed or final report within 60 days after their appointment. The time for filing of said report may be extended by the clerk upon a showing of meritorious cause for the extension.

(8) Upon the filing of said report those landowners in the area to be included who are not parties to the proceedings and who do not desire to sign the petition, shall be made parties defendant. Summons shall be served upon the defendants in the manner required for special proceedings. There shall be attached to and served with the summons, in lieu of a copy of the petition or final report, a statement which shall set forth (i) the purpose of the proceedings and (ii) that the report of the board of viewers is on file in the office of the clerk of the superior court and may be examined by persons interested.

(9) The attorney for, or the commissioners of, the district shall use due diligence to give notice to every landowner within the area proposed to be included, who has not signed the petition asking for such extension of boundaries and/or the proposed improvements.

The filing of a certificate by the attorney for, or the commissioners of, the district that due diligence has been used to notify each of said defendant landowners shown by the report of the board of viewers, either by personal service or by publication, shall be sufficient showing of compliance with this provision. The certificate shall contain the names of such landowners served personally, the date of service and the names of those served by publication and the date of service by publication.

(10) Upon filing of said certificate the clerk shall fix a time and place for a hearing upon said report, which date shall be no less than 20 days after filing of said certificate.

(11) Notice of said hearing shall be given as follows:

a. Posting and publication:

1. Posting at the courthouse door of the county in which the proceeding is pending;
2. Posting at five conspicuous places in the district and in the area to be included;
3. The notice shall be posted at least 20 days prior to the said hearing;
4. Publication in a newspaper with general circulation within the area once a week for three successive weeks;
5. Mailing a copy of the notice to those persons for whom an address is shown in the certificate filed by the attorney for, or commissioners of, the district.

b. Contents:
   1. The notice shall state the time and place for the hearing;
   2. Describe in general terms the area proposed to be included and work proposed, if any;
   3. That the court will consider and adjudicate the report of the board of viewers.

(12) At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the board of viewers. It shall be the duty of the clerk to carefully review the report of the board of viewers and the objection filed thereto and make such changes as are necessary to render substantial and equal justice to all of the landowners and the existing district.

(13) The clerk shall, after making adjustments in the report of the board of viewers, if any, determine:

a. If the area(s) of land sought to be included, or any part thereof, is, or will be, benefited by the canals, structures or other improvements of the district.

b. If such area(s) should equitably be included within the boundary of the district because of the benefits received or to be received from the district.

c. If the requirements of the preceding subdivision (3)b, if applicable, are met.

If the clerk shall determine that all of the three preceding requirements are met, he shall direct that the area(s) of land to be included within the boundaries of the district, in accordance with the provisions of the report of the board of viewers, as approved.

(14) If the clerk shall determine either:

a. That no part of the area proposed to be included is or will be benefited by the canals, structures or other improvements of the district and equitably should not be included within the boundaries of the district; or

b. That the requirements of the preceding subdivision (3)a or b, whichever is applicable, have not been complied with; he shall dismiss the proceeding.

(15) Any landowner, party petitioner, or the drainage district may, within 10 days after the entry of an order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. The procedures for taking appeal under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. All of the terms and provisions of G.S. 156-75 apply to the appeal.

(16) The duties and powers of the board of commissioners as to those lands included within the district by the current proceedings shall be the same as to those in the original proceeding. (1961, c. 614, s. 1; 1965, c. 1143, s. 4; 1969, c. 192, s. 3; cc. 440, 1002; 1999-216, s. 22.)

§ 156-93.4. Coordination of proceedings under §§ 156-93.2 and 156-93.3.

In the event a proceeding shall be instituted as provided for in G.S. 156-93.2 and shall also include the extension of boundaries, as provided for in G.S. 156-93.3, the provisions of G.S. 156-93.2 and 156-93.3 shall be coordinated and if there shall be any conflict as to procedure, that provided for in G.S. 156-93.3 shall be followed. (1961, c. 614, s. 1.)

§ 156-93.5. Assessments and bonds for improvement, renovation, enlargement and extension.

The board of drainage commissioners shall, for the purposes set forth in this Article, levy the necessary assessments and may issue bonds or other debentures for the purpose of providing funds for the construction or acquisition of any of the improvements or works authorized by this Article. The time and manner of levying assessments and the issuance of bonds or other debentures and the terms thereof shall be the same as provided for in Article 8 of Subchapter III. (1961, c. 614, s. 1.)

§ 156-93.6. Rights-of-way and easements for existing districts.

All drainage districts heretofore created shall be deemed to own an easement or right-of-way in and to those lands upon which there are existing canals and spoil banks.

Whenever the proposed repairs, maintenance or other improvements make it necessary for the drainage district to acquire additional land for easements or right-of-way, the procedure to secure the same shall be in accordance with G.S. 156-70.1. (1961, c. 614, s. 1.)

CASE NOTES

Applied in Taylor v. Askew, 17 N.C. App. 620, 195 S.E.2d 316 (1973).

§ 156-93.7. Existing districts may act together to extend boundaries within watershed.

If there shall be more than one drainage district in a drainage basin, or watershed, the board of drainage commissioners of any of the districts may initiate or join separately or collectively with the commissioners of one or more of other drainage districts, in the drainage basin or watershed, and/or with the owners of land within the drainage basin, whose lands are not included within an existing drainage district in a petition to the court, asking for the creation of a larger drainage district, or the extension of boundaries of one of the existing districts.

The joinder in the petition by the commissioners of an existing drainage district, acting in the name of the district, shall have the effect of including all of the land assessed within the drainage district, in the petition asking for the creation of the larger drainage district or the extension of boundaries of an existing district. The total area of assessed land, within the existing drainage district shall be included, as land in the petition, in determining whether or not the requirement of G.S. 156-93.3(3)b have been fulfilled.

The provisions of this section shall apply in proceedings provided for in G.S. 156-93.2 and 156-93.3. (1961, c. 614, s. 1; 1965, c. 1143, s. 5.)

ARTICLE 8.

Assessments and Bond Issue.

§ 156-94. Total cost for three years ascertained.

After the classification of lands and the ratio of assessments of the different classes to be made thereon has been confirmed by the court, the board of drainage commissioners shall ascertain the total cost of the improvement, including damages awarded to be paid to owners of land, all costs and incidental expenses, and also including an amount sufficient to pay the necessary expenses of maintaining the improvement for a period of three years after the completion of the work of construction, not exceeding ten per centum (10%) of the estimated actual cost of constructing the drainage works or the contract price thereof if such contract has not been awarded, and after deducting therefrom any special assessments made against any railroad or highway, and, thereupon, the board of drainage commissioners, under the hand of the chairman and secretary of the board, shall certify to the clerk of the superior court the total cost, ascertained as aforesaid; and the certificate shall be forthwith recorded in the drainage record and open to inspection of any landowner in the district. (1909, c. 442, s. 31; 1911, c. 67, s. 8; C.S., s. 5351; 1923, c. 217, s. 4.)

Cross References. — As to application of this section, see G.S. 156-104.

§ 156-95. Assessment and payment; notice of bond issue.

If the total cost of the improvement is less than an average of twenty-five cents (25¢) per acre on all the land in the district, the board of drainage commissioners shall forthwith assess the lands in the district therefor, in accordance with their classification, and said assessment shall be collected in one installment, by the same officer and in the same manner as State and county taxes are collected, and payable at the same time. In case the total cost exceeds an average of twenty-five cents (25¢) per acre on all lands in the district, the board of drainage commissioners shall give notice for three weeks by publication in some newspaper published in a county in which the district, or some part thereof, is situated, if there be any such newspaper, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places in the district, reciting that they propose to issue bonds for the payment of the total cost of the improvement, giving the amount of bonds to be issued, the rate of interest that they are to bear, and the time when payable. Any landowner in the district not wanting to pay interest on the bonds may, within 15 days after the publication of such notice, pay to the county treasurer the full amount for which his land is liable, to be ascertained from the classification sheet and the certificate of the board showing the total cost of the improvement, and have his lands released from liability to be assessed for the improvement; but such land shall continue liable for any future assessment for maintenance or for any increased assessment authorized under the law. (1909, c. 442, s. 32; 1911, c. 67, s. 9; C.S., s. 5352.)

CASE NOTES

Assessments Are Not "Taxes." — Assessments made for the maintenance of a drainage district, incorporated under the provisions of the statute, are not "taxes," even though they may be so incorrectly denominated therein; they are only assessments made for the special benefits to the land within the district, and are not imposed for the purpose of general revenue. Drainage Comm'rs v. Davis, 182 N.C. 140, 108 S.E. 506 (1921).

Drainage district assessments are not taxes. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

Assessments upon lands in a drainage district are liens in rem, resting upon the lands, into whosesoever hands they may be at the time they accrue, and do not come within the terms of a warranty against encumbrances by deed. Taylor v. Commissioners of Moseley Creek Drainage Dist., 176 N.C. 217, 96 S.E. 1027 (1918).

Grantee of Timber Interest Not Liable for Assessment. — A conveyance of the timber, under the usual deed, providing for its cutting and removal from the land within a stated period, is regarded as a severance thereof from the land, and the grantee in the deed is not liable for an assessment for drainage purposes laid thereon. Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917).

No owner is responsible for other owners by reason of their failure to pay, except through the method of assessment provided by the statute. Carter v. Board of Drainage Comm'rs, 156 N.C. 183, 72 S.E. 380 (1911).

Liability for Additional Assessments. — The land of the owner who has paid his assessments, as provided by this section, is subject to additional assessments, the lands in the district being liable until the original bond issue for making the improvements or indebtedness incurred therefor is paid in full. Virginia-Carolina Joint Stock Land Bank v. Watt, 207 N.C. 577, 178 S.E. 228 (1935).

Power of Courts to Enjoin Collection of Assessments. — The courts, in proper instances, have the power to interfere and stay amounts assessed against the owner of lands within an established drainage district, when it appears that the commissioners, in carrying out the ministerial duties imposed on them, endeavored to collect from him a sum in excess of their own assessment, or that they had made out the rolls in utter disregard of the classifications and ratio of assessments established by the final report, or that they had made such changes in the plans and specifications thereof as to exceed their powers and to work substantial wrong and hardship upon the landowner, if he was not guilty of laches and had not unduly delayed asserting his rights. Griffin v. Board of Comm'rs, 169 N.C. 642, 86 S.E. 575 (1915).

Where a drainage district has been fully and lawfully established in accordance with the statute, the commissioners have been duly appointed, and bonds have been issued in furtherance of the scheme, an injunction restraining the collection of the assessment against the landowners therein, at the suit of one of them, will not issue, as against the interest of the holder of the bonds, unless it clearly appears that the commissioners have substantially departed, to the injury of the claimant, from the scheme set forth in the final report of the viewers, etc. Griffin v. Board of Comm'rs, 169 N.C. 642, 86 S.E. 575 (1915).

Purchaser Takes with Notice of Assessments. — The purchaser of lands within a drainage district formed under the provisions of this Chapter is fixed by the statute with notice of the assessments and the time thereof, whether a resident of another state or not. Pate v. Banks, 178 N.C. 139, 100 S.E. 251 (1919).

Presumption as to Notice. — The presumption is in favor of the regularity of the official proceedings of the commissioners of a drainage district, and applies to landowners within the district as to the sufficiency of notice of a meeting duly had to assess such owners according to benefits received from the improvements therein. Mitchem v. Gaston County Drainage Comm'n, 182 N.C. 511, 109 S.E. 551 (1921).

Waiver of Notice. — Where the owner of land in a drainage district, formed under the provisions of the statute, appears at a meeting of the commissioners held for the purpose and is silent, making no objection or exception to the assessment imposed upon his land, the question as to whether he had been sufficiently served with notice of the meeting becomes immaterial, his appearance being construed as a waiver thereof, or rather as dispensing with formal notice, and he cannot collaterally, by injunction, restrain the collection of these assessments by sheriff's sale. This also applies to his grantee who knew that the lands were situate within the district and subject to the assessments. Mitchem v. Gaston County Drainage Comm'n, 182 N.C. 511, 109 S.E. 551 (1921).

Cited in Board of Drainage Comm'rs v. Jarvis, 211 N.C. 690, 191 S.E. 514 (1937).

§ 156-96. Failure to pay deemed consent to bond issue.

Every person owning land in the district who shall fail to pay to the treasurer the full amount for which his land is liable, as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of drainage bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his rights of defense to the payment of any assessments which may be levied for the payment of bonds, because of any irregularity, illegality, or defect in the proceedings prior to this time, except in case of an appeal, as hereinbefore provided, which is not affected by this waiver. The term "person" as used in this Subchapter includes any firm, company, or corporation. (1909, c. 442, s. 33; 1911, c. 67, s. 10; C.S., s. 5353; 1963, c. 767, s. 4.)

CASE NOTES

Cited in Board of Drainage Comm'rs v. Jarvis, 211 N.C. 690, 191 S.E. 514 (1937).

§ 156-97. Bonds issued.

At the expiration of 15 days after publication of notice of bond issue the board of drainage commissioners may issue bonds of the drainage district for an amount equal to the total cost of the improvement, less such amounts as shall have been paid in in cash to the treasurer. Bonds issued by the board of drainage commissioners shall comply with the following provisions:

(1) The bonds shall be serial bonds;
(2) The denomination of the bonds shall be not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000);
(3) The interest upon said bonds shall not be more than fourteen percent (14%) per annum, from the date of issue and payable semiannually;
(4) The first annual installment of principal shall fall due not less than three years nor more than six years after the date of the bonds;
(5) Each annual installment of principal shall be not less than two percent (2%) nor more than ten percent (10%) of the total bonds authorized;
(6) If the total amount of bonds to be issued does not exceed ten percent (10%) of the total amount of the assessment, the board of commissioners may, in their discretion, not issue any bonds and in lieu thereof issue assessment anticipation bonds which shall mature over a period of not less than four nor more than 10 years and shall be payable in equal annual installments. The interest rate on said assessment anticipation bonds shall not be more than fourteen percent (14%) per annum;
(7) The board of commissioners may issue bond anticipation note or notes to be redeemed and paid upon the sale and delivery of bonds herein provided for. If such bond anticipation note or notes are issued, at the discretion of the commissioners, such may be done after the bonds have been sold and prior to the printing and delivery of said bonds and must be paid from the proceeds of said bonds when delivered. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 12; C.S., s. 5354; 1923, c. 217, s. 5; 1955, c. 1340; 1957, c. 1410, s. 1; 1961, c. 601, s. 1; 1963, c. 767, s. 4; 1969, c. 878; 1985, c. 136, ss. 1, 2.)

Cross References. — As to application of this section, see G.S. 156-104.

CASE NOTES

Bond Issue Upheld Despite Interest of Clerk Appointing Commissioners. — An issue of bonds by a drainage commission was not void by reason of the fact that the clerk of the court who appointed the commissioners owned an interest in a tract of land within the drainage district, as such an interest was too minute and was not directly the subject matter of the litigation. White v. Lane, 153 N.C. 14, 68 S.E. 895 (1910).

Cited in Board of Comm'rs v. Gaines, 221 N.C. 324, 20 S.E.2d 377 (1942); In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-97.1. Issuance of assessment anticipation notes.

In lieu of the bonds provided for in G.S. 156-97, the board of drainage commissioners may issue assessment anticipation notes of the district for an amount not to exceed the assessment levied by the commissioners and approved by the clerk of the superior court, less such amounts as shall have been paid in in cash to the treasurer. It shall be optional with the board of drainage commissioners in issuing assessment anticipation notes to issue serial notes in any denominations bearing not more than fourteen percent (14%) interest from the date of issue, payable semiannually. The first annual installment of principal shall be due not less than one year nor more than two years after date thereof, and each annual installment of principal shall not be less than two percent (2%) nor more than twenty-five percent (25%) of the total amount of notes authorized and issued.

Such assessment anticipation notes, when issued, shall have the same force and effect of bonds issued under the provisions of this Article and shall be collectible in the same manner.

The commissioners may issue either serial notes or an amortized note. (1957, c. 912, s. 2; 1961, c. 601, s. 3; 1963, c. 767, ss. 4, 7; 1985, c. 136, s. 3.)

§ 156-98. Form of bonds and notes; excess assessment.

All bonds and notes authorized and issued shall be signed by the chairman and secretary of the board of drainage commissioners and the corporate seal of the district affixed thereto, and the interest coupons shall be authenticated by the facsimile signature of the secretary, and both the principal and interest coupons shall be payable at some bank or trust company to be designated by the board of drainage commissioners and incorporated in the body of the bond. The form of the bond shall be authorized by the board of drainage commissioners or by the board and the purchaser of the bonds jointly, at the option of the board.

All bonds of reclamation districts shall have that fact noted upon the face of the bond, either by stamping or printing the same thereon. All bonds of improvement districts shall also have that fact noted upon their face.

For the purpose of meeting any possible deficit in the collection of annual drainage assessments or any deficit arising out of unforeseen contingencies there shall be levied, assessed and collected during each year when either the interest or principal or both interest and principal on the outstanding bonds shall be due, an assessment as will yield ten percent (10%) more than the total of interest and principal due in such years; that is to say, for every one hundred dollars ($100.00) of principal and interest, or either, due in any one year, there shall be levied, assessed and collected a sufficient drainage assessment to yield one hundred and ten dollars ($110.00) for such year. When this excess of drainage tax so levied, assessed and collected shall accumulate so that the aggregate surplus in the hands of the treasurer of the district shall amount to more than fifteen percent (15%) of the total principal of the bonds of the district outstanding and unpaid, then such surplus above fifteen percent (15%) thereof may be available for expenditure by the board of drainage commissioners in the maintenance and upkeep of the drainage work in such district in the manner provided by law: After all the drainage assessments have been collected except the last assessment, if the surplus which has accumulated amounts to more than five percent (5%) of the total issue of bonds of the district, then and in such event the board of drainage commissioners may in their discretion apply such excess above five percent (5%) toward the reduction of the total amount embraced in the last assessment, reducing the same pro rata as to each tract of land embraced in the district, and having regard to the classification, to the end that such reduction shall be fairly and justly made. As to such surplus as shall accumulate in the hands of the treasurer of the district over and above all obligations of the district which may be due, the treasurer is hereby directed to deposit same in some solvent bank or banks at the highest rate of interest obtainable therefor, and the said treasurer shall be authorized, if he deems it necessary, to demand satisfactory security for such deposits; but the said treasurer shall reserve the right to demand a repayment at any time upon giving not exceeding 30 days' notice thereof. Whereas the proceeds of the first drainage assessment may not be collected and in the hands of the treasurer of the district prior to the maturity of the first and second semiannual installments of interest upon the issue of bonds, the treasurer of the district is hereby directed to pay the interest coupons first maturing and also the interest coupons next maturing, if necessary, out of funds in his hands for the purpose of maintaining the improvement for the period of three years after the completion of the work or construction. As a surplus fund with the treasurer arising out of the annual additional assessment of ten per centum (10%) shall accumulate in any one year in excess of fifteen per centum (15%) of the total principal of the bonds of the district outstanding and unpaid, as herein provided, the treasurer shall transfer in each of such years such surplus fund to the fund for maintaining the improvement after completion, as a reimbursement of the fund formerly withdrawn therefrom for the payment of the first and second installments of interest coupons until such reimbursement shall be fully made. The treasurer shall thereafter keep separate accounts of the proceeds of such additional ten percent (10%) assessment remaining each year after the payment of all maturing obligations, and also a separate account of the funds provided for maintaining the improvement for the period of three years after completion of improvement and all payments therefrom and reimbursements thereto. (1917, c. 152, s. 13; C.S., s. 5355; 1923, c. 217, s. 6; 1927, c. 98, s. 5; 1961, c. 601, s. 2.)

Cross References. — As to application of this section, see G.S. 156-104.

CASE NOTES

Cited in Robeson County Drainage Dist. No. 4 v. Bullard, 229 N.C. 633, 50 S.E.2d 742 (1948); In re Perquimans County Drainage Dist. No. Four, 254 N.C. 155, 118 S.E.2d 431 (1961).

§ 156-99. Application of funds; holder's remedy.

The commissioners of the district may sell the bonds or notes of the district for not less than par and devote the proceeds to the payment of the work as it progresses and to the payment of the other expenses of the district provided for in this Subchapter. The proceeds from the sale of the said bonds or notes shall be for the exclusive use of the levee or drainage district specified therein. A copy of said bonds or notes shall be recorded in the drainage record. If serial bonds or notes are issued it shall only be necessary to record the first numbered bond or note, with a statement showing the serial numbers, the amount and the due dates of principal and interest.

There shall be set out specifically in the drainage record of said proceeding, a description of the lands embraced in the district for which the tax or assessment has not been paid in full, and which is subject to the lien of the said obligations. A reference to the tract number on the map of the district as recorded in the drainage proceedings or in the office of the register of deeds is sufficient description.

If any installment of principal or interest represented by the bonds and notes shall not be paid at the time and in the manner when the same shall become due and payable, and such default shall continue for a period of six months, the holders of such bonds or notes upon which default has been made may have a right of action against the drainage district or the board of drainage commissioners of the district, its officers, including the tax collector and treasurer, directing the levying of a tax or special assessment as herein provided, and the collection of same, in such sum as may be necessary to meet any unpaid installments of principal and interest and costs of action; and such other remedies are hereby vested in the holders of such bonds or notes in default, as may be authorized by law and the right of action is hereby vested in the holders if such bonds or notes upon which default has been made, authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this Subchapter.

The official bond for the tax collector and treasurer shall be liable for the faithful performance of the duties herein assigned them. Such bond may be increased by the board of county commissioners. (1909, c. 442, s. 34; 1911, c. 67, s. 11; c. 205; C.S., s. 5356; 1923, c. 217, s. 7; 1963, c. 767, s. 8.)

§ 156-100. Sale of bonds.

In making the sale of drainage bonds the board of drainage commissioners shall prepare a notice of such sale containing the usual and appropriate information regarding the terms and provisions of the bonds, and shall publish the same for at least a period of two weeks in at least one paper of general circulation published within the State and in at least one other newspaper of large circulation among the buyers of bonds, in which they shall invite sealed bids from prospective purchasers to be opened on a certain day, and may require a cash deposit to accompany all bids, and shall reserve the right to reject any and all bids. In such notice the commissioners may hold in reserve information as to the date when the first installment of principal shall fall due, the annual installments of principal to be paid, the number of years within which the serial bonds are to be paid, the form of the bonds, and the name of the bank or trust company at which the interest coupons and the installments of principal are to be made payable, and shall state that the information and data so withheld may subsequently be agreed upon between the drainage commissioners and the purchaser of the bonds; or the board of drainage commissioners in their advertisement asking bids may make optional propositions in the respects above recited, inviting bids as to each kind of bond so proposed. The board of drainage commissioners shall accept the highest bona fide bid for such bonds and issue and sell the same accordingly, provided the highest bid shall equal or exceed the par value of the bonds with any accrued interest thereon. If no satisfactory bid shall be received, the board of drainage commissioners may readvertise the bonds for sale in the manner above provided, or they may accept any private bid for the bonds at not less than their par value, with any accrued interest thereon. The board of drainage commissioners shall in good faith make diligent effort to sell the bonds at a price not less than their par value, with accrued interest. Bonds of any drainage district heretofore sold or contracted to be sold by the Local Government Commission in the manner provided by the Local Government Act, either alone or in conjunction with the board of drainage commissioners, shall be deemed to have been lawfully sold or contracted to be sold. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 15; C.S., s. 5357; 1941, c. 142.)

Local Modification. — Brunswick, Columbus: 1929, c. 299.

Cross References. — As to application of this section, see G.S. 156-104.

CASE NOTES

The remedy provided by statute to the holders of drainage bonds to enforce payment of their obligations is by action against the drainage district and its commissioners and the tax collector and treasurer to compel these officers to perform their legal duties in pursuing the statutory procedure for the collection and application of drainage assessments, which remedy is adequate and exclusive, and the holder of past-due bonds may not maintain an action against the owner of land within the district to enforce the lien of delinquent drainage assessments against the land. Wilkinson v. Boomer, 217 N.C. 217, 7 S.E.2d 491 (1940).

Service by Publication Held Insufficient. — Where, in an action to foreclose a tax lien, service of process on "bondholders, lien holders or other persons having or claiming some interest in the land" was had by publication, but the publication made no reference to any drainage district, drainage assessment, liens or bonds or bondholders of any drainage district, the publication was held insufficient to give the court jurisdiction of the holders of bonds of the drainage district in which the lands or any part of them lay, and the judgment therein could not preclude the bondholders from exercising their remedy under prescribed conditions to have the drainage district levy additional assessments against the lands for the purpose of paying the drainage bonds. Board of Comm'rs v. Gaines, 221 N.C. 324, 20 S.E.2d 377 (1942).

§ 156-100.1. Sale of assessment anticipation notes.

Should assessment anticipation notes be issued by a drainage district under the provisions of G.S. 156-97.1, the board of drainage commissioners may accept any private bid for said assessment anticipation notes at not less than their par value, with accrued interest thereon without the necessity of advertising the sale hereof as is provided for in the sale of bonds under the provisions of G.S. 156-100. (1957, c. 912, s. 3.)

§ 156-100.2. Payment of assessments which become liens after original bond issue.

Payment of assessments not included in the original bond or note issue shall be financed in the following manner:

(1) In the event of appeal from the order of the clerk of superior court approving the final report of the board of viewers, the assessment approved by the appellate court shall be due and payable 30 days from the entry of the final order in said appeal.

(2) In the event land should be included within the district for any other reason, the assessment thereon shall be due and payable 30 days after the date of the agreement or court order by which said land is included.

(3) In the event the assessments referred to in the preceding subdivisions (1) and (2) are not paid at the expiration of the said 30-day period, then the commissioners may provide for installment payments of said assessment upon such terms as may be approved by the clerk of the superior court who has jurisdiction of the said drainage proceeding.

The commissioners of the district may issue bonds or notes for an amount equal to the total of the installment payments, upon terms as approved by the clerk of the superior court. The lien of the assessment, the rights of the bond or note holder, and all other liabilities and rights shall be the same as prescribed in this Subchapter III for other bonds and notes of the district. (1963, c. 767, s. 9.)

§ 156-100.3. Sinking fund.

The commissioners of the drainage district may establish a sinking fund to be used to pay bonds and notes issued by the district. The terms and conditions by which the said sinking fund is established shall be approved by the clerk of the superior court who has jurisdiction of said district. (1963, c. 767, s. 10.)

§ 156-101. Refunding bonds issued.

In any case where the board of drainage commissioners of any drainage district have issued or may issue bonds for the purpose of constructing or completing the drainage works in such district, the payment of which at maturity would in the judgment of the board of drainage commissioners be an unreasonable burden on the owners of the lands in such district assessed for the payment of such bonds and interest, or if it shall appear for other good and substantial reasons that the welfare of the district and the owners of lands therein would be promoted thereby, the board of drainage commissioners shall have the power to refund such bonds, or any part thereof, and issue new bonds equal to the amount of bonds outstanding and unpaid, or any part thereof. The new or refunding bonds shall bear a rate of interest not exceeding six percent (6%) payable semiannually, and shall be divided into such annual installments not exceeding ten percent (10%) and not less than five percent (5%) of the outstanding bonds so refunded. The new assessments shall be levied and collected with which to pay the principal and interest on the bonds in the manner provided by law. The first installment of principal on the bonds so refunded may be made payable at a certain date in the future not exceeding six years from the date of the refunding bonds, and in the meantime annual assessments shall be levied and collected for the payment of the interest. (1917, c. 152, s. 14; C.S., s. 5358.)

§ 156-102. Drainage bonds received as deposits.

The State Treasurer is authorized to receive drainage bonds issued by drainage districts in North Carolina as deposits from banks, insurance companies, and other corporations required by law to make deposits with the State Treasurer: Provided, that the Attorney General shall have approved the form of such bonds. (1917, c. 152, s. 7; C.S., s. 5359.)

Local Modification. — Edgecombe, Pitt: 1937, c. 334.

§ 156-103. Assessment rolls prepared.

The board of drainage commissioners shall immediately prepare the assessment rolls or drainage tax lists, giving thereon the names of the owners of land in the district and a brief description of the several tracts of land assessed and the amount of assessment against each tract of land. The first of these assessment rolls shall be due and payable on the first Monday in September following the date of such bonds, and shall provide funds sufficient for the payment of interest on such bonds for one year. The second assessment roll shall make like provision for the payment of the interest for one year. Annual assessment rolls shall thereafter provide funds sufficient to meet the interest for one year on the issue of bonds outstanding. During the year previous to maturity of any annual installment due upon the principal of said bonds there shall be an assessment roll sufficient to provide funds for the payment of both the interest for one year and for the payment of the annual installment due upon the principal of the bonds. Such annual assessments shall be made from year to year to provide funds to meet the interest for one year and the annual installment of the principal due upon the bonds outstanding, until the whole principal due upon the outstanding bonds and the interest thereon shall be fully paid. In making up such assessment rolls there shall be included ten percent (10%) additional as provided in G.S. 156-98. Each of the assessment rolls shall specify the time when collectible and be numbered in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of assessments made by the viewers. These assessment rolls shall be signed by the chairman of the board of drainage commissioners and by the secretary of the board. There shall be four copies of each of the assessment rolls, one of which shall be filed with the drainage record, one shall be filed with the chairman of the board of drainage commissioners, who shall carefully preserve the same, one shall be preserved by the clerk of the court, without change or mutilation, for the purposes of reference or comparison, and one shall be delivered to the sheriff, or other county tax collector, after the clerk of the superior court has appended thereto an order directing the collection of such assessments, and the assessments, shall thereupon have the force and effect of a judgment as in the case of State and county taxes. If the drainage commission which has assessed the lands of a drainage district prior to March 11, 1919, shall file the aforesaid four copies of assessment rolls within six months from April 1, 1919, the filing of such assessment rolls shall have the same legal effect as if filed strictly in accordance with this section immediately after the preparation of such assessment rolls. The State having authorized the creation of drainage districts and having delegated thereto the power to levy a valid tax in furtherance of the public purposes thereof, it is hereby declared that drainage districts heretofore or hereafter organized under existing law or any subsequent amendments thereto are created for a public use and are political subdivisions of the State. (1911, c. 67, s. 12; 1917, c. 152, s. 9; 1919, c. 282, s. 1; C.S., s. 5360; 1921, c. 7; 1923, c. 217, s. 8.)

Cross References. — As to application of this section, see G.S. 156-104.

CASE NOTES

The assessment arises upon completion of the assessment rolls. Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

Cited in Board of Comm'rs v. Gaines, 221 N.C. 324, 20 S.E.2d 377 (1942); Robeson County Drainage Dist. No. 4 v. Bullard, 229 N.C. 633, 50 S.E.2d 742 (1948).

§ 156-104. Application of amendatory provisions of certain sections; amendment or reformation of proceedings.

All the provisions of Chapter 217 of the Public Laws of 1923 amendatory of G.S. 156-71, 156-75, 156-83, 156-94, 156-97, 156-98, 156-99 and 156-103 shall apply to all drainage districts which shall hereafter be organized, and also to all districts where proceedings for the organization thereof have been instituted and are now pending and where the bonds have not been actually issued, sold, and delivered to the purchaser thereof. If it shall be necessary to amend or reform any of the pleadings or orders made by the court or any action taken by the board of drainage commissioners in any drainage proceedings instituted and pending before March 6, 1923, full authority is granted to make any such amendments, to the end that the said drainage proceedings shall conform with the provisions hereof. (1923, c. 217, s. 9; C.S., s. 5360(a).)

Local Modification. — Hyde: 1923, c. 217, s. 10; C.S., s. 5360(a).

§ 156-105. Assessment lien; collection; sale of land.

The assessments shall constitute a first and paramount lien, second only to State and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as the State and county taxes are collected. The assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff or tax collector to sell the lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door of the county in which the lands are situated, between the hours of 10 o'clock in the forenoon and four o'clock in the afternoon of any date except Sunday or another legal holiday when the courthouse is closed for transactions, which may be designated by the board of drainage commissioners. After any such sale date has been designated by the board of drainage commissioners, if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the lands may be readvertised and sold on any day which the board of drainage commissioners may or shall designate during the same hours and without any order being obtained therefor during the same calendar year. Nothing in this section shall be construed to require any order from any court for any sale or resale held hereunder. The existing general tax law in force when sales are made for delinquent assessments shall have application in redeeming lands so sold; and in all other respects, except as herein or otherwise modified or amended, the existing law as to the collection of State and county taxes shall apply to the collection of such drainage assessments. No bid at any sale shall be received unless sufficient in amount to discharge all the drainage assessments and other charges due by the delinquent lands or owner thereof, together with all costs and expenses of sale. If no sufficient bid be received, the board of drainage commissioners of the district shall be deemed the purchaser in its corporate capacity at a sum sufficient to pay all assessments which are due and costs as above stated, and shall be entitled to receive a certificate of purchase and deed in the manner provided by law for purchasers at tax sales. The board of drainage commissioners shall only be required to pay to the sheriff the costs and expenses of sale before receiving a certificate of purchase. The board of drainage commissioners of the district in their corporate capacity shall be in like position and have the same rights and be subject to the same duties as the purchaser of lands at any tax sale under the general law. If the board of drainage commissioners shall have been the purchaser of lands so sold, the amount paid in redemption by the owner, or any person having an estate therein or lien thereon, shall include the sum bid therefor plus the penalty. The board of drainage commissioners shall pay to the sheriff or tax collector the amount representing their bid at the sale of said lands before they shall be entitled to receive a deed therefor, which the sheriff shall pay to the treasurer of the drainage district in the same manner as other funds received by him. The board of drainage commissioners, after acquiring a deed for said lands, may hold the same as an asset of the district, and shall be liable for the payment of all drainage assessments and State and county taxes accruing after the sale at which the district was a bidder, and in all respects be deemed the owner of said lands and subject to the same privileges and liabilities as any other landowner, including the right to convey the said lands for a consideration and pay the proceeds of said sale to the treasurer of the district, which may be distributed by the drainage commissioners for the benefit of the district in the same manner as other district funds.

If any sheriff or tax collector failed for any reason to collect drainage assessments upon lands in any drainage districts due in 1917, or any subsequent years, and further failed to make valid sales of the lands so delinquent in the payment of such assessments, then and in such event the existing sheriff or tax collector is hereby authorized and directed to proceed to collect such unpaid drainage assessments, with interest thereon from the dates when such assessments respectively became due, and in default of payment being made he is further authorized to make sales of such lands as may be in default at any time hereafter, at the times and in the manner authorized by law as amended herein; and the purchaser at said sales shall acquire title to such lands in the manner provided by law. If the sheriff or tax collector in office at the time such assessments were in default has since died or gone out of office, the powers herein given shall be exercised by the existing sheriff or tax collector.

The 1931 amendment to this section shall have the same force and effect from and after April 13, 1931, as if it had been ratified and enacted prior to the first day of January, 1929, and no sale of drainage lands held under the provisions of section 5361 shall be deemed or declared void by reason of the fact that they may not have been held on the day specified in section 5361 of the Consolidated Statutes prior to this amendment. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C.S., s. 5361; Pub. Loc. 1923, c. 88, ss. 3, 4, 5; 1931, c. 273; 2003-337, s. 12.)

Local Modification. — Franklin, Hyde, Nash, Wilson: Pub. Loc. 1923, c. 88.

CASE NOTES

Due Process of Law Not Denied. — The statute under which a drainage district is formed does not deny the district due process of law by providing for the collection and security of the assessments as other county taxes are collected, kept, etc. Commissioners of Robeson County v. Lewis, 174 N.C. 528, 94 S.E. 8 (1917).

Assessments upon lands in a drainage district are a lien in rem on the lands of the owner for the payment of the bonds issued by the district in accordance with the statute, the district being a geographical quasi-public corporation, and the benefits annually accruing to the advantage of successive owners. Such assessments are due and payable at stated intervals. Pate v. Banks, 178 N.C. 139, 100 S.E. 251 (1919).

The legislature intended that the assessments as shown on the assessment rolls which the board of drainage commissioners is required to prepare immediately upon the sale of the bonds become liens as they become due, affecting all of the lands on the assessment rolls, which relate to the entire district for the entire period over which the payment of the assessments is spread. Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

And Not a Debt of the Landowner. — The lien of the charges for drainage is not a debt of the owner of the land therein, but is a charge solely upon the land, and accrues, pari passu, with the benefits as they shall accrue thereafter. They are not liens until they successfully fall due, and are presumed to be paid out of the increased productiveness and other benefits as they accrue from time to time. These assessments are to be levied from time to time to pay, not the indebtedness of the owner of any tract, but to pay the bonded indebtedness of the district, in that they are exactly like bonds issued by the township, county or State for public benefits and which become liens on property in futuro only to the extent of the taxes falling due each year to pay the interest, and such part of the principal as may become due. One who purchases land in a township, county or State cannot complain that these successive tax liens will, from time to time, be collectible out of his realty. Whether he knew of the existence of such indebtedness or not makes no difference. They are not encumbrances within the sense of the warranty clause of a deed. The assessment in a drainage district to take the water off the land is simply an annual tax for that purpose. Pate v. Banks, 178 N.C. 139, 100 S.E. 251 (1919).

And Do Not Fall Within a Warranty Against Encumbrances Until Due and Payable. — Liens on lands within a statutory drainage district for assessment charges for its maintenance and upkeep do not fall within a warranty or covenant against encumbrances contained in a deed until they are due and payable. Branch v. Saunders, 195 N.C. 176, 141 S.E. 583 (1928).

Priority of Assessments over Mortgage. — The assessments on lands for a bond issue have a prior lien to a mortgage executed thereon prior to the formation of said district. Drainage Comm'rs of Washington County Dist. No. 4 v. Eastern Home & Farm Ass'n, 165 N.C. 697, 81 S.E. 947 (1914).

Failure to Levy Annual Assessments No Bar to Later Collection. — This section provides that assessments shall be collected "in the same manner and by the same officers as the state and county taxes are collected," and G.S. 105-394(3) provides that "[t]he failure to list, appraise, or assess any property for taxation or to levy any tax within the time prescribed by law" is an immaterial irregularity that does not affect the validity of the assessment; therefore, plaintiff drainage district's failure to levy annual assessments for 1974 and 1983 by the first

Monday in September of those years did not bar later collection of the assessments. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988), rev'd in part and aff'd in part, 326 N.C. 742, 392 S.E.2d 352 (1990).

The drainage assessments collected are public funds although they are to be used solely for the purpose of paying principal and interest on drainage bonds. Wilkinson v. Boomer, 217 N.C. 217, 7 S.E.2d 491 (1940).

This and the following sections impress the moneys derived from the assessments as public money of the county, to be kept in the depository designated under the statute for such funds, although the funds in question are devoted to a particular or defined use. Commissioners of Robeson County v. Lewis, 174 N.C. 528, 94 S.E. 8 (1917).

Remedy for Collection Is Adequate. — It is provided by this section that drainage assessments shall be collected in the same manner as taxes are collected. Such liens may be collected by sale of the land by the sheriff, with issue of certificates of sale, with right in the holder of the certificates to foreclose in due time, or by foreclosure of the lien in a suit instituted by the district or the holder of a tax deed or certificate, in the nature of an action to foreclose a mortgage. This remedy for the collection of such assessments is adequate. Wilkinson v. Boomer, 217 N.C. 217, 7 S.E.2d 491 (1940).

A receiver cannot intervene in a bank's action against the board on the ground that he has the right under this section to collect payments. Board of Drainage Comm'rs v. Lafayette Southside Bank, 27 F.2d 286 (4th Cir. 1928).

§ 156-106. Assessment not collectible out of other property of delinquent.

Only the land assessed in the drainage proceeding shall be liable for the drainage tax or assessment, and no other property of the landowner shall or may be sold for said drainage tax or assessment: Provided, that this section shall not apply to any drainage bond sold and delivered prior to March 7, 1927, or to any litigation pending at that time. (1919, c. 282, s. 2; C.S., s. 5362; 1927, c. 139.)

Local Modification. — Cumberland, Robeson: 1927, c. 139, s. 11/2.

§ 156-107. Sheriff in good faith selling property for assessment not liable for irregularity.

The sheriff who executes upon property for the collection of drainage assessments under the provisions of this Article shall not be liable either civilly or criminally if he shall sell such property in good faith, even though such sale is irregular or for any cause illegal. (1919, c. 282, s. 4; C.S., s. 5363.)

§ 156-108. Receipt books prepared.

The clerk of the superior court in each county where one or more drainage districts have been established shall be required to have prepared annually during the month of August a form of receipt, with appropriate stubs attached and properly bound, for the drainage assessments due on each tract of land as recited in the assessment rolls. This bound book of tax receipts or bills shall be indorsed "Drainage assessments of the (here give the name of the district) for the county of ____________, delivered to the sheriff or tax collector as of the first Monday in September, ________, for collection as required by law," and the same indorsement shall be printed at the top of each tax bill or blank receipt. Each tax bill or blank receipt shall contain a blank space for the name of the owner of the property, the amount of the annual drainage tax, the amount of maintenance tax, if any, and a receipt at the bottom of the same, followed by a blank line for the signature of the tax collector. This bound book of tax bills or receipts, with the blanks duly filled in, shall be delivered to the sheriff or tax collector on the first Monday of September of each year. The necessary cost of printing and binding such book of tax bills or receipts and the filling in of the same shall be a proper charge against such drainage district and shall be paid by the board of drainage commissioners. (1917, c. 152, s. 9; 1919, c. 208, s. 2; C.S., s. 5364; 1999-456, s. 59.)

CASE NOTES

Cited in Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

§ 156-109. Receipt books where lands in two or more counties.

Where any drainage district which has been established contains lands located in a county or counties other than the county in which the district was established, the clerk of the superior court of the county in which the district was established shall have prepared annually during the month of August a form of tax bills or receipts, with appropriate stubs attached, covering all the lands in the drainage district located in such other county or counties, and in the form herein provided for the county in which the district has been established, and have the same substantially bound in book form. He shall also fill in the blanks of such tax receipts ready for the signature of the collector. On a page in such bound book after the tax bills or receipts there shall be appended an order directed to the sheriff or tax collector in the county in which such lands are located, which shall be in substantially the following form: State of North Carolina — County of ____________. The Sheriff or Tax Collector of ______________ County: This is to certify that the foregoing tax bills or blank receipts embrace the drainage assessments made on certain lands in the county of ______________, which are located in and are a part of (here insert the name of the drainage district), which district was established in the county of ____________.These assessments are due on the first Monday of September, ________, and must be paid and collected within the time required by law. You will make monthly settlements of your collections with the treasurer of ____________ County, being the county in which the district was established, and in all other respects you will discharge your duties as sheriff or tax collector as required by law. In witness whereof, I have hereunto set my hand and official seal, this ________ day of ________, ________.

______________________,

Clerk Superior Court ________ County.

Thereupon such drainage assessments in such county shall have the force and effect of a judgment upon the lands so assessed, as in the case of State and county taxes, and shall in all other respects be as valid assessments as those levied upon lands in the county in which the district was established. The auditor for drainage districts herein authorized shall also examine the records and accounts of the sheriff of such county. In the establishment and administration of the drainage districts the clerk of the superior court, the treasurer, and the chairman of the board of drainage commissioners shall have jurisdiction over the lands and the collection of drainage assessments in the county or counties other than the county in which the district was established to the same extent as in the county where such district was established: Provided, that in those counties which do not have a county treasurer, then the auditor provided for in this Subchapter shall perform the duties required by this section for the county treasurer. (1917, c. 152, s. 11; C.S., s. 5365; 1963, c. 767, s. 4; 1999-456, s. 59.)

Editor's Note. — Section 156-81.1, as enacted by Session Laws 1963, c. 767, s. 4, provided that all references in Subchapter III of this Chapter to "treasurer", "county treasurer" or "county auditor" were amended to refer exclusively to the treasurer appointed as provided in that section. Pursuant to G.S. 156-81.1, the word "county" has been deleted preceding "treasurer" near the beginning of the third sentence of the last paragraph of this section. However, there was no practicable method of changing the proviso at the end of this section to give effect to G.S. 156-81.1.

CASE NOTES

The first sentence of the second paragraph must be read in connection with the provisions of § 156-105 that "the assessments shall constitute a first and paramount lien, second only to State and county taxes upon the lands assessed for the payment of bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as State and county taxes are collected;" when so considered, it is clear that this section is not in conflict with G.S. 156-105, but is intended to implement collection of the assessment by the sheriff. Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

§ 156-110. Authority to collect arrears.

If any sheriff or tax collector was authorized to collect drainage assessments in any year prior to 1917, and failed to collect any part of such drainage assessments, and is now out of office, or is still holding the office of sheriff or tax collector, then and in such event such sheriff or tax collector, regardless of the expiration of his term of office, is hereby authorized and directed to proceed to the collection of such unpaid drainage assessments, and in default of payment being made, he is further authorized to make sales of such lands as may be in default at the times and in the manner authorized by law during the year 1917, 1918 or 1919. (1917, c. 152, s. 9; C.S., s. 5366.)

§ 156-111. Sheriff to make monthly settlements; penalty.

The sheriff or tax collector shall be required to make settlements with the treasurer on the first day of each month of all collections of drainage assessments for the preceding month, and to pay over to the treasurer the money so collected, for which the treasurer shall execute an appropriate receipt, to the end that the treasurer may have funds in hand to meet the payments of the interest and principal due upon the outstanding bonds as they mature. If any sheriff or tax collector shall fail to comply with the law for the collection of drainage assessments, or in making payments thereof to the treasurer as provided by law, he shall be guilty of a Class 1 misdemeanor and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of the bonds, to either or both of whom a right of action is given. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C.S., s. 5367; 1963, c. 767, s. 4; 1993, c. 539, s. 1076; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 156-112. Duty of treasurer to make payment; penalty.

It shall be the duty of the treasurer, and without any previous order from the board of drainage commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to the bonds, and also to pay the annual installments of the principal due on the bonds at the time and place as evidenced by the bonds. The treasurer shall be guilty of a Class 1 misdemeanor if he shall willfully fail to make prompt payments of the interest and principal of the bonds, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of such bonds, to either or both of whom a right of action is hereby given. (1911, c. 67, s. 12; C.S., s. 5368; 1963, c. 767, s. 4; 1993, c. 539, s. 1077; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Effect of Local Act Abolishing Office of County Treasurer. — Chapter 46, Public-Local Laws 1917, abolished the office of county treasurer of Robeson County and substituted therefor a depositary and financial agent, to perform the duties of treasurer in disbursement of the county funds. The act further provided that the sheriff, as such, or ex officio treasurer, should turn over all moneys of the county to such depositary. It was held that moneys derived from assessments of a drainage district, being county funds, should be deposited, as the statute directed, with the depositary lawfully designated. Commissioners of Robeson County v. Lewis, 174 N.C. 528, 94 S.E. 8 (1917). As to treasurers of drainage districts, see now § 156-81.1.

§ 156-113. Fees for collection and disbursement.

The fee allowed the sheriff or tax collector for collecting the drainage tax as hereinbefore prescribed shall be two percent (2%) of the amount collected, and the fee allowed the treasurer for disbursing the revenue obtained from the sale of drainage bonds shall be one percent (1%) of the amount disbursed: Provided, that no fee shall be allowed the sheriff or tax collector or treasurer for collecting or receiving the revenue obtained from the sale of the bonds hereinbefore provided for, nor for disbursing the revenue raised or paying off such bonds; provided, that where the sheriff, tax collector or treasurer is on a salary basis, the fees herein set out shall not be charged. (1911, c. 67, s. 13; C.S., s. 5369; 1925, c. 271, s. 1; 1957, c. 562; 1963, c. 767, s. 4.)

Local Modification. — Pitt: 1925, c. 271, s. 2.

CASE NOTES

Construction of Sections in Pari Materia. — The relevant sections of the various statutes upon the subject of the collection of assessments on lands in drainage districts by sheriffs and tax collectors and their compensation therefor, being in pari materia, should be construed together by the courts in ascertaining the legislative intent. Drainage Comm'rs v. Davis of Mattamuskeet Dist., 182 N.C. 140, 108 S.E. 506 (1921).

Sheriff's Compensation Restricted. — The bringing forward of s. 13, c. 67, Public Laws 1911, in this section, providing that 2 percent shall be allowed sheriffs "for collecting the drainage assessments as hereinbefore prescribed," is a legislative construction of the prior law, and was intended to restrict the compensation of the sheriff to 2 percent of the amount of the assessments in drainage districts collected by him, and not to allow him a commission of 5 percent as in case of taxes collected for general governmental purposes. Drainage Comm'rs v. Davis of Mattamuskeet Dist., 182 N.C. 140, 108 S.E. 506 (1921).

Compensation of Treasurer. — This section, dealing with the compensation to be allowed the county treasurer (now the treasurer of the drainage district) for disbursing the revenue obtained from the sale of the bonds of a drainage district provides but one compensation for all services. Board of Drainage Comm'rs v. Credle, 182 N.C. 442, 109 S.E. 88 (1921).

§ 156-114. Conveyance of land; change in assessment roll; procedure.

(a) Status of Land Fixed. — The boundaries of lands as surveyed and mapped, the ownership thereof, and the classification and assessment thereof as appears in the final report and map and upon the assessment roll, shall be and remain as of the time when the district was established and the final report of the board of viewers was approved by the court. No conveyance or devise of land or devolution by inheritance after the petition has been filed or the owner thereof has been served with the original summons, either by personal service or by publication, shall affect the status or liability of such land as a part of such drainage district, except as herein provided.

(b) Conveyance before Final Report. — If the owner of any lands included in such district shall, after the filing of the petition, and after being served with the original summons and before the approval of the final report, convey the whole or any part of such lands, or the title thereto shall be otherwise changed, then and in such event the grantor and grantee or new owner, or either, may file a petition in an ancillary proceeding before the clerk of the superior court setting forth the facts, with a description of the lands conveyed either in part or the entire body of land, together with a description of the land excepted and not conveyed. If the grantor or grantee or new owner, in whole or in part, file such petition, the other not so joining shall be served with notice of same. The clerk may require the petitioner to attach to the petition a map showing the boundaries of the entire body of land as it appears in the record of the proceedings, and also showing the part conveyed. If the ownership of such land has been changed by devise or inheritance, or any joint ownership has been changed by partition, such new owner may file a petition as herein provided. Such petition shall conclude with a prayer that the grantee or new owner be made a party to the proceeding. The court after a hearing may make the grantee or new owner a party to the drainage proceeding and shall certify to the engineer and viewers a description of the land so conveyed or held by the new owner, with directions to verify the boundaries and to classify the land to the same extent as if the grantee was the original party. Any part of such lands not so conveyed shall be and remain a part of the district.

(c) Conveyance after District Established. — After the district shall be established, the lands classified, the final report approved, and the assessment roll filed, no conveyance of any land in the district shall affect or change the existing status or liability of such land as to assessment charges or otherwise, except in the manner herein defined. When the title and ownership of any tract of land embraced in the district have been changed or vested in others by grant, devise, or inheritance, or by partition between joint owners, subsequent to the establishment of the district, the assessment roll may be amended in the following manner: The grantor and grantee, or the new owners, may file a petition with the chairman of the board of drainage commissioners alleging that the ownership of the land has changed, and the manner thereof, in whole or in part. If the whole body of land as appears in the final report or on the assessment roll has changed ownership, a general description consistent with such final report and map shall be sufficient. If the ownership of the body of land has changed only as to part thereof, the petition shall contain a description of the part thereof claimed by the new owners, and the number of acres and the classifications, or the several classes if it be in more than one class, and also a description of that part of the land the title to which remains in the original owner, with the number of acres and with the classification and the several classes if it contains more than one class of land. The petition shall so describe the land and the number of acres in each class as to that part of which the ownership has changed as to maintain the number of acres originally assessed, and the class or classes in which the same has been assessed, and the chairman of the board of drainage commissioners may require the petitioners to have the lands surveyed, and submit a map if the same shall be necessary.

(d) Duty of Chairman of Drainage Commissioners and Clerk. — The chairman of the board of drainage commissioners shall present this petition to the clerk of the superior court at any time thereafter, not later than the first Monday in July following. It shall be the duty of the clerk to examine and verify the facts set forth in the petition, and particularly to determine if the number of acres assessed and the classes thereof against the new owners added to the number of acres and the classes assessed against that part of the land, the title to which has not changed, shall equal the total number of acres and the classes so assessed as appear against such entire body of land in the final report and assessment roll. If the clerk shall be so satisfied, he shall enter an order or decree changing the original assessment roll, or the assessment roll as theretofore amended, by adding the name of the new owner with the number of acres assessed in each class, and by amending the number of acres assessed and the classes thereof against the original owner as appears on the original assessment roll or assessment roll as theretofore amended. It shall be the duty of the clerk after such order to make such changes in the assessment roll. It shall be the duty of the clerk of the superior court in making changes in the original assessment roll from time to time to observe and maintain the total number of acres in each class, to the end that the revenue produced from the annual assessment shall not be thereby diminished. The chairman of the board of drainage commissioners, instead of presenting to the clerk of the court each petition of landowners separately, may combine a number of petitions and present the same to the court at one and the same time. The first Monday in July in each year is hereby set apart as a special day on which petitions for changing the assessment roll may be submitted, at which time the clerk shall hear all petitions not theretofore submitted.

(e) Failure of Chairman of Board to Act. — If the chairman of the board of drainage commissioners shall fail to act when any petition shall be submitted to him as herein provided, or the chairman or any member of the board shall fail to discharge any duty imposed by this section or any other provision of the general drainage law, it is hereby made the duty of the clerk of the superior court, either independently or upon the request of any landowner in the district, to cite such chairman or member to appear before him upon a certain day and show cause why he should not be removed from office, and unless good cause be shown, it shall be the duty of the clerk to remove the chairman or any member of the board of drainage commissioners and to certify his action, to the end that another member may be elected according to law. If the failure of the chairman or any member of the board of drainage commissioners to discharge such duty shall be willful, he shall be guilty of a Class 1 misdemeanor.

(f) When Owner May File Petition with Clerk. — If the grantor and grantee, or all those claiming to have acquired title to any body of land on the assessment roll and whose assessment will be affected, cannot agree upon joinder in a petition to the chairman of the board of drainage commissioners, or if the said chairman fails within a reasonable time to discharge his duty by presenting the petition to the court, then either party interested in the tract of land as it appears on the assessment roll may file a petition with the clerk of the superior court setting forth the facts as to the change in ownership and title of such land, with the description of the entire tract of land and the number of acres in each class, together with a description of that part of the land as to which the ownership has changed, with the number of acres in each class, and pray the court to order that the assessment roll be amended in accordance with the title and interest of the several owners. At the time of filing the petition a summons shall issue to the other parties interested in the tract of land to show cause, on a day certain, why the prayer of the petition should not be granted. Upon the return day the clerk of the court shall hear all the evidence, find the facts, and enter up a judgment directing the appropriate amendment to the assessment roll. It shall be the duty of the clerk to amend the assessment roll in accordance with his judgment.

(g) Effect of Change in Assessment Roll. — No judgment or amendment of the assessment roll shall be valid unless the number of acres and the classes assessed against the original and new owners shall equal the area and classification as contained in the tract of land as it appears on the original assessment roll. This petition may be presented to the court at any time, but the first Monday in July in each year is hereby designated as the day upon which all petitions for amendments to the assessment roll may be submitted. Any amendments to the assessment roll ordered after the last day of August in each year shall not become effective until the first day of September the following year, and the assessment roll as it appears on the first day of September of each year shall constitute the assessment roll to be delivered to the sheriff on the first Monday in September, and he shall collect the drainage assessments as they appear thereon without regard to any changes in title or ownership or any changes in the assessment roll made by the court after the thirty-first day of August. All amendments sought to be made to the assessment roll shall have reference to the assessment roll as it appears at the time the amendment is sought, which shall be either the original assessment roll or as amended; but it shall be the duty of the clerk of the superior court to examine frequently the assessment roll as amended, and before the same shall be further amended, and make certain that the aggregate number of acres in each class as appeared on the original assessment roll shall not be reduced, nor the aggregate annual assessments reduced. Any amendments ordered shall be made on the assessment roll and become due in the following September, and on all subsequent assessment rolls which have not become due or collectible.

(h) Clerk to Prepare New Assessment Rolls. — It shall be the duty of the chairman and the secretary of the board of drainage commissioners of the district to render to the clerk of the court any clerical assistance involved in changes in the assessment rolls, but the primary duty and responsibility in making such amendments shall remain with the clerk of the superior court, and he shall be held liable for any error or omission which may work a loss to the district or the bondholders. If such amendments to the assessment rolls shall make necessary the preparation of new assessment rolls, the clerk of the superior court shall be required to prepare such new assessment rolls with the clerical assistance of the chairman and secretary of the board of drainage commissioners, and such new assessment rolls shall be signed by the chairman and secretary of the board of drainage commissioners and by the clerk of the superior court before delivery to the sheriff or tax collector as required upon the original assessment rolls. The original assessment rolls shall be preserved by the clerk of the court among his records for future reference.

(i) Number of Copies. — In the event it shall be necessary to prepare new assessment rolls, the clerk shall prepare four copies, one copy for the drainage record, another for the sheriff or tax collector, another for the chairman of the board of drainage commissioners, and the other for filing and preserving among the records, and which fourth copy shall never be mutilated or interlined, but shall be preserved in its original form for reference. As to all drainage districts heretofore established, the clerk of the court shall prepare an additional copy of all the original assessment rolls for the several years the lands in such districts are assessed and securely preserve the same, at least until all outstanding bonds of the district shall be paid, to the end that they may always be accessible for reference and comparison. It shall not be necessary hereafter to deliver to the sheriff or tax collector a copy of the assessment roll for the current year in which assessments are due and payable, but the copy provided for him may remain among the records of the clerk of the court for safekeeping and reference by him.

(j) Costs Determined. — As compensation to the clerk of the court for the performance of duties imposed herein, he shall be paid such sum by the board of drainage commissioners of such drainage district as they may deem fair and adequate, and the same is hereby declared a proper charge against said district, but no additional compensation shall be paid to the clerk in those counties where he receives a salary in lieu of fees. Any costs which may accrue in amendments to the assessment rolls shall be adjudged against the parties in interest, in the discretion of the clerk, and such costs shall be paid before the amendment shall become effective. As to all petitions which shall be filed and submitted to the court on the first Monday in July, no costs shall be paid or adjudged against any party in those counties where the clerk and sheriff receive a salary in lieu of fees.

(k) Chairman Represents Board. — As to all petitions filed with the chairman of the board of drainage commissioners, or as to the discharge of any duty by the chairman required of him under the general drainage law, he shall be presumed to act for the board, and the chairman shall do all things necessary to protect and maintain the interests of the drainage district. If the chairman shall be or become a landowner in the drainage district and may desire an amendment to the assessment rolls, he may file his petition before any other member of the board, or file the same directly with the clerk of the superior court.

(*l*) Application of Section. — The provisions of this section shall apply to landowners in districts heretofore established and to drainage proceedings heretofore instituted to the same extent as to drainage proceedings hereafter instituted and established. (1917, c. 152, s. 4; 1919, c. 208, s. 1; C.S., s. 5370; 1993, c. 539, s. 1078; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 156-115. Warranty in deed runs to purchaser who pays assessment.

Where the land assessed by drainage commissioners under the provisions of this Article has been purchased since the making of the assessment by a purchaser for value without notice under a deed of general warranty, and said purchaser pays to the sheriff the amount of said drainage assessment, which is a lien on the land purchased, then such purchaser who pays the said drainage assessment shall have a right of action against the warrantor of his title under the covenant of general warranty contained in his deed for the recovery of the amount paid. (1919, c. 282, s. 3; C.S., s. 5371.)

CASE NOTES

Section Does Not Refer to Future Assessments. — An assessment matured and due, under the decisions, would constitute "a lien on the land purchased," but this section does not refer to future assessments not due at the time the land was purchased. Branch v. Saunders, 195 N.C. 176, 141 S.E. 583 (1928).

Liens Not Within Warranty Against Encumbrances Until Due and Payable. — Liens on lands within a statutory drainage district for assessment charges for its maintenance and upkeep do not fall within a warranty or covenant against encumbrances contained in a deed until they are due and payable. Branch v. Saunders, 195 N.C. 176, 141 S.E. 583 (1928).

§ 156-116. Modification of assessments.

(a) Relevy. — Where the court has confirmed an assessment for the construction of any public levee, ditch, or drain, and such assessment has been modified by the court of superior jurisdiction, but for some unforeseen cause it cannot be collected, the board of drainage commissioners shall have power to change or modify the assessment as originally confirmed to conform to the judgment of the superior court and to cover any deficit that may have been caused by the order of court or unforeseen occurrence. The relevy shall be made for the additional sum required, in the same ratio on the lands benefited as the original assessment was made.

(b) Upon Sale of Land for Assessments. — If any person, or any number of persons, claiming to have title to any tract or tracts of land subject to assessment or drainage tax shall fail to pay any annual assessment levied against such lands, and the sheriff or tax collector shall be compelled to sell such lands under the law for the purpose of making such collection, the net proceeds of such sale shall be paid to the treasurer, to be held by him and disbursed for the purpose of paying the current assessment and future annual assessments so far as the proceeds may be sufficient. When the fund in the custody of the treasurer shall be exhausted in the payment of annual assessments against such lands, or there shall not be a sufficient sum to pay the next annual assessment, the treasurer shall immediately give written notice to that effect to the chairman of the board of drainage commissioners of the district, and also to the clerk of the superior court, whereupon the board of drainage commissioners shall institute an investigation of such tract or tracts of land to determine the market value, and if they shall find that the market value is not equal to all the future annual assessments to cover its share of installments of principal and interest on the outstanding bonds, they shall proceed, with the approval of the clerk of the superior court, to make new reassessment rolls on all the remaining lands in the district and increase the sum in sufficient sums to equal the deficit thereby created and such new assessment rolls shall constitute the future assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided in lieu of the former assessment rolls. However, the tract or tracts of land which have been so sold by the tax collector shall continue on the assessment roll in the name of the new owner, but reassessed upon the new basis, and the drainage tax collected at the same time and in the same manner as other lands as long as such lands may have sufficient market value out of which to collect the annual drainage tax, and when such lands shall cease to have such value, or shall be abandoned by the person claiming title thereto, the drainage commissioners may omit the same from the assessment roll with the approval of the clerk of the superior court, but such lands may in the same manner at any time in the future be restored to the assessment rolls.

(c) Surplus Funds. — If the funds in the hands of the treasurer at any time, arising under this section or in any other manner, shall be greater than is necessary to pay the annual installments of principal and interest, or the annual cost of maintenance of the drainage works, or both, such surplus shall be held by the treasurer for future disbursement for other purposes as herein provided or subject to the order of the board of drainage commissioners.

(d) Insufficient Funds. — If there shall be any impairment or destruction of the drainage works by any unforeseen cause or occurrence not anticipated, during the period of construction by the contractor, the contractor shall nevertheless repair and complete the works according to the contract and specifications and shall be liable therefor and also his sureties on his bond; but if the contractor shall make default and if there shall be a failure to collect all resulting damages from such contractor and the sureties upon his bond, and it shall thereby be necessary to raise a greater sum of money to complete the drainage works in accordance with the plans, or if for any other unavoidable cause it shall be necessary to raise a greater sum to complete such drainage works, the board of drainage commissioners, having first obtained the approval of the clerk of the superior court, shall prepare new assessment rolls upon all the lands in the district upon the original basis of classification of benefits and increase the same in sufficient sums to equal the deficit thereby created, and the same shall constitute the new assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided.

(e) Additional Bonds Issued. — If for any of the causes hereinbefore recited in this section, or for any other cause, a sum of money greater than the proceeds of sale of the drainage bonds shall become necessary to complete the drainage system, and the board of drainage commissioners shall determine that the amount to be raised is greater than can be realized from the collection of one annual assessment upon the lands in the district without imposing an undue burden upon the lands, or if it is advisable or necessary to raise the money more expeditiously, then and under such conditions additional bonds may be issued in such aggregate sum as may be necessary.

(f) Manner of Issue. — The proceedings for the issue of such additional bonds shall be substantially as follows: The board of drainage commissioners shall file their petition with the clerk of the superior court, setting forth all the facts which require the expenditure of more money and the issue of additional bonds to complete the drainage system, which shall be accompanied by the recommendation of the drainage engineer who was one of the original viewers, or some other expert drainage engineer selected by the drainage commissioners; whereupon the court shall issue a notice to all the owners of land within the district reciting the substance of the petition and directing each to appear before the court on a day certain, not less than 20 days after the service upon all the parties, and to show cause, if any they have, why the additional bonds should not be authorized, which notice shall be served personally on each such landowner by reading the same, and by leaving a copy, and if the same cannot be personally served, then it shall be served in the manner authorized by law. Any landowner may file an answer denying any material allegation in the petition or setting forth any valid objection to same before the return day thereof.

Upon the day when the notice is returnable, or on such day as to which the same may have been continued, the court shall proceed to hear the petition and answers. If the court shall find that the allegations of the petition are true, and that the issue of additional bonds is advisable or necessary, the court shall make an appropriate order authorizing and directing the issue of such additional bonds, fixing the amount of such issue, the date of same, the time when the interest and principal shall be payable, and all other matters necessary and appropriate in the premises. Any landowner may appeal from the order of the clerk of the superior court, and on such appeal only the issues raised in the answer shall be considered, and such appeal and the further procedure thereon shall be as prescribed in special proceedings, except as modified by this Subchapter.

After the court shall have ordered the additional issue of bonds, the further procedure as to the assessment rolls, the levying and collecting of the drainage taxes, the disbursement of the revenue therefrom for the payment of such bonds and interest thereon, and all further procedure shall be the same as required for the establishment of drainage districts. The additional bonds issued shall not exceed twenty-five percent (25%) of the total amount originally issued. The additional issue of bonds shall bear six percent (6%) interest per annum and may be made payable in 10 annual installments, or in lesser number of annual installments as nearly equal as may be, as recommended by the board of drainage commissioners and approved by the court. (1909, c. 442, s. 35; 1911, c. 67, s. 15; C.S., s. 5372; 1963, c. 767, s. 4.)

CASE NOTES

The disposition of funds of a drainage district is a matter of statutory regulation in North Carolina. In re Perquimans County Drainage Dist. No. Four, 254 N.C. 155, 118 S.E.2d 431 (1961).

Distribution of Surplus to Owners. — Where a drainage district of a county has assessed the property owners therein for improvements, and after completing the same there is a surplus in the hands of the county treasurer, the board of drainage commissioners, upon the exercise of a sound discretion and in good faith, may determine that the fund on hand is not necessary for further disbursements for the benefit of the district, according to the plan adopted, and may distribute the same proportionately among those assessed in accordance with law, especially when such owners have thereto agreed. Foil v. Board of Drainage Comm'rs, 192 N.C. 652, 135 S.E. 781 (1926).

Transaction Held Invalid Under Public-Local Law. — Where, under the provisions of a public-local law, a drainage district could lend its money derived from its assessments until required for use in payment of the principal and interest on its bonds maturing serially for a period of 10 years, and the statute provided for a depository for these funds, the drainage commissioners could not contract with a different bank to deposit the funds there, in consideration of such bank buying at par a certain issue of such bonds that could not otherwise have been sold, except below par; nor could the transaction, contemplating a period of 10 years, be construed as a loan to the bank as authorized by the statute. Regarded either as a deposit of the funds or a loan thereof, the transaction was void. Commissioners of Robeson County v. Lewis, 174 N.C. 528, 94 S.E. 8 (1917).

Cited in Robeson County Drainage Dist. No. 4 v. Bullard, 229 N.C. 633, 50 S.E.2d 742 (1948).

§ 156-117. Subdistricts formed.

Subdistricts may be formed by owners of land in main districts theretofore established in the manner provided for the organization of main districts. Such subdistricts shall have the right to use the ditches or canals of the main districts for outlets. The formation of subdistricts shall not operate to release the lands in any subdistrict from the payment of any assessment or levy made prior to the formation of such subdistricts, nor from any assessment which may thereafter be made for the completion and maintenance of the canals in main districts, or for the payment of the principal and interest on any indebtedness incurred by the main district, nor shall it give the subdistrict any claim on the funds of such main district for its local use. It shall be the duty of the drainage commissioners of the main district to control all matters pertaining to the main district drainage. Drainage commissioners for the subdistricts shall have authority and control over all matters pertaining to drainage within their respective subdistricts, except such work as belongs exclusively to the main district. (1917, c. 152, s. 8; C.S., s. 5373.)

§§ 156-118 through 156-120: Repealed by Session Laws 1961, c. 614, s. 11.

§ 156-121. Redress to dissatisfied landowners.

Anyone owning land which has been reclassified by the board of viewers who is dissatisfied with their classification shall have the same redress as has heretofore been provided where divisions of classification have been made by a petition to the clerk or otherwise. (1923, c. 231, s. 4; C.S., s. 5373(d).)

§ 156-122. Increase to extinguish debt.

If in the opinion of the board of drainage commissioners it would help the sale of the maintenance or improvement bonds, or they would deem it necessary under the provision of G.S. 156-101, they may, with the approval of the clerk of the superior court, add to the amount estimated by the board of viewers a sufficient amount to pay off all outstanding obligations of the district, leaving this their only bond issue. (1923, c. 231, s. 5; C.S., s. 5373(e).)

§ 156-123. Proceedings as for original bond issue.

The compensation of the board of viewers and their assistants, together with all other expenses in connection with this bond issue, shall be paid in the same manner, the duties and power of the clerk, and the duties and power of the board of drainage commissioners, the bonds shall be advertised and sold, divided into such annual installments, bear such a rate of interest, the landowners shall be given the same notices and the same rights to pay cash, the contract shall be let and supervised, and contractor paid the same, as if this was the original bond issue. (1923, c. 231, s. 6; C.S., s. 5373(f).)

CASE NOTES

As to effect of this section and former § 156-118 or § 156-92, see In re Perquimans County Drainage Dist. No. Four, 254 N.C. 155, 118 S.E.2d 431 (1961), decided prior to the repeal of §§ 156-118 through 156-120.

§ 156-124. No drainage assessments for original object may be levied on property when once paid in full.

Whenever any assessment has been made or may be made by any drainage district formed under the laws of the State of North Carolina upon any lands in said district, either for construction or maintenance of its system of drainage or for any other purpose, and the particular assessment made against any particular piece of property has been paid or shall be hereafter paid in full, then and in that event no other or further assessment may be made upon said land for the purpose of providing money for the purpose for which the original assessment was made. (1933, c. 504; 1935, c. 469, s. 5.)

Local Modification. — Mecklenburg: 1933, c. 504; 1935, c. 469.

CASE NOTES

This section does not apply to bonds issued prior to its effective date, or affect the right of the holders of such bonds under prescribed conditions to require the levying and collection of special assessments for the purpose of paying the bonds. Board of Comm'rs v. Gaines, 221 N.C. 324, 20 S.E.2d 377 (1942).

Additional Assessments to Pay Judgment Rendered Prior to Effective Date. — This section does not affect the liability of lands within a drainage district for additional assessments necessary to pay a judgment against the district rendered prior to the effective date of this section for improvements theretofore made by the district. Virginia-Carolina Joint Stock Land Bank v. Watt, 207 N.C. 577, 178 S.E. 228 (1935).

§ 156-124.1: Repealed by Session Laws 1961, c. 614, s. 11.

ARTICLE 9.

Adjustment of Delinquent Assessments.

§ 156-125. Adjustment by board of commissioners authorized.

The board of commissioners of any drainage district may, in connection with the issuance of bonds for the purpose of refunding outstanding bonds of the district, and in addition to preparing a new assessment roll, for the payment of principal and interest of such refunding bonds, and when the bonds so refunded constitute all of the bonds of the district for which an assessment has been made against property therein, adjust the uncollected delinquent installments of the assessment made upon property in the district, for the payment of principal and interest of the bonds so refunded and for other purposes authorized by law before said bonds were refunded. The adjustment of such delinquent assessments may include reduction of the principal amount of the delinquent installments, not exceeding fifty per centum (50%) thereof, to which reduced installments shall be added interest computed thereon, at a rate not less than the rate of interest of the refunding bonds, from the date of delinquency of said installments to the date of the refunding bonds, and shall include any costs legally incurred for the collection of the same; the date of delinquency shall be deemed to be the first day of December following the date upon which each of said installments became due: Provided, however, all delinquent installments of such assessment shall be adjusted on the same basis and by the same method. (1935, c. 469, s. 1.)

§ 156-126. Extension of adjusted installments.

Upon adjustment of delinquent installments of any assessment as provided herein, the payment of all delinquent installments so adjusted may be extended over a period not exceeding the life of the issue of refunding bonds, but in no event over a period exceeding 20 years. Such extension shall be made by the preparation of assessment rolls, which shall provide for the payment of installments so adjusted in equal annual installments which shall become due annually on September 1, in accordance with the original assessment, and shall bear interest at the rate of four per centum (4%) per annum from December 1 following their due date until paid. Such assessment rolls shall be prepared and filed with the sheriff and the clerk of superior court and receipts shall be prepared and the same shall be collected in the same manner as other assessments of the district. (1935, c. 469, s. 2.)

§ 156-127. Special fund set up; distribution of collections.

The collection of assessments adjusted under this Article and of interest accrued under G.S. 156-126 shall be set aside in a fund and shall be applied as follows: One third of such collections may be used solely for operating and administrative expenses of the district, but the remaining two thirds thereof shall be reserved as additional security for the payment of the refunding bonds, or for the purchase and retirement of such refunding bonds, at prices not exceeding par and accrued interest. (1935, c. 469, s. 3.)

§ 156-128. Approval of adjustments by Local Government Commission.

Any adjustments of delinquent assessments under the provisions of this Article shall be effective only upon approval of the Local Government Commission. (1935, c. 469, s. 4.)

§ 156-129. Amount of assessments limited; reassessments regulated.

The assessments made under this Article shall in no instance, and against no piece of property, be greater in amount than that percent which the percent assessment authorized by this Article bears to the unpaid original assessment upon each piece or tract of property within the district. In no instance, either under this Article or any other law, shall any reassessment be made upon any piece of property for the purpose of providing money for the same purpose for which the original assessment was made, when the original assessment upon said property has been paid, or shall be paid prior to such general reassessment, nor to the extent that the original assessment has been paid. (1935, c. 469, s. 4(b).)

ARTICLE 10.

Reports of Officers.

§ 156-130. Drainage commissioners to make statements.

It shall be the duty of the commissioners of all drainage districts in the State of North Carolina organized under the provisions of the laws thereof to file with the clerk of the superior court in the county where such district is organized a monthly statement or account during the course of construction of canals for the district, showing the receipts and expenditures of all funds coming into their hands belonging to such drainage district for the period of one month prior to the day on which the same is filed, and also to post a copy of such statement or account at the courthouse door in the county. After the construction of the canals has been concluded and the drainage commissioners have only to maintain the canals, said drainage commissioners shall only be required to file and post the annual statement required in G.S. 156-131. Such statement or account shall be certified by the chairman of the board of commissioners of each drainage district and shall be attested by the secretary thereof, and a copy thereof shall be filed and kept as a part of the minutes of the district. (1917, c. 72, s. 1; C.S., s. 5374; 1927, c. 98, s. 6.)

§ 156-131. Annual report.

At the end of each fiscal year the board of commissioners of all drainage districts in the State of North Carolina shall file with the clerk of the superior court in the county where the district is organized a verified itemized statement of receipts and expenditures of all funds belonging to the district during the fiscal year just closed. (1917, c. 72, s. 2; C.S., s. 5375; 1957, c. 1410, s. 2.)

§ 156-132. Penalty for failure.

Any board of commissioners of any drainage district in the State, and each of the members thereof, which shall fail or refuse to file the statements or accounts, as provided in G.S. 156-130 and 156- 131, shall be deemed guilty of a Class 1 misdemeanor. (1917, c. 72, s. 3; C.S., s. 5376; 1957, c. 1410, s. 3; 1993, c. 539, s. 1079; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 156-133. Auditor appointed; duties; compensation.

The clerk of the superior court for the county where the district was organized, shall annually appoint an intelligent and competent person of sufficient experience, as auditor for each drainage district which levies current assessments or which has accumulated funds. The same person may be auditor of more than one drainage district. The auditor shall annually report to the court as to financial affairs of the drainage district. The auditor may prepare all financial reports required by the drainage law to be made to the court by the commissioners of the drainage district. The compensation of the auditor shall be fixed by the said clerk of the superior court, and shall be paid out of the general, or operating, fund of the district. (1917, c. 152, s. 10; 1919, c. 208, s. 3; C.S., s. 5377; 1959, c. 420; 1963, c. 767, s. 11.)

§ 156-134. Duties of the auditor.

The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited.

The auditor shall for each of such years make a report as to each drainage district, showing the total amount of drainage assessments due for each year, the amount collected by the sheriff up to the fifteenth day of May of the following year, the names of the owners of land, and a brief description of the lands on which the drainage assessments have not been paid, and the total amount of unpaid drainage assessments, with any further data or information which the auditor may regard as pertinent.

If the lands in the district lie in other counties, the auditor for the county in which the district was established shall also examine the records of the sheriff or tax collector for such other counties.

The auditor shall also examine the books of the treasurer for similar years, and he shall report the amount of drainage assessments paid to the treasurer by the sheriff or tax collector for each year, and the amounts paid out by the treasurer during such years, and for what purposes paid. It shall be the duty of the sheriff and treasurer to permit the auditor to examine their official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.

The auditor shall make a report to the board of county commissioners on or before the first Monday in July following his appointment, and he shall deliver a duplicate of such report to the chairman of the board of drainage commissioners of each drainage district established in the county.

If the sheriff has not collected all of the drainage assessments, or has not paid over all collections to the treasurer, or if the treasurer has not made disbursements of the drainage funds as required by law, or has not in his hands the funds not so disbursed by him, it shall be the duty of the auditor to so report, and to prepare two certified copies of his report, one of which shall be delivered to the judge holding a session of superior court in the county following the first Monday in July, and a copy to the district attorney of the prosecutorial district as defined in G.S. 7A-60 in which the county is located, and it shall be the duty of such district attorney to examine carefully such report and to institute such action, civil or criminal, against the sheriff or tax collector or the treasurer, as the facts contained in the report may justify, or as may be required by law. (1917, c. 152, s. 10; C.S., s. 5378; 1963, c. 767, s. 4; 1973, c. 47, s. 2; c. 108, s. 97; 1987 (Reg. Sess., 1988), c. 1037, s. 124.)

Article 11.

General Provisions.

§ 156-135. Construction of drainage law.

The provisions of this Subchapter shall be liberally construed to promote the leveeing, ditching, draining, and reclamation of wet and overflowed lands. The collection of the assessment shall not be defeated, where the proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the court confirming the final report of the viewers; but such order or orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person or to modify his assessment or liability, it shall in no manner affect the rights and legality of any person other than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this Subchapter shall exclude all other remedies. (1909, c. 442, s. 37; C.S., s. 5379.)

CASE NOTES

Liberal Construction of Drainage Laws. — The drainage laws apply to the whole State, and by the express provision of this section they should be liberally construed to promote the leveeing, ditching, draining and reclamation of wet and overflowed lands. Board of Drainage Comm'rs of Parkville Drainage Dist. No. 1 v. Brett Eng'r Co., 165 N.C. 37, 80 S.E. 897 (1914).

Provision that the collection of assessments shall not be defeated, etc., is absolutely necessary if the public are to be protected in their purchase of the bonds put upon the market. It is to be presumed that when the court has rendered such final judgment and the bonds are issued there will be no interference with the collection of the assessments to pay the bondholders, but that all controversies were thrashed out and settled before such final judgment. Banks v. Lane, 171 N.C. 505, 88 S.E. 754 (1916).

Formation of a district is not subject to collateral attack. Board of Drainage Comm'rs v. Lafayette Southside Bank, 27 F.2d 286 (4th Cir. 1928).

§ 156-135.1. Investment of surplus funds.

Any drainage district organized under the provisions of Subchapter III of Chapter 156 of the General Statutes and the governing authority of same is hereby authorized and empowered to invest any surplus funds or any funds not needed for the immediate use of the district in United States bonds or any securities or type of investment in which guardians, executors, administrators and others acting in a fiduciary capacity are authorized to make investments by virtue of Article 1 of Chapter 36 of the General Statutes as amended. (1951, c. 1058, s. 1.)

Editor's Note. — Article 1 of Chapter 36, referred to in this section, was repealed by Session Laws 1977, c. 502, s. 1. For present provisions covering the subject matter of the repealed article, see Article 1 of Chapter 36A.

CASE NOTES

Cited in In re Perquimans County Drainage District No. Four, 254 N.C. 155, 118 S.E.2d 431 (1961).

§ 156-136. Removal of officers.

Any engineer, viewer, superintendent of construction or other person appointed under this Chapter may be removed by the court, upon petition, for corruption, negligence of duties, or other good and satisfactory cause shown. (1909, c. 442, s. 38; C.S., s. 5380.)

§ 156-137. Local drainage laws not affected.

This Subchapter shall not repeal or change any local drainage laws already enacted. (1909, c. 442, s. 381/2; C.S., s. 5381.)

CASE NOTES

Where a special local statute for the formation and operation of a drainage district is complete in itself in all its details, a general law expressing itself applicable to all such drainage districts in the State, adding further duties and making the failure of the commissioners to file certain reports an indictable offense, will not be construed to apply unless special reference is made to the special local act. State v. Gettys, 181 N.C. 580, 107 S.E. 307 (1921).

§ 156-138. Punishment for violating law as to drainage districts.

If any person shall violate any of the provisions of law in reference to drainage districts as provided in this Chapter, or shall leave any log, brush, trash, or other thing where it is liable to wash into an adjacent stream and obstruct the flow of water or cut any tree so as to fall in a stream, or place any other obstruction in a stream in a drainage district, he shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1905, c. 541, ss. 7, 9; Rev., s. 3378; C.S., s. 5382.)

§ 156-138.1. Acquisition and disposition of lands; lease to or from federal or State government or agency thereof.

The district may acquire any lands necessary or convenient to enable it to accomplish the purposes for which the district was established. If the lands cannot be acquired by agreement as to the purchase price, then the power of eminent domain is hereby conferred and the lands may be condemned by the procedure set out in G.S. 156-67 and Chapter 40A of the General Statutes. The land so acquired may be used in a manner and for the purposes the commissioners of the district deem best. If, in the opinion of the drainage commission of the district the lands should be sold, leased or rented, the board may do so, subject to the approval of the clerk of the superior court.

The commissioners of the district may, in their discretion, convey or lease to the State or federal governments, or any of their agencies, with or without consideration, any properties, real or personal, belonging to the district, if in their opinion it is necessary to enable the district to receive State or federal funds available to the district. The terms of a conveyance or lease shall be subject to the approval of the clerk of the superior court of the county in which the district was established.

The commissioners of the district may lease from the State or federal governments any real or personal property needed by the district to enable it to efficiently operate and maintain the district for the purposes for which it was established. The terms of a lease shall be subject to the approval of the clerk of the superior court of the county in which the district was established. (1957, c. 539; 2001-487, s. 38(h).)

§ 156-138.2. Meaning of "majority of resident landowners" and "owners of three fifths of land area."

Wherever in this Subchapter reference is made to a "majority of resident landowners" or "owners of three fifths of the land area," such reference shall be deemed to refer only to lands alleged in a petition or adjudged by the court to be benefited by the proposed construction work. (1959, c. 1312, s. 2.)

§ 156-138.3. Notice.

Unless specifically required by the provisions of this Subchapter, it is not necessary to give notice to any landowner of a motion made to, or order rendered by the clerk of the superior court or the judge of the superior court relating to the affairs of the district, financial or otherwise, except when an assessment is proposed to be made upon his land and then such notice shall be given as is required by the provisions of this Subchapter. This provision for notice of assessment shall not apply to assessments for annual maintenance expenses, which are provided for in this Subchapter, and specifically in Article 7A and G.S. 156-92. (1961, c. 614, s. 3.)

CASE NOTES

The land clause of the Constitution of North Carolina is violated insofar as this section dispenses with notice and an opportunity to be heard before imposing maintenance assessments on landowners within the drainage district; the imposition of assessments was not a matter of mathematical computation, but rather, it involved some discretion on the part of the commissioners. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

This section violates the law of the land clause of the Constitution of North Carolina insofar as it dispenses with notice and an opportunity to be heard before imposing maintenance assessments on landowners within the drainage district. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-138.4. Procedures to be followed in connection with drainage projects that involve channelization.

Every drainage project that involves channelization shall be subject to the procedures set forth in G.S. 139-47. (1971, c. 1138, s. 4.)

Editor's Note. — Section 139-47, referred to in this section, was repealed by Session Laws 1993, c. 391, s. 31, effective July 19, 1993.

SUBCHAPTER IV. DRAINAGE BY COUNTIES.

ARTICLE 12.

Protection of Public Health.

§ 156-139. Cleaning and draining of streams, etc., under supervision of governmental agencies.

When the board of commissioners of any county subject to the provisions of this Article shall, by resolution duly adopted, find as facts: (i) that the cleaning out and draining of any portion of any nonnavigable stream, creek or swamp area in such county is necessary and/or desirable to protect and promote the health of the citizens of such county, and (ii) that the agricultural benefits which the lands along such stream or area might receive from such cleaning out and draining would be so negligible as not to justify the levying of any special assessments against such lands on account thereof, it may order, provide for, and accomplish the cleaning out and draining of such portion of such stream, creek or swamp area by, through, and under the supervision and jurisdiction of, the health department, or any sanitary committee, or any drainage commission, or other governmental agency or department of such county. (1943, c. 553, s. 1.)

Legal Periodicals. — For comment on this section and G.S. 156-140 and 156-141, see 21 N.C.L. Rev. 352 (1943).

§ 156-140. Tax levy.

In order to carry out and accomplish the objects and purposes of this Article, the board of commissioners of any such county may annually levy and collect a countywide tax not exceeding two cents (2¢) upon each one hundred dollars ($100.00) in value of the taxable property in such county. (1943, c. 553, s. 2.)

§ 156-141. Article applicable to certain counties only.

This Article shall apply only to those counties which may have a population in excess of 100,000 persons. (1943, c. 553, s. 3.)

Chapter 157.

Housing Authorities and Projects.

Article 1.

Housing Authorities Law.

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Article 2.

Municipal Cooperation and Aid.

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Article 4.

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157-52. Purpose of Article.
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Article 5.

Indian Housing Authority.

157-66. Authority created.
157-67. Powers of Authority; applicability of certain laws; powers of Governor and Commission of Indian Affairs.
157-68. Commissioners of Authority.
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ARTICLE 1.

Housing Authorities Law.

§ 157-1. Title of Article.

This Article may be referred to as the Housing Authorities Law. (1935, c. 456, s. 1.)

Legal Periodicals. — For comment on this Article, see 19 N.C.L. Rev. 484 (1941).

For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

For comment on eviction in public housing, see 4 Wake Forest Intra. L. Rev. 112 (1968).

For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

For note, "New Developments for Federally Subsidized Housing Tenants in North Carolina," see 64 N.C.L. Rev. 1455 (1986).

CASE NOTES

Constitutionality. — This Article is a constitutional exercise of a legislative power. Wells v. Housing Auth., 213 N.C. 744, 197 S.E. 693 (1938).

A housing authority created under this Article is not invested with legislative and supreme judicial powers, and therefore its creation does not violate the constitutional provision that such powers be and remain separate and distinct. Cox v. Kinston, 217 N.C. 391, 8 S.E.2d 252 (1940).

Purpose of Article. — The State cannot enact laws, and cities and towns cannot pass effective ordinances, forbidding disease, vice and crime to enter into the slums of overcrowded areas, there defeating every purpose for which civilized government exists and spreading influences detrimental to law and order; but experience has shown that this result can be more effectively brought about by the removal of physical surroundings conducive to these conditions. This is the objective of this Article and the means by which it is intended to accomplish it. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Slum Clearance as Public Purpose. — "Slum clearance" to rehabilitate crowded and congested areas in cities and towns where conditions conducive to disease and public disorder exist is a public purpose, for which the legislature may create municipal corporations, and housing authorities established under this and the following sections are for such governmental purpose. Wells v. Housing Auth., 213 N.C. 744, 197 S.E. 693 (1938); In re Housing Auth., 233 N.C. 649, 65 S.E.2d 761 (1951).

The State does not engage in a private enterprise when it undertakes a project of slum clearance. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

A housing authority organized under this Article is created for a public purpose and exercises an essential governmental function. Briefly stated, its public purpose is the elimination or rehabilitation of unsafe and unsanitary dwelling units in crowded and congested areas and the construction of housing projects to provide safe and sanitary dwelling units for rental to persons of low income. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Article Relates to Health and Sanitation. — This Article, authorizing the creation of municipal housing authorities, is a statute relating to health and sanitation. State v. Alverson, 254 N.C. 204, 118 S.E.2d 408 (1961).

Hearing Requirements Before Eviction. — Hearing to be afforded tenants of public housing before determination to evict them requires: (1) timely and adequate notice detailing the reasons for a proposed termination, (2) an opportunity on the part of the tenant to confront and cross-examine adverse witnesses, (3) the right of a tenant to be represented by counsel, provided by him to delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination and generally to safeguard his interests, (4) a decision, based on evidence adduced at the hearing, in which the reasons for decision and the evidence relied on are set forth, and (5) an impartial decision maker. Caulder v. Durham Hous. Auth., 433 F.2d 998 (4th Cir. 1970), cert. denied, 401 U.S. 1003, 91 S. Ct. 1228, 28 L. Ed. 2d 539 (1971).

The public duty doctrine did not apply to the defendant Housing Authority because it was properly classified as a local government agency, despite its existence as a municipal corporation, for the following reasons: Pursuant to G.S. 157-4, a housing authority is created by local government; the city council and its members are appointed by the mayor; the language in several provisions within Chapter 157 clearly distinguishes between housing authorities and state agencies; G.S.157-26 labels housing authorities as "local government agencies" and exempts them from taxation "to the same extent as a unit of local government;" and the Housing Authorities Law which creates the North Carolina Indian Housing Authority states: "It is the intent of the General Assembly that the North Carolina Indian Housing Authority not be treated as a State agency for any purpose, but rather that it be treated as a housing authority as set out above." Huntley v. Pandya, 139 N.C. App. 624, 534 S.E.2d 238, 2000 N.C. App. LEXIS 981 (2000), cert. denied, 353 N.C. 263, 546 S.E.2d 98 (2000).

Housing authority provided a governmental function and was entitled to rely on doctrine of governmental immunity as it related to a personal injury suit brought against it; G.S. 160A-485(a) did not control whether or not the housing authority had legal capacity to waive its immunity by buying insurance, but authority could have accepted liability to the extent of insurance purchased, and the case was therefore remanded since the appellate court was unable to discern whether the trial court's denial of the housing authority's motion to dismiss was premised upon the housing authority's insurance coverage. Evans v. Hous. Auth., 359 N.C. 50, 602 S.E.2d 668, 2004 N.C. LEXIS 1125 (2004).

Applied in Housing Auth. v. Wooten, 257 N.C. 358, 126 S.E.2d 101 (1962); Housing Auth. v. Farabee, 17 N.C. App. 431, 194 S.E.2d 553 (1973).

Cited in In re Housing Auth., 235 N.C. 463, 70 S.E.2d 500 (1952); State ex rel. East Lenoir San. Dist. v. City of Lenoir, 249 N.C. 96, 105 S.E.2d 411 (1958); Redevelopment Comm'n v. Guilford County, 1 N.C. App. 512, 162 S.E.2d 108 (1968).

§ 157-2. Finding and declaration of necessity.

(a) It is hereby declared that unsanitary or unsafe dwelling accommodations exist in urban and rural areas throughout the State and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; that in such urban and rural areas many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in such urban and rural areas there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise; that the clearance, replanning and reconstruction of such areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be instituted as soon as possible; and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative determination to be in the public interest.

(b) It is hereby further declared that there is a serious shortage of decent, safe and sanitary housing in North Carolina that can be afforded by persons and families of moderate income; that it is in the best interest of the State to encourage programs to provide housing for such persons without imposing on them undue financial hardship; and that in undertaking such programs a housing authority is promoting the health, welfare and prosperity of all citizens of the State and is serving a public purpose for the benefit of the general public. (1985, c. 456, s. 2; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2; 1987, c. 464, s. 1.)

Legal Periodicals. — For comment on the 1941 amendment to this section, see 19 N.C.L. Rev. 481 (1941).

For note on retaliatory evictions and housing code enforcement, see 49 N.C.L. Rev. 569 (1971).

CASE NOTES

Legislative Purpose. — The legislature authorized the creation of housing authorities as a means of protecting low-income citizens from unsafe or unsanitary conditions in urban or rural areas. Powell v. Eastern Carolina Regional Hous. Auth., 251 N.C. 812, 112 S.E.2d 386 (1960).

Due Process in Eviction Procedure. — Both governmental and individual interests are furthered by affording due process in the eviction procedure. Caulder v. Durham Hous. Auth., 433 F.2d 998 (4th Cir. 1970), cert. denied, 401 U.S. 1003, 91 S. Ct. 1228, 28 L. Ed. 2d 539 (1971).

Suit Against Party Named in Lease. — The law of this State allows the housing authority to sue in summary ejectment the party whose name alone is on the lease. Maxton Hous. Auth. v. McLean, 70 N.C. App. 550, 320 S.E.2d 322 (1984), reversed on other grounds, 313 N.C. 277, 328 S.E.2d 290 (1985).

Eviction of Tenant for Failure to Pay Rent. — In order to evict a tenant occupying public housing for persons with low incomes for failure to pay rent as called for in the lease, there must be a finding of fault on the part of the tenant in failing to make the rental payment. Upon a showing by the Authority that the rental payment has not been made as required by the lease, it is presumed that the failure to pay the rent is good cause for eviction. The burden there-upon shifts to the tenant to produce evidence to prove a lack of fault on his part in failing to make the rental payment. Maxton Hous. Auth. v. McLean, 313 N.C. 277, 328 S.E.2d 290 (1985).

Good cause was not shown for termination of lease, where Authority proved the failure of tenant to make rental payments and water and sewer payment, thus raising a presumption that good cause existed to terminate the lease, but by uncontroverted evidence rebutted the presumption by proving the lack of fault on her part in failing to make these payments, showing that initially, no rent was required of tenant and her two children, that the rent in question was based upon the income of husband when he moved into the apartment after marrying defendant, that tenant still had no income herself, and that husband refused to pay the rent and then lost his job. Maxton Hous. Auth. v. McLean, 313 N.C. 277, 328 S.E.2d 290 (1985).

Applied in Housing Auth. v. Montgomery, 55 N.C. App. 422, 286 S.E.2d 114 (1982).

Cited in Mallard v. Eastern Carolina Regional Hous. Auth., 221 N.C. 334, 20 S.E.2d 281 (1942); State v. Alverson, 254 N.C. 204, 118 S.E.2d 408 (1961).

§ 157-3. Definitions.

The following terms, wherever used or referred to in this Article shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "housing authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "Bonds" shall mean any bonds, interim certificates, notes, debentures, obligations, or other evidences of indebtedness issued pursuant to this Article.

(3) "City" shall mean any city or town having a population of more than 500 inhabitants according to the last federal census or any revision or amendment thereto.

(4) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor respectively.

(5) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this Article.

(6) "Community facilities" shall include real and personal property, and buildings and equipment for recreational or social assemblies, for educational, health or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority and/or the occupants of the dwelling accommodation.

(7) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(8) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(9) "Farmers of low income" shall mean persons or families who at the time of their admission to occupancy in a dwelling of the authority:

   a. Live under unsafe or unsanitary housing conditions;

   b. Derive their principal income from operating or working upon a farm; and

   c. Had an aggregate average annual net income for the three years preceding their admission that was less than the amount that shall be determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing, without overcrowding.

(10) "Federal government" shall include the United States of America, the Federal Emergency Administration of Public Works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(11) "Government" shall include the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(12) "Housing project" shall include all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

   a. To demolish, clear, remove, alter or repair unsanitary or unsafe housing; and/or

   b. To provide safe and sanitary dwelling accommodations for persons of low income, or moderate income, or low and moderate income; and/or

c. To provide safe and sanitary housing for persons of low income, through payment of rent subsidies from any source; and/or

d. To provide grants, loans, interest supplements and other programs of financial assistance (including rent subsidies in furtherance of a program of home ownership) to persons of low income, or moderate income, or low and moderate income, so that such persons may become owners of their own housing or rehabilitate their own housing; and/or

e. To provide grants, loans, interest supplements and other programs of financial assistance to public or private developers of housing for persons of low income, or moderate income, or low and moderate income.

"Housing project" also includes any project that provides housing for persons of other than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for the exclusive use of persons of low income.

The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(13) "Mortgage" shall include deeds of trust, mortgages, building and loan contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(14) "Municipality" shall mean any city, town, incorporated village or other municipality in the State.

(15) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.

(15a) "Persons of low income" means persons in households the annual income of which, adjusted for family size, is not more than sixty percent (60%) of the local area median family income as defined by the most recent figures published by the U.S. Department of Housing and Urban Development.

(15b) "Persons of moderate income" means persons deemed by the authority to require the assistance made available pursuant to this Chapter on account of insufficient personal or family income taking into consideration, without limitation, (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the person's family, (iii) the cost and condition of housing facilities available, and (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a moderate or low and moderate income basis.

(16) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(17) "State" shall mean the State of North Carolina.

(18) "Trust indenture" shall include instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof. (1935, c. 456, s. 3; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2; 1943, c. 636, s. 1; 1959, cc. 321, 641, 1281; 1961, c. 200, s. 1; 1977, c. 924; 1987, c. 464, ss. 2, 3.)

Editor's Note. — Session Laws 1943, c. 636, which amended this section as well as G.S. 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37, and added G.S. 157-39.1 through 157-39.8, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

CASE NOTES

A housing authority created hereunder is a municipal corporation created for a public governmental purpose, and such authority is invested with a governmental function. Cox v. Kinston, 217 N.C. 391, 8 S.E.2d 252 (1940).

The public duty doctrine did not apply to the defendant Housing Authority because it was properly classified as a local government agency, despite its existence as a municipal corporation, for the following reasons: Pursuant to G.S. 157-4, a housing authority is created by local government; the city council and its members are appointed by the mayor; the language in several provisions within Chapter 157 clearly distinguishes between housing authorities and state agencies; G.S.157-26 labels housing authorities as "local government agencies" and exempts them from taxation "to the same extent as a unit of local government;" and the Housing Authorities Law which creates the North Carolina Indian Housing Authority states: "It is the intent of the General Assembly that the North Carolina Indian Housing Authority not be treated as a State agency for any purpose, but rather that it be treated as a housing authority as set out above." Huntley v. Pandya, 139 N.C. App. 624, 534 S.E.2d 238, 2000 N.C. App. LEXIS 981 (2000), cert. denied, 353 N.C. 263, 546 S.E.2d 98 (2000).

Cited in In re Housing Auth., 233 N.C. 649, 65 S.E.2d 761 (1951).

§ 157-4. Notice, hearing and creation of authority; cancellation of certificate of incorporation.

Any 25 residents of a city and of the area within 10 miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least 10 days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least 10 days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether insanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or insanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor who shall thereupon appoint, as hereinafter provided, not less than five nor more than nine commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital):

(1) That a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;
(2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this Article;
(3) The term of office of each of the commissioners;
(4) The name which is proposed for the corporation; and
(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this Article, under the seal of the State, and shall record the same with the application.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this Article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

The Secretary of State is authorized and empowered to revoke or to cancel a certificate of incorporation previously issued to an authority or housing authority upon filing in his office a petition and resolution of the council and a petition and resolution of the authority and its members requesting such revocation or cancellation and when the Secretary of State is satisfied that no indebtedness has been incurred or property acquired by said housing authority. (1935, c. 456, s. 4; 1943, c. 636, s. 7; 1961, c. 987; 1971, c. 362, s. 1; c. 599.)

Local Modification. — City of Durham: 1971, c. 575.

Editor's Note. — Session Laws 1943, c. 636, which amended this section as well as G.S. 157-3, 157-10, 157-33, 157-35, 157-36 and 157-37, and added G.S. 157-39.1 through 157-39.8, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

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Justification for Housing Authority to Be Determined by Municipality. — Existence or nonexistence of facts within its corporate limits justifying the creation of a housing authority is for the determination of the municipal corporation, which duty is political and not judicial, and in proceedings to enjoin the activities of a housing authority the court does not have authority to hear evidence in regard to the existence of the facts upon which the creation of the housing authority was predicated. Cox v. Kinston, 217 N.C. 391, 8 S.E.2d 252 (1940).

No Unconstitutional Delegation in Authorizing Municipality to Determine Necessity for Authority. — The provision of this section investing each municipal corporation with the power to determine for itself the existence or nonexistence of facts necessary for the creation of a housing authority to perform a proper municipal governmental function within its limits is not an unconstitutional delegation of legislative authority. Cox v. Kinston, 217 N.C. 391, 8 S.E.2d 252 (1940).

A rural housing authority duly created is a municipal corporation created for a public purpose and realty acquired by such authority is exempt from taxation. Mallard v. Eastern Carolina Regional Hous. Auth., 221 N.C. 334, 20 S.E.2d 281 (1942).

Publication of notice is not required for creation of a rural housing authority under this section. Mallard v. Eastern Carolina Regional Hous. Auth., 221 N.C. 334, 20 S.E.2d 281 (1942).

The public duty doctrine did not apply to the defendant Housing Authority because it was properly classified as a local government agency, despite its existence as a municipal corporation, for the following reasons: Pursuant to G.S. 157-4, a housing authority is created by local government; the city council and its members are appointed by the mayor; the language in several provisions within Chapter 157 clearly distinguishes between housing authorities and state agencies; G.S.157-26 labels housing authorities as "local government agencies" and exempts them from taxation "to the same extent as a unit of local government;" and the Housing Authorities Law which creates the North Carolina Indian Housing Authority states: "It is the intent of the General Assembly that the North Carolina Indian Housing Authority not be treated as a State agency for any purpose, but rather that it be treated as a housing authority as set out above." Huntley v. Pandya, 139 N.C. App. 624, 534 S.E.2d 238, 2000 N.C. App. LEXIS 981 (2000), cert. denied, 353 N.C. 263, 546 S.E.2d 98 (2000).

Cited in Sides v. Cabarrus Mem. Hosp., 22 N.C. App. 117, 205 S.E.2d 784 (1974); In re Appeal of Fayette Place LLC, — N.C. App. —, 668 S.E.2d 354, 2008 N.C. App. LEXIS 2027 (2008).

§ 157-4.1. Alternative organization.

(a) In lieu of creating a housing authority as authorized herein, the council of any city may, if it deems wise, either designate a redevelopment commission created under the provisions of Chapter 160 of the General Statutes to exercise the powers, duties, and responsibilities of a housing authority as prescribed herein, or may itself exercise such powers, duties, and responsibilities. Any such designation shall be by passage of a resolution adopted in accordance with the procedure and pursuant to the finding specified in the first and second paragraphs of G.S. 157-4. In the event the council of any city designates itself to exercise the powers, duties, and responsibilities of a housing authority, then where any act, proceeding, or approval is required to be done, recommended, or approved both by a housing authority and by the council of the city, then the performance, recommendation, or approval thereof once by the council of the city shall be sufficient to make such performance, recommendation, or approval valid and legal. In the event the council of the city designates itself to exercise the powers, duties, and responsibilities of a housing authority, it may assign the administration of the housing programs, projects, and policies to any existing or new department of the city.

(b) The council of any city which has prior to July 1, 1969, created, or which may hereafter create, a housing authority may, in its discretion, by resolution abolish such housing authority, such abolition to be effective on a day set in such resolution not less than 90 days after its adoption. Upon the adoption of such a resolution, the housing authority of the city is hereby authorized and directed to take such actions and to execute such documents as will carry into effect the provisions and the intent of the resolution, and as will effectively transfer its authority, responsibilities, obligations, personnel, and property, both real and personal, to the city. Any city which abolishes a housing authority pursuant to this subsection may, at any time subsequent to such abolition or concurrently therewith, exercise the authority granted by subsection (a) of this section.

On the day set in the resolution of the council:

(1) The housing authority shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the housing authority shall vest in, belong to, and be the property of the city;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the housing authority shall remain, vest in, and inure to the benefit of the city;

(4) All rentals, taxes, assessments, and any other funds, charges or fees, owing to the housing authority shall be owed to and collected by the city;

(5) Any actions, suits, and proceedings, pending against, or having been instituted by the housing authority shall not be abated by such abolition, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the city shall be a party to all such actions, suits, and proceedings in the place and stead if the housing authority and shall pay or cause to be paid any judgments rendered against the housing authority in any such actions, suits, or proceedings, and no new process need be served in any such action, suit, or proceeding;

(6) All obligations of the housing authority, including outstanding indebtedness, shall be assumed by the city, and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the city;

(7) All ordinances, rules, regulations and policies of the housing authority shall continue in full force and effect until repealed or amended by the council of the city.

(c) Where the governing body of any municipality has in its discretion, by resolution abolished a housing authority, pursuant to subsection (b) above, the governing body of such municipality may, at any time subsequent to the passage of a resolution abolishing a housing authority, or concurrently therewith, by the passage of a resolution adopted in accordance with the procedures and pursuant to the finding specified in G.S. 157-4.1, designate an existing redevelopment commission created pursuant to Article 37 of Chapter 160 of the General Statutes, to exercise the powers, duties, and responsibilities of a housing authority. Where the governing body of any municipality designates, pursuant to this subsection, an existing redevelopment commission created pursuant to Article 37 of Chapter 160 of the General Statutes to exercise the powers, duties, and responsibilities of a housing authority, on the day set in the resolution of the governing body passed pursuant to subsection (b) of this section, or pursuant to subsection (c) of this section:

(1) The housing authority shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the housing authority or to the municipality as hereinabove provided in subsections (a) or (b), shall vest in, belong to, and be the property of the existing redevelopment commission of the municipality;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the housing authority or in favor of the municipality as hereinabove provided in subsections (a) or (b), shall remain, vest in, and inure to the benefit of the existing redevelopment commission of the municipality;

(4) All rentals, taxes, assessments, and any other funds, charges, or fees owing to the housing authority or owing to the municipality as hereinabove provided in subsections (a) or (b), shall be owed to and collected by the existing redevelopment commission of the municipality;

(5) Any actions, suits, and proceedings pending against or having been instituted by the housing authority or the municipality, or to which the municipality has become a party as hereinabove provided in subsections (a) or (b), shall not be abated by such abolition but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the existing redevelopment commission of the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the housing authority or the municipality, and shall pay or cause to be paid any judgments rendered in such actions, suits, or proceedings, and no new processes need be served in such action, suit, or proceeding;

(6) All obligations of the housing authority or the municipality as hereinabove provided in subsections (a) or (b), including outstanding indebtedness, shall be assumed by the existing redevelopment commission of the municipality; and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the existing redevelopment commission of the municipality;

(7) All ordinances, rules, regulations, and policies of the housing authority or the municipality as hereinabove provided in subsections (a) or (b), shall continue in full force and effect until repealed and amended by the existing redevelopment commission of the municipality.

(d) A redevelopment commission designated by the governing body of any municipality to exercise the powers, duties and responsibilities of a housing authority shall, when exercising the same, do so in accordance with Chapter 157 of the General Statutes. Otherwise the redevelopment commission shall continue to exercise the powers, duties and responsibilities of a redevelopment commission in accordance with Article 37 of Chapter 160 of the General Statutes. (1969, c. 1217, s. 2; 1971, c. 116, ss. 3, 4.)

Editor's Note. — Article 37 of Chapter 160, referred to in this section, was transferred and renumbered Article 22 of Chapter 160A by Session Laws 1973, c. 426.

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Cited in In re Appeal of Fayette Place LLC, — N.C. App. —, 668 S.E.2d 354, 2008 N.C. App. LEXIS 2027 (2008).

§ 157-4.2. Authority budgeting and accounting systems as a part of city or county budgeting and accounting systems.

The council of a city or the board of commissioners of a county may by resolution provide that the budgeting and accounting systems of the city's or county's housing authority (or, if the city's redevelopment commission is exercising the powers, duties, and responsibilities of a housing authority, the budgeting and accounting systems of the redevelopment commission) shall be an integral part of the budgeting and accounting systems of the city or county. If such a resolution is adopted:

(1) For purposes of the Local Government Budget and Fiscal Control Act, the authority (or commission) shall not be considered a "public authority," as that phrase is defined in G.S. 159-7(b), but rather shall be considered a department or agency of the city or county. The operations of the authority (or commission) shall be budgeted and accounted for as if the operations were those of a public enterprise of the city or county.

(2) The budget of the authority (or commission) shall be prepared and submitted in the same manner and according to the same procedures as are the budgets of other departments and agencies of the city or county; and the budget ordinance of the city or county shall provide for the operations of the authority (or commission).

(3) The budget officer and finance officer of the city or county shall administer and control that portion of the city or county budget ordinance relating to the operations of the authority (or commission). (1971, c. 780, s. 37.1; 1973, c. 474, s. 29.)

§ 157-5. Appointment, qualifications and tenure of commissioners.

(a) An authority shall consist of not less than five nor more than eleven commissioners appointed by the mayor and the mayor shall designate the first chair. No commissioner may be a city official. At least one of the commissioners appointed shall be a person who is directly assisted by the public housing authority. However, there shall be no requirement to appoint such a person if the authority: (i) operates less than 300 public housing units, (ii) provides reasonable notice to the resident advisory board of the opportunity for at least one person who is directly assisted by the authority to serve as a commissioner, and (iii) within a reasonable time after receipt of the notice by the resident advisory board, has not been notified of the intention of any such person to serve. The mayor shall appoint the person directly assisted by the authority unless the authority's rules require that the person be elected by other persons who are directly assisted by the authority. If the commissioner directly assisted by the public housing authority ceases to receive such assistance, the commissioner's office shall be abolished and another person who is directly assisted by the public housing authority shall be appointed by the mayor.

(b) No commissioner who is also a person directly assisted by the public housing authority shall be qualified to vote on matters affecting his or her official conduct or matters affecting his or her own individual tenancy, as distinguished from matters affecting tenants in general. No more than one third of the members of any housing authority commission shall be tenants of the authority or recipients of housing assistance through any program operated by the authority.

(c) The council may at any time by resolution or ordinance increase or decrease the membership of an authority, within the limitations herein prescribed.

(d) The mayor shall designate overlapping terms of not less than one nor more than five years for the commissioners first appointed. Thereafter, the term of office shall be five years. A commissioner shall hold office until his or her successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his or her services but he or she shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his or her duties.

(e) When the office of the first chair of the authority becomes vacant, the authority shall select a chair from among its members. An authority shall select from among its members a vice-chair, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1935, c. 456, s. 5; 1971, c. 362, ss. 2-5; 1981, c. 864; 1999-146, s. 1.)

Local Modification. — City of Asheville: 2007-239, s. 1; city of Charlotte: 1989 (Reg. Sess., 1990), c. 835; city of Durham: 1971, c. 575; city of Greensboro: 1971, c. 573; city of Greenville: 2009-211, s. 1; city of Washington: 1993 (Reg. Sess., 1994), c. 693, s. 1; city of Wilson: 1953, c. 664.

§ 157-6. Duty of authority.

The authority shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this Article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1935, c. 456, s. 6; 1997-455, s. 1.)

Local Modification. — City of Washington: 1995 (Reg. Sess., 1996), c. 615, s. 1; Washington Housing Authority: 1995 (Reg. Sess., 1996), c. 615, s. 1.

§ 157-7. Interested commissioners or employees.

No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1935, c. 456, s. 7.)

§ 157-8. Removal of commissioners.

The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

Any obligee of the authority may file with the mayor written charges that the authority is violating willfully any law of the State or any term, provision or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least 10 days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within 15 days after receipt of such charges remove any commissioners of the authority who shall have been found to have acquiesced in any such willful violation.

A commissioner shall be deemed to have acquiesced in a willful violation by the authority of a law of this State or of any term, provision or covenant contained in a contract to which the authority is a party, if, before a hearing is held on the charges against him, he shall not have filed a written statement with the authority of his objections to, or lack of participation in, such violation.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioners and the findings thereon. (1935, c. 456, s. 8.)

Local Modification. — City of Durham: 1971, c. 575.

§ 157-9. Powers of authority.

(a) An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to cooperate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to approve, assist, and cooperate with, as its instrumentality, a nonprofit corporation in providing financing by the issuance by such nonprofit corporation's obligations (which obligations shall not be or be deemed to be indebtedness of a housing authority) for one or more housing projects, pursuant to the United States Housing Act of 1937, as amended, and applicable regulations thereunder, specifically including, but not limited to, programs to make construction and other loans to developers or owners of residential housing, and to acquire, operate or manage such a housing project, and to administer federal housing assistance subsidy payments for such projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (i) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (ii) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (iii) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this Article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this Article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this Article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, (i) all of the stock of which shall be owned by the authority or its nominee or nominees or (ii) the board of directors of which shall be elected or appointed by the authority or is composed of the commissioners of the authority or (iii) which is otherwise subject to the control of the authority or the governmental entity which created the authority, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this Article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(b) Notwithstanding anything to the contrary contained in this Article or in any other provision of law an authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(c) To the extent not inconsistent with the Constitution or statutes of this State or the United States, an authority may adopt and enforce rules governing the lawful entry of guests and visitors to its properties, including the visitors and guests of its tenants. Prior to adopting such rules, an authority shall make reasonable efforts to consult with or obtain comments from its tenants or their representatives. Persons who enter or remain on the property of an authority in violation of such rules shall be subject to prosecution as applicable under G.S. 14-159.12 or G.S. 14-159.13.

(d) A housing authority shall not erect or maintain around any lawfully occupied housing units any fence or gate structure that is electrified or that includes spikes or barbed wire. (1935, c. 456, s. 9; 1939, c. 150; 1977, c. 784, s. 1; 1979, c. 690, s. 1; c. 805; 1995, c. 520, s. 2; 2004-199, s. 40.)

CASE NOTES

Authorities created pursuant to §§ 157-2, 157-4, 157-33, and 157-35 are public bodies exercising public powers. Hence, they are sometimes called municipal corporations. Powell v. Eastern Carolina Regional Hous. Auth., 251 N.C. 812, 112 S.E.2d 386 (1960).

No Delegation of Legislative Functions. — The fact that an administrative board or municipal corporation is authorized to investigate and determine the existence or nonexistence of facts upon which depend the application of the law it is charged with administering is not a delegation of legislative functions. Cox v.

Kinston, 217 N.C. 391, 8 S.E.2d 252 (1940).

Housing authority provided a governmental function and was entitled to rely on doctrine of governmental immunity as it related to a personal injury suit brought against it; G.S. 160A-485(a) did not control whether or not the housing authority had legal capacity to waive its immunity by buying insurance, but authority could have accepted liability to the extent of insurance purchased, and the case was therefore remanded since the appellate court was unable to discern whether the trial court's denial of the housing authority's motion to dismiss was premised upon the housing authority's insurance coverage. Evans v. Hous. Auth., 359 N.C. 50, 602 S.E.2d 668, 2004 N.C. LEXIS 1125 (2004).

Applied in Housing Auth. v. Montgomery, 55 N.C. App. 422, 286 S.E.2d 114 (1982).

§ 157-9.1. Moderate income.

(a) Whenever the words "low income" appear in this Chapter, they shall be construed to mean "low and moderate income."

(b) This section applies only to the housing authority of the largest city in a county which has two or more cities with a population of 60,000 or over, according to the most recent decennial federal census.

(c) This section shall apply only to existing, non-federally subsidized structures.

(d) Notwithstanding the provisions of subsections (b) and (c), subsection (a) of this section applies to all counties with an area of 250 square miles or less, and a population of more then [than] 100,000 according to the most recent decennial federal census, and applies to all cities within such counties.

(e) Notwithstanding the provisions of subsections (b), (c), and (d) of this section, subsection (a) of this section applies to the housing authorities of all cities that have a population of less than 20,000 according to the most recent decennial federal census and are the location of a constituent institution of The University of North Carolina that has a student enrollment of more than 10,000 students and applies to the housing authorities of all counties that have a population of less than 80,000 according to the most recent decennial federal census and are the location of a constituent institution of The University of North Carolina that has a student enrollment of more than 10,000 students. (1983, c. 769, s. 1; 1985 (Reg. Sess., 1986), c. 1004, s. 1; 2009-218, s. 1.)

Effect of Amendments. — Session Laws 2009-218, s. 1, effective June 30, 2009, added subsection (e).

§ 157-9.2. Additional powers.

(a) The findings and purposes set forth in the first three paragraphs of G.S. 122A-2 and in G.S. 122A-5.4(a) are hereby restated and incorporated herein by reference, except that for purposes of incorporating such findings and purposes herein, the phrases "North Carolina Housing Finance Agency" and "Agency" shall read "authority" and the word "Chapter" shall read "Section".

(b) Words and phrases used in this section and not otherwise defined in this Chapter shall be defined as provided in Chapter 122A of the General Statutes, except that for purposes of incorporating such definitions into this section, the phrases "North Carolina Housing Finance Agency" and "Agency" shall read "authority" and the "Chapter" shall read "Section".

(c) An authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this section, including, without limiting the generality of the foregoing, the power:

(1) To make or participate in the making of mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the authority that mortgage loans are

not otherwise available wholly or in part from public or private lenders upon equivalent terms and conditions;

(2) To make or participate in the making of mortgage loans to persons and families of lower income and persons and families of moderate income for residential housing; provided, however, that such loans shall be made only upon the determination by the authority that mortgage loans are not otherwise available wholly or in part from public or private lenders upon equivalent terms and conditions;

(3) To make loans to mortgage lenders on terms and conditions requiring the proceeds thereof to be used by such mortgage lenders to originate new mortgage loans to (i) sponsors of residential housing for persons and families of lower income and persons and families of moderate income and (ii) persons and families of lower income and persons and families of moderate income for residential housing. The loans to mortgage lenders and the loans to be made by such mortgage lenders shall be made on such applicable terms and conditions as are set forth in rules and regulations of the authority or otherwise established by the authority; provided, however, that loans shall be made by such mortgage lenders only upon the determination by the authority that such financing is not otherwise available, wholly or in part, from public or private lenders upon equivalent terms and conditions;

(4) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing of its loans, notes, bonds, commitments and other evidences of indebtedness; and

(5) To borrow money to carry out and effectuate its corporate purposes and to issue its obligations as evidence of any such borrowing.

(d) Notwithstanding the provisions of G.S. 157-17.1, the approval of the Local Government Commission shall not be necessary for the issuance of bonds or the incurrence of indebtedness pursuant to this section, and the provisions of the Local Government Finance Act shall not be applicable with respect to bonds issued or indebtedness incurred pursuant to this section. Provided further that notwithstanding any other provision of State law or local ordinance, the approval of the governing body of the county or city in which the housing authority is located shall be necessary for the issuance of bonds or the incurrence of indebtedness pursuant to this section.

(e) This section applies only to housing authorities in any county with an area of 250 square miles or less and a population of more than 100,000 according to the most recent decennial federal census, and applies to all housing authorities of all cities within such counties.

(f) Not later than 30 days prior to making its determination, pursuant to subsections (c)(1), (2) or (3) of this section, that mortgage loans are not otherwise available wholly or in part from public or private lenders upon equivalent terms and conditions, an authority shall give written notice of a proposed financing, including the proposed terms and conditions of the mortgage loans to be made, to the North Carolina Housing Finance Agency. Within 20 days following receipt of such notice, the North Carolina Housing Finance Agency shall respond, in writing, to the authority, and provide the authority with any terms and conditions of mortgage loans which the Agency can make available and which the Agency believes are reasonably relevant to said determination. (1987, c. 423, s. 1.)

§ 157-9.3. Mixed income projects owned or operated by authorities.

If an authority is the owner or operator of a housing project that includes units for persons of other than low or moderate income, the operating expenses of that project (or of all such projects, together, owned or operated by the authority) shall be met entirely from rents from the project (or projects) together with any rent subsidies provided to low income tenants in the project (or projects). No rent subsidy may be provided to any tenant who is not a person of low income, and no rent subsidy may be paid from bond proceeds. (1987, c. 464, s. 4.)

§ 157-9.4. Multi-family rental housing projects.

(a) If an authority owns, operates, or provides financial assistance to a multi-family rental housing project, at least twenty percent (20%) of the units in the project shall be set aside for the exclusive use of persons of low income. An authority may group projects being developed concurrently in order to meet the requirement of this subsection.

(b) If an authority provides financial assistance to a multi-family rental housing project, the authority shall establish, as a condition of the assistance, requirements and procedures that insure that all units initially set aside for the exclusive use of persons of low income continue to be so used for at least 15 years after the initial date on which at least fifty percent (50%) of the units in the project are occupied. (1987, c. 464, s. 4.1.)

§ 157-10. Cooperation of authorities.

Any two or more authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing (including the issuance of bonds, notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project or projects located within the boundaries of any one or more of said authorities. For such purpose an authority may by resolution prescribe and authorize any other housing authority or authorities, so joining or cooperating with it, to act on behalf with respect to any or all of such powers. Any authorities joining or cooperating with one another may by resolutions appoint from among the commissioners of such authorities an executive committee with full power to act on behalf of such authorities with respect to any or all of their powers, as prescribed by resolutions of such authorities. (1935, c. 456, s. 10; 1943, c. 636, s. 2.)

Editor's Note. — Session Laws 1943, c. 636, which amended this section as well as G.S. 157-3, 157-4, 157-33, 157-35, 157-36 and 157-37, and added G.S. 157-39.2 through 157-39.8, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-11. Eminent domain.

The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this Article after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of Chapter 40A.

Property already devoted to a public use may be acquired, provided, that no property belonging to any city or municipality or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation. (1935, c. 456, s. 11; 1981, c. 919, s. 25.)

Cross References. — As to exercise of eminent domain for housing projects generally, see G.S. 157-48, et seq.

Legal Periodicals. — For article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

CASE NOTES

A housing authority has wide discretion in the selection and location of a site for a housing project. It is not required to select a site in a slum area as the site for a low-rent housing project; and the fact that a few isolated properties in an area to be taken and dismantled are above the average standard of slum properties, or that some few desirable homes would be taken, does not affect the public character of the condemnation proceeding. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

As to adoption of proper resolution as prerequisite to exercise of eminent domain, see In re Housing Auth., 233 N.C. 649, 65 S.E.2d 761 (1951).

Applied in Housing Auth. v. Montgomery, 55 N.C. App. 422, 286 S.E.2d 114 (1982).

§ 157-12. Acquisition of land for government.

The authority may acquire by purchase or by the exercise of its power of eminent domain, as aforesaid, any property real or personal for any housing project being constructed or operated by a government. The authority upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project. (1935, c. 456, s. 12.)

§ 157-13. Zoning and building laws.

All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. (1935, c. 456, s. 13.)

Legal Periodicals. — For article, "Zoning for Direct Social Control," see 1982 Duke L.J. 761 (1982).

CASE NOTES

A town council may not violate at will the regulations it has established for its own procedure; it must comply with the provisions of the applicable ordinance. This requirement is necessary in order to accord due process and equal protection to applicants and to refute charges that any denial is an arbitrary discrimination against the property owner. Piney Mt. Neighborhood Ass'n v. Town of Chapel Hill, 63 N.C. App. 244, 304 S.E.2d 251 (1983).

Applied in Philbrook v. Chapel Hill Hous. Auth., 269 N.C. 598, 153 S.E.2d 153 (1967).

§ 157-14. Types of bonds authority may issue.

An authority shall have power to issue bonds from time to time in its discretion for any of its corporate purposes. An authority shall also have power to issue or exchange refunding bonds for the purpose of paying, retiring, extending or renewing bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable from income and revenues of the authority and from grants or contributions from the federal government or other source. Such income and revenues securing the bonds may be:

(1) Exclusively the income and revenues of the housing project financed in whole or in part with the proceeds of such bonds;
(2) Exclusively the income and revenues of certain designated housing projects, whether or not they are financed in whole or in part with the proceeds of such bonds; or
(3) The income and revenues of the authority generally.

Any such bonds may be additionally secured by a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state in their face) shall not be a debt of any city or municipality and neither the State nor any such city or municipality shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of the laws of the State. Bonds may be issued under this Article notwithstanding any debt or other limitation prescribed in any statute.

This Article without reference to other statutes of the State shall constitute full and complete authority for the authorization, issuance, delivery and sale of bonds hereunder and such authorization, issuance, delivery and sale shall not be subject to any conditions, restrictions or limitations imposed by any other law whether general, special or local. (1935, c. 456, s. 14; 1939, c. 150, s. 2.)

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

CASE NOTES

A city or town is not liable on the bonds of a housing authority within its territory, as it is expressly provided that neither the State nor the city or town shall be liable, and the authority is not an agency of the city or town so as to contravene this express statutory provision. Wells v. Housing Auth., 213 N.C. 744, 197 S.E. 693 (1938).

Cited in Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 157-15. Form and sale of bonds.

The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding 60 years from their respective dates, bear interest at such rate or rates, be in such denominations (which may be made interchangeable), be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public or private sale; provided, however, that no public sale shall be held unless notice thereof is published once at least 10 days prior to such sale in a newspaper having a general circulation in the city in which the authority is located and in a financial newspaper published in the City of New York, New York, or in the City of Chicago, Illinois. The bonds may be sold at such price or prices as the authority shall determine.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All funds so purchased shall be cancelled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this Article shall be fully negotiable. (1935, c. 456, s. 15; 1971, c. 87, s. 1; 1977, c. 784, s. 2.)

§ 157-16. Provisions of bonds, trust indentures, and mortgages.

In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, mortgage, or other contract, all or any part of its rents, fees, or revenues.

(2) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.

(3) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof, or with respect to limitations on its right to undertake additional housing projects.

(4) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

(5) To provide for the release of property, rents, fees and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

(6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(7) To covenant as to what other, or additional debt, may be incurred by it.

(8) To provide for the terms, form, registration, exchange, execution and authentication of bonds.

(9) To provide for the replacement of lost, destroyed or mutilated bonds.

(10) To covenant that the authority warrants the title to the premises.

(11) To covenant as to the rents and fees to be charged, the amount (calculated as may be determined) to be raised each year or other

period of time by rents, fees, and other revenues and as to the use and disposition to be made thereof.

(12) To covenant as to the use of any or all of its property, real or personal.

(13) To create or to authorize the creation of special funds in which there shall be segregated

a. The proceeds of any loan and/or grant;

b. All of the rents, fees and revenues of any housing project or projects or parts thereof;

c. Any moneys held for the payment of the costs of operation and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof;

d. Any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and

e. Any moneys held for any other reserves or contingencies; and to covenant as to the use and disposal of the moneys held in such funds.

(14) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(15) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

(16) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(17) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(18) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.

(19) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(20) To covenant as to the right, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

(21) To covenant to surrender possession of all or any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right without judicial proceedings to take possession and to use, operate, manage and control such housing projects or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the moneys collected in accordance with the agreement of the authority with such obligee.

(22) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the

trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

(23) To make covenants other than in addition to the covenants herein expressly authorized, of like or different character.

(24) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified as the government or any purchaser of the bonds of the authority may reasonably require.

(25) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the Constitution of the State and no consent or approval of any judge or court shall be required thereof. (1935, c. 456, s. 16; 1979, c. 690, ss. 2, 3.)

§ 157-17. Power to mortgage when project financed with governmental aid.

In connection with the interim or permanent financing of any project to be permanently financed in whole or in part by a government, or the permanent financing of which is to be secured by a pledge of a government commitment for rental assistance payments, the authority shall also have the power, subject to the consent or approval of any government providing such financing or making such commitment for rental assistance payments, to mortgage all or any part of its property, real or personal, then owned or thereafter acquired, and thereby:

(1) To vest in a government the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, so long as a government shall be the holder of any of the bonds secured by such mortgage.

(2) To vest in a trustee or trustees the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings.

(3) To vest in other obligees the right to foreclose such mortgage by judicial proceedings.

(4) To vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid, to foreclose such mortgage as to all or such part or parts of the property covered thereby as such obligee (in its absolute discretion) shall elect; the institution, prosecution and conclusion of any such foreclosure proceedings and/or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid. (1935, c. 456, s. 17; 1977, c. 784, s. 3.)

§ 157-17.1. Approval of mortgages by Local Government Commission; considerations; rules and regulations.

(a) With the exception of mortgages under G.S. 157-17, no housing authority may execute any mortgage authorized by this Chapter without the approval of the Local Government Commission.

(b) The Local Government Commission shall consider, in any application by a housing authority for approval of a mortgage, the following issues:

(1) The value of the property, and any other secured indebtedness upon the property;
(2) The ability of the authority to repay the indebtedness secured by the mortgage;
(3) Any other issues it deems necessary to insure the financial soundness of the housing authority.

(c) The Local Government Commission shall adopt rules and regulations to implement this section. (1979, c. 690, s. 5.)

§ 157-18. Remedies of an obligee of authority.

An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:.

(1) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this Article.
(2) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority.
(3) By suit, action or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority. (1935, c. 456, s. 18.)

§ 157-19. Additional remedies conferrable by mortgage or trust indenture.

Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations the right upon the happening of an "event of default" as defined in such instrument:

(1) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any housing project of the authority or any part or parts thereof. If such receiver be appointed, he may enter and take possession of such housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

(2) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust. (1935, c. 456, s. 19.)

§ 157-20. Remedies cumulative.

All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority. (1935, c. 456, s. 20.)

§ 157-21. Limitations on remedies of obligee.

All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution shall issue against the same. No judgment against the authority shall be a charge or lien against its property, real or personal. The provisions of this section shall not apply to or limit the right of obligees of any mortgage of the authority provided for in G.S. 157-17, after foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby and to issue execution on the credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority, which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree. (1935, c. 456, s. 21; 1979, c. 690, s. 4.)

§ 157-22. Title obtained at foreclosure sale subject to agreement with government.

Notwithstanding anything in this Article to the contrary, any purchaser or purchasers at a sale of real or personal property of the authority whether pursuant to any foreclosure of a mortgage, pursuant to judicial process or otherwise, shall obtain title subject to any contract between the authority and a government relating to the supervision by a government of the operation and maintenance of such property and the construction of improvements thereon. (1935, c. 456, s. 22.)

§ 157-23. Contracts with federal government.

In addition to the powers conferred upon the authority by other provisions of this Article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this Article to undertake, to take over any land acquired by the federal government for the construction of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this Article to authorize every authority to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the construction, maintenance and operation of any housing project which the authority is empowered by this Article to undertake. (1935, c. 456, s. 23.)

§ 157-24. Security for funds deposited by authorities.

The authority may by resolution provide that

(1) All moneys deposited by it shall be secured by obligations of the United States or of the State of a market value equal at all times to the amount of such deposits or

(2) By any securities in which savings banks may legally invest funds within their control or

(3) By an undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits. (1935, c. 456, s. 24.)

§ 157-25. Housing bonds, legal investments and security.

The State and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued by a housing authority established (or hereafter established) pursuant to this Article or issued by any public housing authority or agency in the United States, when such bonds are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, or bonds which may be issued notwithstanding any other limitations of this Chapter, by a not-for-profit corporate agency of a housing authority secured by rentals payable pursuant to section 23 of the United States Housing Act of 1937, as amended, or by rental assistance payments under any other section of said act, as amended, and any such bonds shall be authorized security for all public deposits and shall be fully negotiable in this State; it being the purpose of this Article to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds and that any such bonds shall be authorized security for all public deposits and shall be fully negotiable in this State: Provided, however, that nothing contained in this Article shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities. (1935, c. 456, s. 25; 1941, c. 78, s. 3; 1971, c. 1161; 1977, c. 784, s. 4.)

§ 157-26. Tax exemptions.

An authority is a local government agency and is exempt from taxation to the same extent as a unit of local government. Property owned by an authority is exempt from taxation in accordance with Article V, § 2 of the North Carolina Constitution. Bonds and other obligations issued by an authority or its corporate agent authorized by this Article to exercise its powers are declared to be issued for a public purpose and to be public instrumentalities. These obligations are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income. (1935, c. 456, s. 26; 1953, c. 907; 1973, c. 695, s. 7; 1977, c. 784, s. 5; 1995, c. 46, s. 17.)

Legal Periodicals. — For brief comment on the 1953 amendment to this section, see 31 N.C.L. Rev. 442 (1953).

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Property of Authority Exempt from Ad Valorem Taxation. — Since a housing authority created under G.S. 157-1, et seq. is a municipal corporation created for a public, governmental purpose, its property is exempt from State, county and municipal taxation. Wells v. Housing Auth., 213 N.C. 744, 197 S.E. 693 (1938).

Collection of Sales Tax from Housing Authority Not Constitutionally Prohibited. — Neither the Constitution of this State nor the Constitution and laws of the United States prohibit the collection of a sales tax on purchases of tangible personal property made by a housing authority duly created, organized and existing under and by virtue of this Article. Housing Auth. v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

And Authority Is Not Entitled to Refund of Sales Taxes. — A housing authority created pursuant to the provisions of this Article is a municipal corporation but is not an incorporated city or town, and is not entitled to the refund of sales taxes paid on purchases of tangible personal property pursuant to the provisions of G.S. 105-164.14(c). Housing Auth. v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

A municipal corporation or public agency created, organized and existing under and by virtue of the laws of this State, particularly this Article, is not a charitable organization within the meaning of the refund provisions of G.S. 105-164.14(b). Housing Auth. v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

The public duty doctrine did not apply to the defendant Housing Authority because it was properly classified as a local government agency, despite its existence as a municipal corporation, for the following reasons: Pursuant to G.S. 157-4, a housing authority is created by local government; the city council and its members are appointed by the mayor; the language in several provisions within Chapter 157 clearly distinguishes between housing authorities and state agencies; G.S.157-26 labels housing authorities as "local government agencies" and exempts them from taxation "to the same extent as a unit of local government;" and the Housing Authorities Law which creates the North Carolina Indian Housing Authority states: "It is the intent of the General Assembly that the North Carolina Indian Housing Authority not be treated as a State agency for any purpose, but rather that it be treated as a housing authority as set out above." Huntley v. Pandya, 139 N.C. App. 624, 534 S.E.2d 238, 2000 N.C. App. LEXIS 981 (2000), cert. denied, 353 N.C. 263, 546 S.E.2d 98 (2000).

Cited in Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 157-26.1. Exemption from real estate licensure requirements.

The authority and the regular salaried employees of the authority shall be exempt from the requirements of Chapter 93A of the General Statutes as provided in G.S. 93A-2(c)(8). (1999-409, s. 2.)

§ 157-27. Reports.

The authority shall at least once a year file with the mayor of the city a report of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this Article. (1935, c. 456, s. 27.)

Local Modification. — City of Durham: 1971, c. 575.

§ 157-28. Restriction on right of eminent domain; right of appeal preserved; investigation by Utilities Commission.

Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this Article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the Utilities Commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the Utilities Commission of North Carolina, the said Utilities Commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this Article and determine the question of the public convenience and necessity for said project. (1935, c. 456, s. 28.)

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Cited in In re Housing Auth., 233 N.C. 649, 65 S.E.2d 761 (1951); Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 157-29. Rentals; tenant selections; and summary ejectments.

(a) It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the cost of dwelling accommodations for persons of low income at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations. No housing authority may construct or operate its housing projects so as to provide revenues for other activities of the city.

(b) In the operation or management of housing projects, portions of projects, or other housing assistance programs for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount of income that is necessary (as determined by the housing authority undertaking the project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and

(2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.

(3) Repealed by Session Laws 2006-219, s. 1, effective August 8, 2006.

(3a) It shall comply with the following targeting requirements:

a. Not less than forty percent (40%) of the families admitted to its public housing program from its waiting list in its fiscal year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income. For purposes of this section, this shall be known as the "basic targeting requirement".

b. To the extent provided in sub-subdivisions c. and d. of this subdivision, the admission of extremely low-income families to its Section 8 voucher program during the same fiscal year shall be credited against the basic targeting requirement. For purposes of this section, "Section 8" refers to Section 8 of the U.S. Housing Act of 1937 as amended.

c. If admissions of extremely low-income families to its Section 8 voucher program during its fiscal year exceed the seventy-five percent (75%) minimum targeting requirement for its Section 8 voucher program, the excess shall be credited against its basic targeting requirement for the same fiscal year.

d. The fiscal year credit for Section 8 voucher program admissions that exceeded the minimum Section 8 voucher program targeting requirement shall not exceed the lower of any of the following:

1. Ten percent (10%) of its waiting list admissions during its fiscal year.
2. Ten percent (10%) of waiting list admissions to its Section 8 tenant-based assistance program during its fiscal year.
3. The number of qualifying low-income families who, during the fiscal year, commence occupancy of its public housing units that are located in census tracts with a poverty rate of thirty percent (30%) or more. For purposes of this sub-sub-subdivision, qualifying low-income family means a low-income family other than an extremely low-income family.

(4) Repealed by Session Laws 2006-219, s. 1, effective August 8, 2006.

(4a) Its targeting requirement for tenant-based assistance shall ensure that not less than seventy-five percent (75%) of the families admitted to its tenant-based voucher program from its waiting list during its fiscal year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income.

(c) An authority may terminate or refuse to renew a rental agreement for a serious or repeated violation of a material term of the rental agreement such as (i) failure to make payments due under the rental agreement, if such payments were properly and promptly calculated according to applicable HUD regulation, whether or not such failure was the fault of the tenant, (ii) failure to fulfill the tenant obligations set forth in 24 C.F.R. Section 966.4(f) or other applicable provisions of federal law as they may be amended from time to time, or (iii) other good cause. Except in the case of failure to make payments due under a rental agreement, fault on the part of a tenant may be considered in determining whether good cause exists to terminate a rental agreement.

(d) The receipt or acceptance of rent by an authority, with or without knowledge of a prior default or failure by the tenant under a rental agreement, shall not constitute a waiver of that default or failure unless (i) the authority expressly agrees to such waiver in writing, or (ii) within 120 days after obtaining knowledge of the default or failure, the authority fails either to notify the tenant that a violation of the rental agreement has occurred or to exercise one of the authority's remedies for such violation.

(e) In any summary ejectment action wherein a housing authority alleges that a tenant's lease has been terminated because the tenant, a household member, or a guest has engaged in a criminal activity that threatens the health and safety of others or the peaceful enjoyment of the premises by others, or has engaged in activity involving illegal drugs, as defined in 24 C.F.R. § 966.4, the housing authority may bring an action under Article 7 of Chapter 42 of the General Statutes. (1939, c. 150; 1985, c. 741, s. 2; 1987, c. 464, s. 5; 1989, c. 272; 1995, c. 520, s. 1; 1997-473, s. 1; 2005-423, s. 8; 2006-219, s. 1; 2006-259, s. 39.)

Legal Periodicals. — For note, "New Developments for Federally Subsidized Housing Tenants in North Carolina," see 64 N.C.L. Rev. 1455 (1986).

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Preference Favoring Landowners Who Convey Property. — Agreement of a rural housing authority giving priority in occupancy of its dwelling units to those landowners or their tenants, sharecroppers or farm wage hands who convey property to the authority, provided that they come within the definition of families of low income, is not unlawful discrimination in favor of such class. Mallard v. Eastern Carolina Regional Hous. Auth., 221 N.C. 334, 20 S.E.2d 281 (1942).

When tenant's annual net income exceeds prescribed limit, he must move to other dwelling accommodations. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Cited in Charlotte Hous. Auth. v. Patterson, 120 N.C. App. 552, 464 S.E.2d 68 (1995).

§ 157-29.1. Fraudulent misrepresentation.

(a) Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who willfully and knowingly and with intent to deceive fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, attempts to obtain for himself or another person, or continues to receive housing assistance in the amount or value of not more than four hundred dollars ($400.00) is guilty of a Class 1 misdemeanor.

(b) Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who willfully and knowingly and with intent to deceive fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, or continues to receive housing assistance in the amount or value of more than four hundred dollars ($400.00) is guilty of a Class I felony.

(c) As used in this section the word "person" means person, association, consortium, body politic, partnership, or other group, entity, or organization. (1985, c. 741, s. 1; 1993, c. 539, s. 1080; 1994, Ex. Sess., c. 24, s. 14(c).)

Legal Periodicals. — For note, "New Developments for Federally Subsidized Housing Tenants in North Carolina," see 64 N.C.L. Rev. 1455 (1986).

§ 157-30. Creation and establishment validated.

The creation and establishment of housing authorities under the provisions of Chapter 456, Public Laws of 1935, as amended by Chapter 2, Public Laws of 1938, Extra Session, and as further amended by Chapter 150, Public Laws of 1939, and any additional amendments thereto, known as the Housing Authorities Law [G.S. 157-1 et seq.], together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 1; 1941, c. 62, s. 1.)

Cross References. — For additional validation provision relating to the creation, establishment and organization of housing authorities, see G.S. 157-32.1.

Legal Periodicals. — For comment on the 1941 act, see 19 N.C.L. Rev. 484 (1941).

§ 157-31. Contracts, agreements, etc., validated.

All contracts, agreements, obligations and undertakings of such housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance or operation of any housing project or projects or to obtaining aid therefor from the United States Housing Authority, including (without limiting the generality of the foregoing) loan and annual contributions contracts and leases with the United States Housing Authority, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to cooperation and contributions in aid of housing projects, payments (if any) in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 2; 1941, c. 62, s. 2.)

Cross References. — For additional validation provision relating to contracts, agreements, etc., see G.S. 157-32.2.

§ 157-32. Proceedings for issuance, etc., of bonds and notes validated.

All proceedings, acts and things heretofore undertaken, performed or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 3; 1941, c. 62, s. 3.)

Cross References. — For additional validation provision relating to bonds and notes, see G.S. 157-32.3.

§ 157-32.1. Other validation of creation, etc.

The creation, establishment and organization of housing authorities under the provisions of the Housing Authorities Law (Chapter 456, Public Laws of 1935, as amended, codified as G.S. 157-1 et seq.), together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects. (1943, c. 89, s. 1.)

Editor's Note. — This section and G.S. 157-32.2 and 157-32.3, validating housing authorities created under G.S. 157-1 et seq., together with certain acts done in connection therewith, are similar to G.S. 157-30 through 157-32. The words "notwithstanding any want of statutory authority or any defect or irregularity therein," appearing at the end of G.S. 157-30 through 157-32, do not appear in the other sections and they differ slightly in other particulars.

§ 157-32.2. Other validation of contracts, agreements, etc.

All contracts, agreements and undertakings of such housing authorities heretofore entered into relating to financing, or aiding in the development or operation of any housing projects, including (without limiting the generality of the foregoing) loan and annual contributions contracts, agency contracts and leases, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to cooperation in aid of housing projects, payments to public bodies in the State, furnishing of municipal services and facilities and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects. (1943, c. 89, s. 2.)

Editor's Note. — This section and G.S. 157-32.1 and 157-32.3, validating housing authorities created under G.S. 157-1 et seq., together with certain acts done in connection therewith, are similar to G.S. 157-30 through 157-32. The words "notwithstanding any want of statutory authority or any defect or irregularity therein," appearing at the end of G.S. 157-30 through 157-32, do not appear in the other sections and they differ slightly in other particulars.

§ 157-32.3. Other validation of bonds and notes.

All proceedings, acts and things heretofore undertaken or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated and declared legal in all respects. (1943, c. 89, s. 3.)

Editor's Note. — This section and G.S. 157-32.1 and 157-32.2, validating housing authorities created under G.S. 157-1 et seq., together with certain acts done in connection therewith, are similar to G.S. 157-30 through 157-32. The words "notwithstanding any want of statutory authority or any defect or irregularity therein," appearing at the end of G.S. 157-30 through 157-32, do not appear in the other sections and they differ slightly in other particulars.

§ 157-32.4. Further validation of contracts, agreements, etc.

All contracts or agreements of housing authorities heretofore entered into with the federal government or its agencies, and with municipalities or others relating to financial assistance for housing projects in which it was required that loans or advances shall bear an interest rate in excess of six per centum (6%) per annum, or in which a municipality or others had agreed to pay funds equal to the interest in excess of six per centum (6%) per annum are hereby validated, ratified, confirmed, approved and declared legal with respect to the payment of interest in excess of six per centum (6%), and all things done or performed in reference thereto. The housing authorities are hereby authorized to assume the full obligation of the municipalities under the contracts or agreements with reference to interest in excess of six per centum (6%), and to reimburse any municipality which has made any interest payment under such contracts or agreements. (1971, c. 87, s. 2.)

§ 157-33. Notice, hearing and creation of authority for a county.

Any 25 residents of a county may file a petition with the clerk of the board of county commissioners setting forth that there is a need for an authority to function in the county. Upon the filing of such a petition such clerk shall give notice of the time, place and purposes of a public hearing at which the board of county commissioners will determine the need for an authority in the county. Such notice shall be given at the county's expense by publishing a notice, at least 10 days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the county or, if there be no such newspaper, by posting such a notice in at least three public places within the county, at least 10 days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing to be held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the county and to all other interested persons. After such a hearing, the board of county commissioners shall determine (i) whether insanitary or unsafe inhabited dwelling accommodations exist in the county and/or (ii) whether there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof. In determining whether dwelling accommodations are unsafe or insanitary, the board of county commissioners shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of the land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall thereupon either (i) determine that the board of county commissioners shall itself constitute and act ex officio as an authority or (ii) appoint, as hereinafter provided, not less than five nor more than nine commissioners to act as an authority. Said authority shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital)

(1) That a notice has been given and public hearing has been held as aforesaid, that the board of county commissioners made the aforesaid determination after such hearing and appointed them as commissioners;
(2) The name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this Article;
(3) The term of office of each of the commissioners, except where the authority consists of the board of county commissioners ex officio;
(4) The name which is proposed for the corporation; and
(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners, a certificate of incorporation pursuant to this Article, under the seal of the State, and shall record the same with the application.

If the board of county commissioners, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this Article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1941, c. 78, s. 4; 1943, c. 636, s. 7; 1969, c. 785, s. 1; 1981, c. 21, s. 1.)

Editor's Note. — Session Laws 1943, c. 636, which amended this section as well as G.S. 157-3, 157-4, 157-10, 157-35, 157-36 and 157-37, and added G.S. 157-39.1 through 157-39.8, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-34. Commissioners and powers of authority for a county.

The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor; provided, that the board of county commissioners may determine in the case of any authority for its county that the board of county commissioners itself shall constitute and act ex officio as the authority. The board of county commissioners may at any time by resolution or ordinance increase or decrease the membership of an authority, within the limitations prescribed in G.S. 157-33. Except as otherwise provided herein, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities and the commissioners of such housing authorities: Provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "clerk of the board of county commissioners" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context: Provided, further, that a housing authority created for a county shall not be subject to the limitations provided in subdivision (4) of G.S. 157-29 of the housing authorities law with respect to housing projects for farmers of low income. (1941, c. 78, s. 4; 1969, c. 785, s. 2; 1981, c. 21, s. 2.)

Editor's Note. — Subdivision (4) of G.S. 157-29, referred to in the last sentence, which formerly specified a maximum income test for tenants in housing projects, no longer exists.

§ 157-35. Creation of regional housing authority.

If the board of county commissioners of each of two or more contiguous counties having an aggregate population of more than 60,000 by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise powers and other functions herein prescribed for a housing authority in such counties, a public body corporate and politic to be known as a regional housing authority for all of such counties shall (after the commissioners thereof file an application with the Secretary of State as hereinafter provided) thereupon exist for and exercise its powers and other functions in such counties; and thereupon any housing authority created for any of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided: Provided, that the board of county commissioners shall not adopt a resolution as aforesaid if there is a county housing authority created for such county which has any bonds or notes outstanding unless first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority on all such bonds and notes; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided: Provided, further, that when the above conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations, and property, real and personal, of such county housing authority shall be in the name of and vest in such regional housing authority, and all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority. When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds: Provided, that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of county commissioners of each of two or more said contiguous counties shall by resolution declare that there is a need for one regional housing authority to be created for all of such counties to exercise powers and other functions herein prescribed in such counties, if such board of county commissioners finds (and only if it finds)

(1) Insanitary or unsafe dwelling accommodations exist in the area of its respective county and/or there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof and

(2) That a regional housing authority for the proposed region would be a more efficient or economical administrative unit than a housing authority for an area having a smaller population to carry out the

purposes of the housing authorities law and any amendments thereto, in such county.

In determining whether dwelling accommodations are unsafe or insanitary, the board of county commissioners shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that both (1) and (2) of the above enumerated conditions exist, the board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding). After the appointment, as hereinafter provided, of the commissioners to act as the regional housing authority, said authority shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital)

(1) That the boards of county commissioners made the aforesaid determination and that they have been appointed as commissioners;
(2) The name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this Article;
(3) The term of office of each of the commissioners;
(4) The name which is proposed for the corporation; and
(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners, a certificate of incorporation pursuant to this Article, under the seal of the State, and shall record the same with the application.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have been established in accordance with the provisions of this Article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1941, c. 78, s. 4; 1943, c. 636, ss. 3, 7; 1998-217, s. 20.)

Editor's Note. — Session Laws 1943, c. 636, which amended this section as well as G.S. 157-3, 157-4, 157-10, 157-33, 157-36 and 157-37, and added G.S. 157-39.1 through 157-39.8, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-36. Commissioners of regional housing authority.

(a) The board of county commissioners of each county included in a regional housing authority shall appoint one person as a commissioner of such authority, and each such commissioner to be first appointed by the board of county commissioners of a county may be appointed at or after the time of the adoption of the resolution declaring the need for such regional housing authority or declaring the need for the inclusion of such county in the area of operation of such regional housing authority. When the area of operation of a regional housing authority is increased to include an additional county or counties as provided in this Article, the board of county commissioners of each such county shall thereupon appoint one additional person as a commissioner of the regional housing authority. The board of county commissioners of each county shall appoint the successor of the commissioner appointed by it.

(b) The commissioners of the regional housing authority shall appoint as a commissioner at least one person who is directly assisted by the authority unless the authority's rules require that the person be elected by other persons who are assisted by the authority. However, there shall be no requirement to appoint such a person if the authority: (i) operates less than 300 public housing units, (ii) provides reasonable notice to all resident advisory boards within the authority's area of operation of the opportunity for at least one person who is directly assisted by the authority to serve as a commissioner, and (iii) within a reasonable time after receipt of the notice by the resident advisory boards, has not been notified of the intention of any such person to serve. The commissioners of the regional housing authority shall appoint successors of the commissioner appointed by them and shall fill any vacancies. A certificate of the appointment signed by the chair of the commissioners of the regional housing authority shall be conclusive evidence of the due and proper selection of the commissioner. If the commissioner directly assisted by the regional housing authority ceases to receive such assistance, the commissioner's office shall be abolished and another person who is directly assisted by the regional housing authority shall be appointed by the commissioners of the regional housing authority.

(c) No commissioner who is also a person directly assisted by the regional housing authority shall be qualified to vote on matters affecting his or her official conduct or matters affecting his or her own individual tenancy, as distinguished from matters affecting tenants in general.

(d) If any county is excluded from the area of operation of a regional housing authority, the office of the commissioner of such regional housing authority appointed by the board of county commissioners of such county shall be thereupon abolished. If the person appointed as a commissioner under subsection (b) of this section resides in a county that is excluded from the authority's area of operation, the office of that commissioner shall be abolished and another person residing within the authority's area of operation shall be appointed.

(e) A certificate of the appointment of any commissioner signed by the chair of the board of county commissioners (or the appointing officer) shall be conclusive evidence of the due and proper appointment of such commissioner.

(f) If the area of operation of a regional housing authority consists at any time of an even number of counties, except as provided in subsection (g) of this section, the Governor shall appoint one additional commissioner to such regional housing authority whose term of office shall be as herein provided for a commissioner of a regional housing authority, except that such term shall end at any earlier time that the area of operation of the regional housing authority shall be changed to consist of an odd number of counties. The Governor shall likewise appoint each person to succeed such additional commissioner. A certificate of the appointment of any such additional commissioner shall be signed by the Governor and filed with the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be conclusive evidence of the due and proper appointment of such additional commissioner.

(g) If the membership of the board of commissioners consists of an even number as a result of the appointment of a person who is directly assisted by the regional housing authority, the Governor shall appoint one additional commissioner to the authority whose term of office shall be as herein provided for a commissioner of an authority, except that such term shall end at any earlier time that the area of operation of the authority shall be changed to consist of an even number of counties. A certificate of the appointment shall be signed and filed as provided in subsection (f) of this section. The Governor shall appoint successors to the additional commissioner and shall fill any vacancies.

(h) The commissioners of a regional housing authority shall be appointed for terms of five years except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his or her successor has been appointed and has qualified.

(i) For inefficiency or neglect of duty or misconduct in office, a commissioner of a regional housing authority may be removed by the appointing authority. The commissioner shall have been given a copy of the charges against him or her at least 10 days prior to the hearing thereon and shall have had an opportunity to be heard in person or by counsel.

(j) The commissioners appointed as aforesaid shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

(k) The commissioners of a regional housing authority shall elect a chair from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes. (1941, c. 78, s. 4; 1943, c. 636, s. 4; 1999-146, s. 2.)

Editor's Note. — Session Laws 1943, c. 636, which amended this section as well as G.S. 157-3, 157-4, 157-10, 157-33, 157-35, and 157-37, and added G.S. 157-39.1 through 157-39.8, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-37. Powers of regional housing authority.

Except as otherwise provided herein, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities or counties and the commissioners of such housing authorities: Provided, that for such purposes the term "mayor" or "council" as used in the Housing Authorities Law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "clerk of the board of county commissioners" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context: Provided, further, that a regional housing authority shall not be subject to the limitations provided in subdivision (4) of G.S. 157-29 of the Housing Authorities Law with respect to housing projects for farmers of low income. Except as otherwise provided in this Article, all the provisions of law applicable to housing authorities created for counties and the commissioners of such authorities shall be applicable to regional housing authorities and the commissioners thereof. (1941, c. 78, s. 4; 1943, c. 636, s. 6.)

Editor's Note. — Session Laws 1943, c. 636, which amended this section as well as G.S. 157-3, 157-4, 157-10, 157-33, 157-35, and 157-36, and added G.S. 157-39.1 through 157-39.8, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

Subdivision (4) of G.S. 157-29, referred to in the first sentence, which formerly specified a maximum income test for tenants in housing projects, no longer exists.

§ 157-38. Rural housing projects.

Housing authorities created for counties and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income. In connection with such projects, such housing authorities may enter into such lease or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this Article. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this section shall be construed as limiting any other powers of any housing authority. (1941, c. 78, s. 4.)

§ 157-39. Housing applications by farmers.

The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a county or a regional housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income. Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income. (1941, c. 78, s. 4.)

§ 157-39.1. Area of operation of city, county and regional housing authorities.

(a) The boundaries or area of operation of a housing authority created for a city shall include said city and the area within 10 miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city, except as otherwise provided herein. Notwithstanding the previous sentence, a housing authority created for a city may operate and perform any of its lawful functions within any other city that has a common boundary with a city creating an authority when requested to do so by resolution of the governing body of such other city. The area of operation or boundaries of a housing authority created for a county shall include all of the county for which it is created and the area of operation or boundaries of a regional housing authority shall include (except as otherwise provided elsewhere in this Article) all of the counties for which such regional housing authority is created and established: Provided, that a county or regional housing authority shall not undertake any housing project or projects within the boundaries of any city unless a resolution shall have been adopted by the governing body of such city (and also by any housing authority which shall have been theretofore established and authorized to exercise its powers in such city) declaring that there is a need for the county or regional housing authority to exercise its power within such city: Provided, that the jurisdiction of any rural housing authority to which the Secretary of State has heretofore issued a certificate of incorporation shall extend to within a distance of one mile of the town or city limits of any town or city having a population in excess of 500, located in any county now or hereafter constituting a part of the territory of such rural housing authority: Provided, further, that this provision shall not affect the jurisdiction of any city housing authority to which the Secretary of State has heretofore issued a certificate of incorporation. A housing authority created for a county may operate and perform any of its lawful functions anywhere within the municipal boundaries of any city located in whole or in part within the county for which it is created, when requested to do so by resolution of the governing body of such city.

(b) In any county in which a city housing authority has been established, but where there are portions of the county in which the city is located which are more than 10 miles from the territorial boundaries of the city, the city housing authority is authorized to operate in areas of the county beyond such limit, which are not within another city, upon the adoption of a joint resolution by the city council and the board of county commissioners. Such joint resolution must find that in such additional area, that insanitary or unsafe inhabited dwelling accommodations exist in such area or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford. A public hearing on such resolution need be held only by the board of county commissioners.

(c) A joint resolution adopted under subsection (b) of this section may, in lieu of the appointment provisions of G.S. 157-5, provide that the board of commissioners of the housing authority shall be composed of nine members, with a number (not less than five) to be appointed by the mayor, and the remainder to be appointed by the board of county commissioners. Such housing authority commissioners shall be subject to removal by the appointing person or board under the procedural requirements of G.S. 157-8. (1943, c. 636, s. 5; 1961, c. 200, s. 2; 1979, 2nd Sess., c. 1108, ss. 1, 2; 1993, c. 458, s. 1.)

Editor's Note. — Session Laws 1943, c. 636, which added G.S. 157-39.1 through 157-39.8, inclusive, and amended G.S. 157-3, 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-39.2. Increasing area of operation of regional housing authority.

The area of operation or boundaries of a regional housing authority shall be increased from time to time to include one or more additional contiguous counties not already within a regional housing authority if the board of county commissioners of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties each adopts a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolutions, any county housing authority created for any such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided. Provided, however, that such resolutions shall not be adopted unless the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, bonds, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided: Provided, further, that when the above condition is complied with and the area of operation of such regional housing authority is increased to include such additional county, as hereinabove provided, all rights, contracts, bonds, and property, real and personal, of such county housing authority shall be in the name of and vested in such regional housing authority, all contracts and bonds of such county housing authority shall be the contracts and bonds of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds: Provided, that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of county commissioners of each of the counties in the regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties shall by resolution declare that there is a need for the inclusion of such county or counties in the area of operation of the regional housing authority, only if:

(1) The board of county commissioners of each such additional county or counties find that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford, and

(2) The board of county commissioners of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit if the area of operation of the regional housing authority is increased to include such additional county or counties. (1943, c. 636, s. 5; 1971, c. 431, s. 1.)

Editor's Note. — Session Laws 1943, c. 636, which added G.S. 157-39.1 through 157-39.8, inclusive, and amended G.S. 157-3, 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-39.3. Decreasing area of operation of regional housing authority.

The area of operation or boundaries of a regional housing authority shall be decreased from time to time to exclude one or more counties from such area if the board of county commissioners of each of the counties in such area and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding such county or counties from such area: Provided, that if such action decreases the area of operation of the regional housing authority to only one county, such authority shall thereupon constitute and become a housing authority for such county, in the same manner as though such authority were created, and constituted a public and corporate body for such county pursuant to other provisions of this housing authority law, and the commissioners of such authority shall be thereupon appointed as provided for the appointment of commissioners of a housing authority created for a county.

The board of county commissioners of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority shall adopt a resolution declaring that there is a need for excluding a county or counties from such area only if:

(1) Each such board of county commissioners of the counties to remain in the area of operation of the regional housing authority and the commissioners of the regional housing authority find that, because of facts arising or determined subsequent to the time when such area first included the county or counties to be excluded, the regional housing authority would be a more efficient or economical administrative unit if such county or counties were excluded from such area, and

(2) The board of county commissioners of each county or counties to be excluded and the commissioners of the regional housing authority each also find that another housing authority for such county or counties would be a more efficient or economical administrative unit to function in such county or counties.

Nothing contained herein shall be construed as preventing a county or counties excluded from the area of operation of a regional housing authority, as provided above, from thereafter being included within the area of operation of any housing authority in accordance with this Article.

Any property held by a regional housing authority within a county or counties excluded from the area of operation of such authority as herein provided, shall, as soon as practicable after the exclusion of said county or counties, respectively, be disposed of by such authority in the public interest. (1943, c. 636, s. 5; 1971, c. 431, s. 2.)

Editor's Note. — Session Laws 1943, c. 636, which added G.S. 157-39.1 through 157-39.8, inclusive, and amended G.S. 157-3, 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law.

The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-39.4. Requirements of public hearings.

The board of county commissioners of a county shall not adopt any resolution authorized by G.S. 157-35, 157-39.1, 157-39.2 or 157-39.3 unless a public hearing has first been held which shall conform (except as otherwise provided herein) to the requirements of this Housing Authorities Law for hearings to determine the need for a housing authority of a county: Provided, that such hearings may be held by the board of county commissioners without a petition therefor.

In connection with the issuance of bonds, a regional housing authority may covenant as to limitations on its right to adopt resolutions relating to the increase or decrease of its area of operation. (1943, c. 636, s. 5; 1979, 2nd Sess., c. 1108, s. 3.)

Editor's Note. — Session Laws 1943, c. 636, which added G.S. 157-39.1 through 157-39.8, inclusive, and amended G.S. 157-3, 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-39.5. Consolidated housing authority.

If the governing body of each of two or more municipalities (with a population of less than 500, but having an aggregate population of more than 500) by resolution declares that there is a need for one housing authority for all of such municipalities to exercise in such municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority (with such corporate name as it selects) shall thereupon exist for all of such municipalities and exercise its powers and other functions within its area of operation (as herein defined), including the power to undertake projects therein; and thereupon any housing authority created for any of such municipalities shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority: Provided, that the creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations of this Housing Authorities Law as are applicable to the creation of a regional housing authority and that all of the provisions of this Housing Authorities Law applicable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof: Provided, further that the area of operation or boundaries of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of such authority together with the territory within 10 miles of the boundaries of each such municipality, except that such area of operation may be changed to include or exclude any municipality or municipalities (with its aforesaid surrounding territory) in the same manner and under the same provisions as provided in this Article for changing the area of operation of a regional housing authority by including or excluding a contiguous county or counties: Provided, further, that for all such purposes the term "board of county commissioners" shall be construed as meaning "governing body" except in G.S.

157-36, where it shall be construed as meaning "mayor" or other executive head of the municipality, the term "county" shall be construed as meaning "municipality," the term "clerk" shall be construed as meaning "clerk of the municipality or officer with similar duties," the term "region" shall be construed as meaning "area of operation of the consolidated housing authority" and the terms "county housing authority" and "regional housing authority" shall be construed as meaning "housing authority of the city" and "consolidated housing authority," respectively, unless a different meaning clearly appears from the context.

The governing body of any such municipality for which a housing authority has not been created may adopt the above resolution if it first determines that there is a need for a housing authority to function in said municipality, which determination shall be made in the same manner and subject to the same conditions as the determination required by G.S. 157-4 for the creation of a housing authority for a city: Provided, that after notice given by the clerk (or officer with similar duties) of the municipality, the governing body of the municipality may, without a petition therefor, hold a hearing to determine the need for a housing authority to function therein.

Except as otherwise provided herein, a consolidated housing authority and the commissioners thereof shall, within the area of operation of such consolidated housing authority have the same functions, rights, powers, duties, privileges, immunities and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities. (1943, c. 636, s. 5; 1961, c. 200, s. 3; 1965, c. 431, s. 3.)

Editor's Note. — Session Laws 1943, c. 636, which added G.S. 157-39.1 through 157-39.8, inclusive, and amended G.S. 157-3, 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-39.6. Findings required for authority to operate in municipality.

No governing body of a city or other municipality shall adopt a resolution as provided in G.S. 157-39.1 declaring that there is a need for a housing authority (other than a housing authority established by such municipality) to exercise its powers within such municipality, unless a public hearing has first been held by such governing body and unless such governing body shall have found in substantially the following terms: (i) that insanitary or unsafe inhabited dwelling accommodations exist in such municipality or that there is a shortage of safe or sanitary dwelling accommodations in such municipality available to persons of low income at rentals they can afford; and (ii) that these conditions can be best remedied through the exercise of the aforesaid housing authority's powers within the territorial boundaries of such municipality: Provided, that such findings shall not have the effect of thereafter preventing such municipality from establishing a housing authority or joining in the creation of a consolidated housing authority or the increase of the area of operation of a consolidated housing authority. The clerk (or the officer with similar duties) of the city or other municipality shall give notice of the public hearing and such hearing shall be held in the manner provided in G.S. 157-4 for a public hearing by a council to determine the need for a housing authority in the city.

During the time that, pursuant to these findings, a housing authority has outstanding (or is under contract to issue) any evidences of indebtedness for a project within the city or other municipality, no other housing authority may undertake a project within such municipality without the consent of said housing authority which has such outstanding indebtedness or obligation. (1943, c. 636, s. 5.)

Editor's Note. — Session Laws 1943, c. 636, which added G.S. 157-39.1 through 157-39.8, inclusive, and amended G.S. 157-3, 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-39.7. Meetings and residence of commissioners.

Nothing contained in this Housing Authorities Law shall be construed to prevent meetings of the commissioners of a housing authority anywhere within the perimeter boundaries of the area of operation of the authority or within any additional area where the housing authority is authorized to undertake a housing project, nor to prevent the appointment of any person as a commissioner of the authority who resides within such boundaries or such additional area, and who is otherwise eligible for such appointment under this Housing Authorities Law. (1943, c. 636, s. 5.)

Editor's Note. — Session Laws 1943, c. 636, which added G.S. 157-39.1 through 157-39.8, inclusive, and amended G.S. 157-3, 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

§ 157-39.8. Agreement to sell as security for obligations to federal government.

In any contract or amendatory or superseding contract for a loan and annual contributions heretofore or hereafter entered into between a housing authority and the federal government with respect to any housing project undertaken by said housing authority, any such housing authority is authorized to make such covenants (including covenants with holders of bonds issued by such authority for purposes of the project involved), and to confer upon the federal government such rights and remedies, as said housing authority deems necessary to assure the fulfillment of the purposes for which the project was undertaken. In any such contract, the housing authority may, notwithstanding any other provisions of law, agree to sell and convey the project (including all lands appertaining thereto) to which such contract relates to the federal government upon the occurrence of such conditions, or upon such defaults on bonds for which any of the annual contributions provided in said contract are pledged, as may be prescribed in such contract, and at a price (which may include the assumption by the federal government of the payment, when due, of the principal of and interest on outstanding bonds of the housing authority issued for purposes of the project involved) determined as prescribed therein and upon such other terms and conditions as are therein provided. Any such housing authority is hereby authorized to enter into such supplementary contracts, and to execute such conveyances, as may be necessary to carry out the provisions hereof. Notwithstanding any other provisions of law, any contracts or supplementary contracts or conveyances made or executed pursuant to the provisions of this section shall not be or constitute a mortgage within the meaning or for the purposes of any of the laws of the State. (1943, c. 636, s. 5.)

Editor's Note. — Session Laws 1943, c. 636, which added G.S. 157-39.1 through 157-39.8, inclusive, and amended G.S. 157-3, 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37, provided in s. 9: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

Article 2.

Municipal Cooperation and Aid.

§ 157-40. Finding and declaration of necessity.

It is hereby declared that insanitary or unsafe dwelling accommodations exist in various areas of the State, and that consequently many persons of low income are forced to reside in such dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination. (1935, c. 408, s. 1.)

Legal Periodicals. — For analysis of this Article, see 13 N.C.L. Rev. 379 (1935).

CASE NOTES

The housing authority of the City of Charlotte, acting in cooperation with the City of Charlotte, is subject to the provisions set forth in this section and subsequent sections in the Housing Authorities Law. In re Housing Auth., 233 N.C. 649, 65 S.E.2d 761 (1951).

§ 157-41. Definitions.

The following terms, whenever used or referred to in this Article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "City" shall mean any city or town of the State having a population of more than 500 inhabitants according to the last federal census or any revision or amendment thereto.
(2) "Housing authority" shall mean any housing authority organized pursuant to the Housing Authorities Law of this State.
(3) "Housing project" shall mean any undertaking (i) to demolish, clear, remove, alter or repair unsafe or insanitary housing, and/or (ii) to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities as are designed primarily for the benefit and use of the housing authority and/or the occupants of such dwelling accommodations.
(4) "Municipality" shall mean any city, town or incorporated village of the State. (1935, c. 408, s. 2; 1961, c. 200, s. 4.)

CASE NOTES

Cited in In re Housing Auth., 233 N.C. 649, 65 S.E.2d 761 (1951).

§ 157-42. Conveyance, lease or agreement in aid of housing project.

For the purpose of aiding and cooperating in the planning, construction and operation of housing projects located within their respective territorial boundaries, the State, its subdivisions and agencies, and any county, city or municipality of the State may, upon such terms, with or without considerations as it may determine:
(1) Dedicate, release, sell, convey, or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a housing authority or the United States of America or any agency thereof;
(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;
(3) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places, which it is otherwise empowered to undertake;
(4) Plan or replan, zone, or rezone; make exceptions from building regulations and ordinances; any city or town also may change its map;
(5) Cause services to be furnished to the housing authority of the character which it is otherwise empowered to furnish;
(6) Enter into agreements with respect to the exercise by it of its powers relating to the repair, closing or demolition of unsafe, insanitary or unfit dwellings;
(7) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a housing authority respecting action to be taken pursuant to any of the powers granted by this Article. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by the State, a city, county, municipality, subdivision or agency of the State without appraisal, public notice, advertisement or public bidding.
(8) With respect to any housing project which a housing authority has acquired or taken over from the United States of America or any

agency thereof and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no city or county shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction. (1935, c. 408, s. 3; 1939, c. 137.)

Cross References. — As to authority of municipalities regarding repair, closing and demolition of unfit dwellings, see G.S. 160A-441 et seq.

Legal Periodicals. — For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

OPINIONS OF ATTORNEY GENERAL

This Section Does Not Provide Authority to Municipalities to Use Tax or Nontax Money in Day-Care Centers and Federally Subsidized Housing Projects. — See opinion of Attorney General to Dale Shepherd, 42 N.C.A.G. 135 (1972).

§ 157-43. Advances and donations by the city and municipality.

The council or other governing body of the city included within the territorial boundaries of such authority is authorized to make an estimate of the amount of money necessary for the administrative expenses and overhead of the housing authority during the first year following the incorporation of such housing authority, and to appropriate such amount to the authority out of any moneys in the city treasury not appropriated to some other purposes, and to cause the moneys so appropriated to be paid the authority as a donation, and moneys so appropriated and paid to a housing authority by a city shall be deemed to be a necessary expense of such city. In addition thereto, the city and any municipality located in whole or in part within the boundaries of a housing authority shall have the power annually and from time to time to make donations or advances to the authority of such sums as the city or municipality in its discretion may determine. The authority, when it has money available therefor, shall reimburse the city or municipality for all advances by way of loan made to it. (1935, c. 408, s. 5.)

Legal Periodicals. — For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

§ 157-44. Action of city or municipality by resolution.

Except as otherwise provided in this Article or by the Constitution of the State, all action authorized to be taken under this Article by the council or other governing body of any city or of any municipality may be by resolution adopted by a majority of all the members of its council or other governing body, which resolution may be adopted at the meeting of the council or other governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted. (1935, c. 408, s. 5.)

CASE NOTES

Cited in Town of Spencer v. Town of E. Spencer, 129 N.C. App. 751, 501 S.E.2d 367 (1998).

§ 157-45. Restrictions on exercise of right of eminent domain; duties of Utilities Commission; investigation of projects.

Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this Article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the Utilities Commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the Utilities Commission of North Carolina, the said Utilities Commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this Article and determine the question of public convenience and necessity for said project. (1935, c. 408, s. 6.)

Cross References. — As to proceedings before the Utilities Commission and appeal therefrom, see G.S. 62-60 to 62-82.

CASE NOTES

Cited in In re Housing Auth., 233 N.C. 649, 65 S.E.2d 761 (1951).

§ 157-46. Purpose of Article.

It is the purpose and intent of this Article that the State, its subdivisions and agencies, and any county, city or municipality of the State shall be authorized, and are hereby authorized, to do any and all things necessary to aid and cooperate in the planning, construction and operation of housing projects by the United States of America and by housing authorities. (1935, c. 408, s. 7.)

§ 157-47. Supplemental nature of Article.

The powers conferred by this Article shall be in addition and supplemental to the powers conferred by any other law. (1935, c. 408, s. 8.)

ARTICLE 3.

Eminent Domain.

§ 157-48. Finding and declaration of necessity.

It is hereby declared that insanitary or unsafe dwelling accommodations exist in various areas of the State and that consequently many persons of low income are forced to reside in such dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provision hereinafter enacted, is hereby declared as a matter of legislative determination. (1935, c. 409, s. 1.)

CASE NOTES

Cited in In re Housing Auth., 233 N.C. 649, 65 S.E.2d 761 (1951).

§ 157-49. Housing project.

The term "housing project" whenever used in this Article shall mean any undertaking (i) to demolish, clear, remove, alter or repair unsafe or insanitary housing and/or (ii) to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities as are designed primarily for the benefit and use of the occupants of such dwelling accommodations. (1935, c. 409, s. 2.)

§ 157-50. Eminent domain for housing projects.

Any corporation which is an agency of the United States of America shall have the right to acquire by eminent domain any real property, including improvements and fixtures thereon, which it may deem necessary for a housing project being constructed, operated or aided by it or the United States of America. Any corporation borrowing money or receiving other financial assistance from the United States of America or any agency thereof for the purpose of financing the construction or operation of any housing project or projects, the operation of which will be subject to public supervision or regulation, shall have the right to acquire by eminent domain any real property, including fixtures and improvements thereon, which it may deem necessary for such project. A housing project shall be deemed to be subject to public supervision or regulation within the meaning of this Article if the rents to be charged by it are in any way subject to the supervision, regulation or approval of the United States of America, the State or any of their subdivisions or agencies, or by a housing authority, city, municipality or county, whether such right to supervise, regulate or approve be by virtue of any law, statute, contract or otherwise.

Any such corporate agency of the United States of America or any such corporation, upon the adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use, may exercise the power of eminent domain pursuant to the provisions of Chapter 40A. (1935, c. 409, s. 3; 1981, c. 919, s. 26.)

Cross References. — As to exercise of eminent domain by housing authorities, see G.S. 157-11.

CASE NOTES

Discretion of Housing Authority in Selection of Site. — In determining what property is necessary for a public housing site, a broad discretion is vested by statute in housing authority commissioners, to whom the power of eminent domain is delegated. In re Housing Auth., 235 N.C. 463, 70 S.E.2d 500 (1952); Housing Auth. v. Wooten, 257 N.C. 358, 126 S.E.2d 101 (1962); Philbrook v. Chapel Hill Hous. Auth., 269 N.C. 598, 153 S.E.2d 153 (1967).

Selection of Slum Area Site Not Required. — In the selection of a location for a housing project as authorized under the Housing Authorities Law, the project may be built either in a slum area which has been cleared or upon other suitable site. The housing authority is given wide discretion in the selection and location of a site for such project. In re Housing Auth., 233 N.C. 649, 65 S.E.2d 761 (1951); Philbrook v. Chapel Hill Hous. Auth., 269 N.C. 598, 153 S.E.2d 153 (1967).

A housing authority has wide discretion in the selection and location of a site for a housing project. It is not required to select a site in a slum area as the site for a low-rent housing project. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Fact that a few isolated properties in an area may be taken and dismantled which are above the standard of slum properties, or that some few desirable homes will be taken, will not affect the public character of the condemnation proceeding. In re Housing Auth., 233 N.C. 649, 65 S.E.2d 761 (1951); Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

When Judicial Review of Authority's Site Selection Is Available. — So extensive is the discretionary power of the housing commissioners that ordinarily the selection of a project site may only become an issuable question, determinable by the court, on allegations charging arbitrary or capricious conduct amounting to an abuse of discretion. However, allegations charging malice, fraud, or bad faith in the selection of a housing project site are not essential to confer the right of judicial review. It suffices to allege and show abuse of discretion. In re Housing Auth., 235 N.C. 463, 70 S.E.2d 500 (1952); Philbrook v. Chapel Hill Hous. Auth., 269 N.C. 598, 153 S.E.2d 153 (1967).

Testimony tending to show that other sites were available and suitable for a housing project is relevant and admissible as bearing directly on the question of whether the housing commissioners acted arbitrarily or capriciously in attempting to appropriate the proposed site. In re Housing Auth., 235 N.C. 463, 70 S.E.2d 500 (1952).

As to evidence showing arbitrary and capricious actions in selecting site, see In re Housing Auth., 235 N.C. 463, 70 S.E.2d 500 (1952).

§ **157-51:** Repealed by Session Laws 1983, c. 149.

ARTICLE 4.

National Defense Housing Projects.

§ 157-52. Purpose of Article.

It is hereby found and declared that the National Defense Program involves large increases in the military forces and personnel in this State, a great increase in the number of workers in already established manufacturing centers and the bringing of a large number of workers and their families to new centers of defense industries in the State; that there is an acute shortage of safe and sanitary dwellings available to such persons and their families in this State which impedes the National Defense Program; that it is imperative that action be taken immediately to assure the availability of safe and sanitary dwellings for such persons to enable the rapid expansion of national defense activities in this State and to avoid a large labor turnover in defense industries which would seriously hamper their production; that the provisions hereinafter enacted are necessary to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities which otherwise would not be provided at this time, and that such provisions are for the public use and purpose of facilitating the National Defense Program in this State. It is further declared to be the purpose of this Article to authorize housing authorities to do any and all things necessary or desirable to secure the financial aid of the federal government, or to cooperate with or act as agent of the federal government, in the expeditious development and the administration of projects to assure the availability when needed of safe and sanitary dwellings for persons engaged in national defense activities. (1941, c. 63, s. 1.)

§ 157-53. Definitions.

(a) "Administration," as used in this Article, shall mean any and all undertakings necessary for management, operation or maintenance, in connection with any project, and shall include the leasing of any project (in whole or in part) from the federal government.

(b) "Development" as used in this Article, shall mean any and all undertakings necessary for the planning, land acquisition, demolition, financing, construction or equipment in connection with a project (including the negotiation or award of contracts therefor), and shall include the acquisition of any project (in whole or in part) from the federal government.

(c) "Federal government," as used in this Article, shall mean the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(d) "Housing authority," as used in this Article, shall mean any housing authority established or hereafter established pursuant to Article 1 of this Chapter.

(e) The development of a project shall be deemed to be "initiated," within the meaning of this Article, if a housing authority has issued any bonds, notes or other obligations with respect to financing the development of such project of the authority, or has contracted with the federal government with respect to the exercise of powers hereunder in the development of such project of the federal government for which an allocation of funds has been made prior to the termination of the present war.

(f) "Persons engaged in national defense activities," as used in this Article shall include: enlisted personnel in the armed services of the United States and employees of the Defense Department assigned to duty at armed forces reservations, posts or bases; and workers engaged or to be engaged in industries connected with and essential to the National Defense Program; and shall include the families of the aforesaid persons who are living with them.

(g) "Persons of low income," as used in this Article, shall mean persons or families who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(h) "State public body," as used in this Article, shall include the State, its subdivisions and agencies, and any county, city, town or incorporated village of the State. (1941, c. 63, s. 8; 1943, c. 90, s. 2; 1995, c. 379, s. 4.)

Editor's Note. — The "present war," referred to in subsection (e) of this section, is World War II.

§ 157-54. Rights, powers, etc., of housing authorities relative to national defense projects.

Any housing authority may undertake the development and administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities whom the housing authority determines would not otherwise be able to secure safe and sanitary dwellings within the vicinity thereof, but no housing authority shall initiate the development of any such project pursuant to this Article after the termination of the present war.

In the ownership, development or administration of such projects, a housing authority shall have all the rights, powers, privileges and immunities that such authority has under any provision of law relating to the ownership, development or administration of slum clearance and housing projects for persons of low income, in the same manner as though all the provisions of law applicable to slum clearance and housing projects for persons of low income were applicable to projects developed or administered to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities as provided in this Article, and housing projects developed or administered hereunder shall constitute "housing projects" under Article 1 of this Chapter, as that term is used therein: Provided, that during the period (herein called the "national defense period") that a housing authority finds (which finding shall be conclusive in any suit, action or proceeding) that within its authorized area of operation, or any part thereof, there is an acute shortage of safe and sanitary dwellings which impedes the National Defense Program in this State and that the necessary safe and sanitary dwellings would not otherwise be provided when needed for persons engaged in national defense activities, any project developed or administered by such housing authority (or by any housing authority cooperating with it) in such area pursuant to this Article, with the financial aid of the federal government (or as agent for the federal government as hereinafter provided), shall not be subject to the limitations provided in G.S. 157-29; and provided further, that, during the national defense period, a housing authority may make payments in such amounts as it finds necessary or desirable for any services, facilities, works, privileges or improvements furnished for or in connection with any such projects. After the national defense period, any such projects owned and administered by a housing authority shall be administered for the purposes and in accordance with the provisions of Article 1 of this Chapter. (1941, c. 63, s. 2; 1943, c. 90, s. 1.)

Editor's Note. — The "present war," referred to at the end of the first paragraph of this section, is World War II.

§ 157-55. Cooperation with federal government; sale to same.

A housing authority may exercise any or all of its powers for the purpose of cooperating with, or acting as agent for, the federal government in the development or administration of projects by the federal government to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and may undertake the development or administration of any such project for the federal government. In order to assure the availability of safe and sanitary housing for persons engaged in national defense activities, a housing authority may sell (in whole or in part) to the federal government any housing projects developed for persons of low income but not yet occupied by such persons; such sale shall be at such price and upon such terms as the housing authority shall prescribe and shall include provision for the satisfaction of all debts and liabilities of the authority relating to such project. (1941, c. 63, s. 3.)

§ 157-56. Cooperation of State public bodies in developing projects.

Any State public body shall have the same rights and powers to cooperate with housing authorities, or with the federal government, with respect to the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities that such State public body has pursuant to Article 2 of this Chapter, for the purpose of assisting the development or administration of slum clearance or housing projects for persons of low income. (1941, c. 63, s. 4.)

§ 157-57. Obligations issued for projects made legal investments; security for public deposits.

Bonds or other obligations issued by a housing authority for a project developed or administered pursuant to this Article shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, bodies and officers as bonds or other obligations issued pursuant to Article 1 of this Chapter for the development of a slum clearance or housing project for persons of low income. (1941, c. 63, s. 5.)

§ 157-58. Bonds, notes, etc., issued heretofore, validated.

All bonds, notes, contracts, agreements and obligations of housing authorities heretofore issued or entered into relating to financing or undertaking (including cooperating with or acting as agent of the federal government in) the development or administration of any project to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, are hereby validated and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority. (1941, c. 63, s. 6.)

§ 157-59. Further declaration of powers granted housing authorities.

This Article shall constitute an independent authorization for a housing authority to undertake the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities as provided in this Article and for a housing authority to cooperate with, or act as agent for, the federal government in the development or administration of similar projects by the federal government. A housing authority may do any and all things necessary or desirable to cooperate with, or act as agent for, the federal government, or to secure financial aid, in the expeditious development or in the administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and to effectuate the purposes of this Article. (1941, c. 63, s. 7.)

§ 157-60. Powers conferred by Article supplemental.

The powers conferred by this Article shall be in addition and supplemental to the powers conferred by any other law, and nothing contained herein shall be construed as limiting any other powers of a housing authority. (1941, c. 63, s. 9.)

CASE NOTES

Cited in In re Housing Auth., 235 N.C. 463, 70 S.E.2d 500 (1952).

§§ 157-61 through 157-65: Reserved for future codification purposes.

Article 5.

Indian Housing Authority.

§ 157-66. Authority created.

There is hereby created and established a public body corporate and politic to be known as the North Carolina Indian Housing Authority which shall be governed by the provisions of law controlling housing authorities as set out in this Chapter as well as other applicable provisions of the General Statutes. It is the intent of the General Assembly that the North Carolina Indian Housing Authority not be treated as a State agency for any purpose, but rather that it be treated as a housing authority as set out above. (1977, c. 1112, s. 1; 1989 (Reg. Sess., 1990), c. 1066, s. 15(b); 1993, c. 201, s. 1.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 1066, which amended this section, in s. 15(a) provided: "The Director of the Office of Indian Housing has stated that if the North Carolina State Indian Housing Authority is a State agency, then it will be ineligible to receive more than $1,000,000 per year in federal assistance. This section clarifies that the Authority is not a State agency."

Legal Periodicals. — For article on criminal jurisdiction on the North Carolina Cherokee Indian reservation, see 24 Wake Forest L. Rev. 335 (1989).

CASE NOTES

The public duty doctrine did not apply to the defendant Housing Authority because it was properly classified as a local government agency, despite its existence as a municipal corporation, for the following reasons: Pursuant to G.S. 157-4, a housing authority is created by local government; the city council and its members are appointed by the mayor; the language in several provisions within Chapter 157 clearly distinguishes between housing authorities and state agencies; G.S.157-26 labels housing authorities as "local government agencies" and exempts them from taxation "to the same extent as a unit of local government;" and the Housing Authorities Law which creates the North Carolina Indian Housing Authority states: "It is the intent of the General Assembly that the North Carolina Indian Housing Authority not be treated as a State agency for any purpose, but rather that it be treated as a housing authority as set out above." Huntley v. Pandya, 139 N.C. App. 624, 534 S.E.2d 238, 2000 N.C. App. LEXIS 981 (2000), cert. denied, 353 N.C. 263, 546 S.E.2d 98 (2000).

§ 157-67. Powers of Authority; applicability of certain laws; powers of Governor and Commission of Indian Affairs.

The Indian Housing Authority, hereafter referred to as the Authority, shall exercise its powers to provide housing for Indians of low income. Except as otherwise provided in this Article, all the provisions of law applicable to housing authorities created for municipalities pursuant to Chapter 157 of the General Statutes shall be applicable to this Authority, unless a different meaning clearly appears from the context. The Governor and the Commission of Indian Affairs are hereby authorized to exercise all appointing and other powers with respect to this Authority that are vested pursuant to said Chapter 157 in the chief executive officer and governing body of a municipality. (1977, c. 1112, s. 2; 1993, c. 201, s. 1.)

§ 157-68. Commissioners of Authority.

The Authority shall consist of not less than five nor more than 16 commissioners (the number to be set by the North Carolina State Commission of Indian Affairs) who shall be appointed by the Governor, after receiving nominations from the North Carolina State Commission of Indian Affairs. For each vacancy, the Governor must appoint one person from a list of two eligible persons so nominated. Commissioners shall be selected from the major groups of North Carolina Indians that elect members to the North Carolina State Commission of Indian Affairs under G.S. 143B-407. No person shall be barred from serving as a commissioner because he is a tenant or home buyer in an Indian housing project. (1977, c. 1112, s. 3; 1987 (Reg. Sess., 1988), c. 1014; 1998-155, s. 2; 2001-318, s. 2.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1014, s. 2 provided that the act, which rewrote this section, was effective upon ratification (June 29, 1988), but would not affect the term of office of any current member of the North Carolina State Indian Housing Authority.

§ 157-69. Area of operation.

The area of operation of the Authority shall include the entire State: Provided, that the Authority shall not undertake any housing project or projects within the area of operation of any city, county or regional housing authority unless a resolution shall have been adopted by such city, county or regional housing authority declaring that there is a need for the Indian Housing Authority to exercise its powers within such city, county or regional housing authority's area of operation. (1977, c. 1112, s. 4; 1993, c. 201, s. 1.)

§ 157-70. Rentals and tenant selection in accordance with § 157-29.

Rentals and tenant selection in connection with projects of the Authority shall be in accordance with G.S. 157-29. (1977, c. 1112, s. 5; 1983 (Reg. Sess., 1984), c. 1068.)

powers with respect to this Authority that are vested pursuant to said Chapter 157 in the chief executive officer and governing body of a municipality. (1977, c. 1112, s. 2; 1993, c. 201, s. 1.)

§ 157-68. Commissioners of Authority.

The Authority shall consist of not less than five nor more than 11 commissioners (the number to be set by the North Carolina State Commission of Indian Affairs) who shall be appointed by the Governor, after receiving nominations from the North Carolina State Commission of Indian Affairs. For each vacancy, the Governor must appoint one person from a list of two eligible persons so nominated. Commissioners shall be selected from the major groups of North Carolina Indians that elect members to the North Carolina State Commission of Indian Affairs under G.S. 143B-407. No person shall be barred from serving as a commissioner because he is a tenant or home buyer in an Indian housing project. (1977, c. 1112, s. 3; 1987 (Reg. Sess., 1988), c. 1018; 1998-155, s. 2; 2001-[illegible], s. 2.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1018, s. 4, provides that [illegible] of the North Carolina State Indian Housing [illegible] which was amended by this section [illegible] Authority [illegible] ratification (June 29, 1988), but [illegible]

§ 157-69. Area of operation.

The area of operation of the Authority shall include the entire State: Provided, that the Authority shall not undertake any housing project or projects within the area of operation of any city, county or regional housing authority unless a resolution shall have been adopted by such city, county or regional housing authority declaring that there is a need for the Indian Housing Authority to exercise its powers within such city, county or regional housing authority's area of operation. (1977, c. 1112, s. 4; 1993, c. 201, s. 1.)

§ 157-70. Rentals and tenant selection in accordance with § 157-29.

Rentals and tenant selection in connection with projects of the Authority shall be in accordance with G.S. 157-29. (1977, c. 1112, s. 6; 1983 (Reg. Sess., 1984), c. 1003.)

Chapter 157A.

Historic Properties Commissions.

§§ 157A-1 through 157A-13: Transferred to §§ 160A-399.1 to 160A-399.13 by Session Laws 1973, c. 426, s. 62.

Chapter 158.

Local Development.

Article 1.

Local Development Act of 1925.

Sec.

158-1 through 158-7. [Repealed.]

158-7.1. Local development.

158-7.2. Accounting for expenditures.

158-7.3. Development financing.

158-7.4. Interlocal agreements concerning economic development.

Article 2.

Economic Development Commissions.

158-8. Creation of municipal, county or regional commissions authorized; composition; joining or withdrawing from regional commissions.

158-8.1. Creation of Western North Carolina Regional Economic Development Commission.

158-8.2. Creation of North Carolina's Northeast Commission.

158-8.3. Creation of Southeastern North Carolina Regional Economic Development Commission.

158-8.4. Removal of commission members.

158-8.5. Annual reporting requirement.

158-8.6. Uniform standards.

158-8.7. Use of State funds.

158-8.8. Orientation for board members.

158-9. Organization of commission; rules and regulations; committees; meetings.

158-10. Staff and personnel; contracts for services.

158-11. Office and equipment.

158-12. Fiscal affairs generally; appropriations.

158-12.1. Commission funds secured.

158-13. Powers and duties.

158-14. Regional planning and economic development commissions authorized.

158-15. Powers granted herein supplementary.

Article 2A.

Multi-County Water Conservation and Infrastructure District.

158-15.1. Multi-County Water Conservation and Infrastructure District.

158-15.2 through 158-15.9. [Reserved.]

Article 3.

Tax Elections for Industrial Development Purposes.

Sec.

158-16. Board of commissioners may call tax election; rate and purposes of tax.

158-17. Registration of voters; election under supervision of county board of elections.

158-18. Form of ballot; when ballots supplied; designation of ballot box.

158-19. Counting of ballots; canvassing, certifying and announcing results of elections.

158-20. Authorized tax rate.

158-21. Creation of industrial development commission; membership and terms of office; vacancies; meetings; selection of officers; bylaws and procedural rules and policies; authority of treasurer and required bond; subsidy or investment in business or industry forbidden.

158-22. Bureau set up under supervision and control of industrial development commission; furnishing county commissioners with proposed budget.

158-23. Board of county commissioners may function and carry out duties of industrial development commission.

158-24. Counties to which Article applies.

158-25 through 158-29. [Reserved.]

Article 4.

North Carolina's Eastern Region.

158-30. Title.

158-31. Purpose.

158-32. Definitions.

158-33. Creation of North Carolina's Eastern Region.

158-33.1. Addition of counties to Region.

158-34. Territorial jurisdiction of Region.

158-35. Commission membership, officers, compensation.

158-36. Voting.

158-37. Powers of the Region.

158-38. Fiscal accountability.

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158-40. Tax exemption.

158-41. Withdrawal; termination.

158-42. Temporary Region vehicle registration tax.

ARTICLE 1.

Local Development Act of 1925.

Local Modification. — (As to Article 1) Pitt: 1989 (Reg. Sess., 1990), c. 847, s. 1.

§ 158-1: Repealed by Session Laws 1973, c. 803, s. 37.

Cross References. — See now G.S. 158-7.1 and 158-7.2.

§ 158-2: Repealed by Session Laws 1973, c. 803, s. 38.

Cross References. — See now G.S. 158-7.1 and 158-7.2.

§§ 158-3 through 158-7: Repealed by Session Laws 1973, c. 803, ss. 39-43.

§ 158-7.1. Local development.

(a) Each county and city in this State is authorized to make appropriations for the purposes of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city or in the county; encouraging the building of railroads or other purposes which, in the discretion of the governing body of the city or of the county commissioners of the county, will increase the population, taxable property, agricultural industries and business prospects of any city or county. These appropriations may be funded by the levy of property taxes pursuant to G.S. 153A-149 and 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law.

(b) A county or city may undertake the following specific economic development activities. (This listing is not intended to limit by implication or otherwise the grant of authority set out in subsection (a) of this section). The activities listed in this subsection may be funded by the levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law.

(1) A county or city may acquire and develop land for an industrial park, to be used for manufacturing, assembly, fabrication, processing, warehousing, research and development, office use, or similar industrial or commercial purposes. A county may acquire land anywhere in the county, including inside of cities, for an industrial park, while a city may acquire land anywhere in the county or counties in which it is located. A county or city may develop the land by installing utilities, drainage facilities, street and transportation facilities, street lighting, and similar facilities; may demolish or rehabilitate existing structures; and may prepare the site for industrial or commercial uses. A county or city may convey property located in an industrial park pursuant to subsection (d) of this section.

(2) A county or city may acquire, assemble, and hold for resale property that is suitable for industrial or commercial use. A county may acquire such property anywhere in the county, including inside of cities, while

a city may acquire such property inside the city or, if the property will be used by a business that will provide jobs to city residents, anywhere in the county or counties in which it is located. A county or city may convey property acquired or assembled under this subdivision pursuant to subsection (d) of this section.

(3) A county or city may acquire options for the acquisition of property that is suitable for industrial or commercial use. The county or city may assign such an option, following such procedures, for such consideration, and subject to such terms and conditions as the county or city deems desirable.

(4) A county or city may acquire, construct, convey, or lease a building suitable for industrial or commercial use.

(5) A county or city may construct, extend or own utility facilities or may provide for or assist in the extension of utility services to be furnished to an industrial facility, whether the utility is publicly or privately owned.

(6) A county or city may extend or may provide for or assist in the extension of water and sewer lines to industrial properties or facilities, whether the industrial property or facility is publicly or privately owned.

(7) A county or city may engage in site preparation for industrial properties or facilities, whether the industrial property or facility is publicly or privately owned.

(c) Any appropriation or expenditure pursuant to subsection (b) of this section must be approved by the county or city governing body after a public hearing. The county or city shall publish notice of the public hearing at least 10 days before the hearing is held. If the appropriation or expenditure is for the acquisition of an interest in real property, the notice shall describe the interest to be acquired, the proposed acquisition cost of such interest, the governing body's intention to approve the acquisition, the source of funding for the acquisition and such other information needed to reasonably describe the acquisition. If the appropriation or expenditure is for the improvement of privately owned property by site preparation or by the extension of water and sewer lines to the property, the notice shall describe the improvements to be made, the proposed cost of making the improvements, the source of funding for the improvements, the public benefit to be derived from making the improvements, and any other information needed to reasonably describe the improvements and their purpose.

(d) A county or city may lease or convey interests in real property held or acquired pursuant to subsection (b) of this section in accordance with the procedures of this subsection. A county or city may convey or lease interests in property by private negotiation and may subject the property to such covenants, conditions, and restrictions as the county or city deems to be in the public interest or necessary to carry out the purposes of this section. Any such conveyance or lease must be approved by the county or city governing body, after a public hearing. The county or city shall publish notice of the public hearing at least 10 days before the hearing is held; the notice shall describe the interest to be conveyed or leased, the value of the interest, the proposed consideration for the conveyance or lease, and the governing body's intention to approve the conveyance or lease. Before such an interest may be conveyed, the county or city governing body shall determine the probable average hourly wage to be paid to workers by the business to be located at the property to be conveyed and the fair market value of the interest, subject to whatever covenants, conditions, and restrictions the county or city proposes to subject it to. The consideration for the conveyance may not be less than the value so determined.

(d1) Repealed by Session Laws 1993, c. 497, s. 22.

(d2) In arriving at the amount of consideration that it receives, the Board may take into account prospective tax revenues from improvements to be constructed on the property, prospective sales tax revenues to be generated in the area, as well as any other prospective tax revenues or income coming to the county or city over the next 10 years as a result of the conveyance or lease provided the following conditions are met:

(1) The governing board of the county or city shall determine that the conveyance of the property will stimulate the local economy, promote business, and result in the creation of a substantial number of jobs in the county or city that pay at or above the median average wage in the county or, for a city, in the county where the city is located. A city that spans more than one county is considered to be located in the county where the greatest population of the city resides. For the purpose of this subdivision, the median average wage in a county is the median average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data is available.

(2) The governing board of the county or city shall contractually bind the purchaser of the property to construct, within a specified period of time not to exceed five years, improvements on the property that will generate the tax revenue taken into account in arriving at the consideration. Upon failure to construct the improvements specified in the contract, the purchaser shall reconvey the property back to the county or city.

(e) All appropriations and expenditures pursuant to subsections (b) and (c) of this section shall be subject to the provisions of the Local Government Budget and Fiscal Control Acts of the North Carolina General Statutes, respectively, for cities and counties and shall be listed in the annual financial report the county or city submits to the Local Government Commission. The budget format for each such governing body shall make such disclosures in such detail as the Local Government Commission may by rule and regulation direct.

(f) At the end of each fiscal year, the total of the following for each county and city may not exceed one-half of one percent (0.5%) of the outstanding assessed property tax valuation for the county or city as of January 1 preceding the beginning of the fiscal year:

(1) The investment in property acquired at any time under subdivisions (b)(1) through (b)(4) of this section and owned at the end of the fiscal year.

(2) The amount expended during the fiscal year under subdivisions (b)(5) and (b)(7) of this section.

(3) The amount of tax revenue that was taken into account under subsection (d2) of this section and was expected to be received during the fiscal year.

The Local Government Commission shall review the annual financial reports filed by counties and cities to determine if any county or city has exceeded the limit set by this subsection. If the Commission finds that a county or city has exceeded this limit, it shall notify the county or city. A county or city that receives a notice from the Commission under this subsection must submit to the Commission for its review and approval any appropriation or expenditure the county or city proposes to make under this section during the next three fiscal years. The Commission shall not approve an appropriation or expenditure that would cause a county or city to exceed the limit set by this subsection.

(g) Repealed by Session Laws 1989, c. 374, s. 1.

(h) Each economic development agreement entered into between a private enterprise and a city or county shall clearly state their respective responsibilities under the agreement. Each agreement shall contain provisions regarding remedies for a breach of those responsibilities on the part of the private enterprise. These provisions shall include a provision requiring the recapture of sums appropriated or expended by the city or county upon the occurrence of events specified in the agreement. Events that would require the city or county to recapture funds would include the creation of fewer jobs than specified in the agreement, a lower capital investment than specified in the agreement, and failing to maintain operations at a specified level for a period of time specified in the agreement. (1973, c. 803, s. 37; 1985, c. 639, s. 1; 1985 (Reg. Sess., 1986), c. 846, s. 1; c. 848, s. 1; c. 858, s. 1; c. 911, s. 1; c. 921, s. 1; 1987, c. 577, s. 1.1; 1989, c. 374, s. 1; 1991, c. 598, s. 6; c. 659, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 793, s. 1; c. 799, s. 1; c. 938, s. 1; 1993, c. 31, s. 1; c. 42, s. 1; c. 246, ss. 1(a), 1(b); c. 275, s. 2; c. 358, s. 13; c. 497, ss. 22, 24; c. 536, ss. 1, 4; 2007-515, ss. 1, 7.)

Local Modification. — (As to Article 1) Burke: 1987 (Reg. Sess., 1988), c. 1002, s. 3.2; Chatham: 1993, c. 358, ss. 10-12; Clay: 1993, c. 520, s. 3; Davie: 1993, c. 536, s. 2; Duplin: 1991, c. 390; Henderson: 1993, c. 520, s. 3; (As to Article 1) Lenoir: 1987 (Reg. Sess., 1988), c. 1002, ss. 1-3; Mecklenburg: 1993, c. 174, s. 1; Rockingham: 1993, c. 536, s. 2; Transylvania: 1993, c. 520, s. 3; city of Brevard: 1993, c.,520, s. 3; city of Charlotte: 1993, c. 174, s. 1; (As to Article 1) city of Kinston: 1987 (Reg. Sess., 1990), c. 1002, ss. 1-3; (As to Article 1) city of Morganton: 1987 (Reg. Sess., 1988), c. 1002, s. 3.1; (As to subsection (d2)) city of Raleigh: 2009-468, s. 1; town of Mocksville: 1993, c. 536, s. 2; town of Pittsboro: 1993, c. 358, ss. 10-12; town of Silver City: 1993, c. 358, ss. 10-12; town of Wallace: 1998-40, s. 2.

Editor's Note. — Session Laws 1987, c. 577, s. 1 amended Session Laws 1985, c. 639, s. 4, as amended by Session Laws 1985 (Reg. Sess., 1986), cc. 846, 848, 849, 858, 874, 911, 916, 921, and Session Laws 1987, c. 203, which formerly made subsections (b) to (f) of this section applicable only to certain counties, municipalities and towns, to read solely: "This act shall become effective January 1, 1986." Furthermore, subsection (g), which was enacted by Session Laws 1987, c. 577, s. 1.1 and excepted Buncombe County and municipalities therein from the provisions of subsections (b) to (f) was repealed by Session Laws 1989, c. 374, s. 1. Thus subsections (b) to (d), (e) and (f) now have statewide application.

Session Laws 1993, c. 272, s. 2 and c. 520, s. 4 created local modifications to subsection (d1) applicable to the cities of Brevard and High Point and to Clay, Henderson, and Transylvania Counties. Subsection (d1) was repealed by Session Laws 1993, c. 497, s. 22 and c. 536, s. 4.

Session Laws 1993, c. 497, which amended this section, in s. 25 provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 1993, c. 497, which amended this section, in s. 29 provides that Sections 22, 23, and 24 do not affect appropriations or expenditures that are made by a county or city after the effective date of the act and were agreed to in writing by the county or city before the effective date of this agreement as part of an economic development. The act was effective upon ratification (July 23, 1993).

Session Laws 1993, c. 536, which amended this section, in s. 3 provides: "This act does not affect appropriations or expenditures that are made by a county or city after the effective date of this act and were agreed to in writing by the county or city before the effective date of this act as part of an economic development project."

Legal Periodicals. — For comment, "'Don't Know What a Slide Rule Is For': The Need for a Precise Definition of Public Purpose in North Carolina in the Wake of Kelo v. City of New London," see 28 Campbell L. Rev. 291 (2006).

CASE NOTES

Constitutionality. — This section does not violate the public purpose clause of the North Carolina Constitution. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

Under the expanded understanding of public purpose, even the most innovative activities this section permits are constitutional so long as they primarily benefit the public and not a private party. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

Public Purpose. — An expenditure does not lose its public purpose merely because it involves a private actor; if an act will promote the welfare of a state or local government and its citizens, it is for a public purpose. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

Promotion of General Economic Welfare. — Sections 158-8 through 158-15, 160A-209(c), and 153A-149(c) clearly indicate that this section is a part of a comprehensive scheme of legislation dealing with economic development whereby the General Assembly is attempting to authorize exercise of the power of taxation for the perceived public purpose of promoting the general economic welfare of the citizens of North Carolina. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

Permissible Governmental Action. — The activities this section authorizes are in keeping with those accepted as within the scope of permissible governmental action. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

State and local government's conduct in granting economic incentives to locate in North Carolina fostered the permissible goal of encouraging economic development in order to benefit the public, and, thus, the taxpayers could not show that their conduct in providing incentives such as tax credits to the business to locate its computer manufacturing facility in the county violated G.S. 158-7.1. Blinson v. State, 186 N.C. App. 328, 651 S.E.2d 268, 2007 N.C. App. LEXIS 2191 (2007), review denied, appeal dismissed, 362 N.C. 355, 661 S.E.2d 240 (2008).

Cited in BellSouth Telecomms., Inc. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E.2d 721, 2005 N.C. App. LEXIS 164.

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A business development investment grant program designed to offer tax rebates for the purposes of "diversify[ing] the tax base, offer[ing] improved employment opportunities for the citizens" and "promot[ing] economic growth" may be permissible under this section depending upon whether it primarily serves a public purpose. See opinion of Attorney General to Robert B. Smith, Jr., Smith and Gamblin, PLLC Attorneys at Law, 1997 N.C.A.G. 55 (8/29/97).

§ 158-7.2. Accounting for expenditures.

In the event funds appropriated for the purposes of this Article are turned over to any agency or organization other than the county or city for expenditure, no such expenditure shall be made until the county or city has approved the same, and all such expenditures shall be accounted for by the agency or organization at the end of the fiscal year for which they were appropriated. (1973, c. 803, s. 38.)

§ 158-7.3. Development financing.

(a) Definitions. — The following definitions apply in this section:

(1) Development project. — A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in a development tier one area, as defined in G.S. 143B-437.08 and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

(2) Publish. — Insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the unit is located.

(3) Unit or unit of local government. — A county, city, town, or incorporated village.

(b) Authorization. — A unit of local government may finance public improvements that are part of a development project with the proceeds of project development financing debt instruments, issued pursuant to Article 6 of Chapter 159 of the General Statutes, together with any other revenues that are available to the unit. Before it receives the approval of the Local Government Commission for issuance of project development financing debt instruments, the unit's governing body must define a development financing district and adopt a development financing plan for the district. The county may act jointly with a city to finance a project, define a development financing district that is within the city, and adopt a development financing plan for the district.

(c) Development Financing District. — A development financing district created pursuant to this section must be comprised of property that is one or more of the following:

(1) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth.

(2) Appropriate for rehabilitation or conservation activities.

(3) Appropriate for the economic development of the community.

The total land area within development financing districts in a unit, including development financing districts created pursuant to G.S. 160A-515.1, may not exceed five percent (5%) of the total land area of the unit. For the purposes of this section, land in a district created by a county that subsequently becomes part of a city, town, or incorporated village does not count against the five-percent (5%) limit for the city, town, or incorporated village unless the city, town, or incorporated village and the county have entered into an agreement pursuant to G.S. 159-107(e). A county may not include in a district created pursuant to this section any land that, at the time the district is created, is inside a city, town, or incorporated village.

(d) Development Financing Plan. — The development financing plan must include all of the following:

(1) A description of the boundaries of the development financing district.

(2) A description of the proposed development of the district, both public and private.

(3) The costs of the proposed public activities.

(4) The sources and amounts of funds to pay for the proposed public activities.

(5) The base valuation of the development financing district.

(6) The projected incremental valuation of the development financing district.

(7) The estimated duration of the development financing district.

(8) A description of how the proposed development of the district, both public and private, will benefit the residents and business owners of the district in terms of jobs, affordable housing, or services.

(9) A description of the appropriate ameliorative activities which will be undertaken if the proposed projects have a negative impact on residents or business owners of the district in terms of jobs, affordable housing, services, or displacement.

(10) A requirement that the initial users of any new manufacturing facilities that will be located in the district and that are included in the plan will comply with the wage requirements referred to in subsection (e) of this section.

(e) Wage Requirements. — A development financing plan shall include a requirement that the initial users of a new manufacturing facility to be located in the district and included in the plan must pay its employees an average weekly manufacturing wage that is either above the average manufacturing wage paid in the county in which the district will be located or not less than ten percent (10%) above the average weekly manufacturing wage paid in the State. The plan may include information on the wages to be paid by the initial users of a new manufacturing facility to its employees and any provisions necessary to implement the wage requirement. The issuing unit's governing body shall not adopt a plan until the Secretary of Commerce certifies that the Secretary has reviewed the average weekly manufacturing wage required by the plan to be paid to the employees of a new manufacturing facility and has found either (i) that the wages proposed by the initial users of a new manufacturing facility are in compliance with the amount required by this subsection or (ii) that the plan is exempt from the requirement of this subsection. The Secretary of Commerce may exempt a plan from the requirement of this subsection if the Secretary receives a resolution from the issuing unit's governing body requesting an exemption from the wage requirement and a letter from an appropriate State official, selected by the Secretary, finding that unemployment in the county in which the proposed district is to be located is especially severe. Upon the creation of the district, the unit of local government proposing the creation of the district shall take any lawful actions necessary to require compliance with the applicable wage requirement by the initial users of any new manufacturing facility included in the plan; however, failure to take such actions or obtain such compliance shall not affect the validity of any proceedings for the creation of the district, the existence of the district, or the validity of any debt instruments issued under Article 6 of Chapter 159 of the General Statutes. All findings and determinations made by the Secretary of Commerce under this subsection shall be binding and conclusive. For purposes of this section, the term "manufacturing facility" means any facility that is used in the manufacturing or production of tangible personal property, including the processing resulting in a change in the condition of the property.

(f) County Review. — If the unit creating a development financing district and adopting a development financing plan is a city, town, or incorporated village, before adopting the plan the unit's governing body shall send notice of the plan, by first-class mail, to the board of county commissioners of the county or counties in which the development financing district is located. The person mailing the notice shall certify that fact, and the date thereof, to the governing body, and the certificate is conclusive in the absence of fraud. Unless the board of county commissioners (or either board, if the district is in two counties) by resolution disapproves the proposed plan within 28 days after the date the notice is mailed, the governing body may proceed to adopt the plan.

(g) Environmental Review. — Before adopting a plan for development financing districts, the issuing unit's governing body shall submit the plan to the Secretary of Environment and Natural Resources to review to determine if the construction and operation of any new manufacturing facility in the district will have a materially adverse effect on the environment and whether the company that will operate the facility has operated in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. If the Secretary finds that the new manufacturing facility will not have a materially adverse effect on the environment and that the company that will operate the facility has operated other facilities in compliance with environmental requirements, the Secretary shall approve the plan. In making the determination on environmental impact, the Secretary shall use the same criteria that apply to the determination under G.S. 159C-7 of whether an industrial project will have a materially adverse effect on the environment. The findings of the Secretary are conclusive and binding.

(h) Plan Adoption. — Before adopting a plan for a development financing district, the issuing unit's governing body shall hold a public hearing on the plan. The governing body shall, no more than 30 days and no less than 14 days before the day of the hearing, cause notice of the hearing to be published once and shall cause notice of the hearing to be mailed, by first-class mail, to all property owners and mailing addresses of the development financing district and to the governing body of any special district, as defined by G.S. 159-7, within which the development financing district is located. The notice shall state the time and place of the hearing, shall specify its purpose, and shall state that a copy of the proposed plan is available for public inspection in the office of the unit's clerk. At the public hearing, the governing body shall hear anyone who wishes to speak with respect to the proposed district and proposed plan. Unless a board of county commissioners or the Secretary of Environment and Natural Resources has disapproved the plan pursuant to subsection (f) or (g) of this section, the governing body may adopt the plan, with or without amendment, at any time after the public hearing. However, the plan and the district do not become effective until the unit's application to issue project development financing debt instruments has been approved by the Local Government Commission, pursuant to Article 6 of Chapter 159 of the General Statutes.

(i) Plan Modification. — Subject to the limitations of this subsection, a governing body may, after the effective date of the district, amend a development financing plan adopted for a development financing district. Before making any amendment, the governing body shall follow the procedures and meet the requirements of subsections (e) through (h) of this section. The boundaries of the district may be enlarged only during the first five years after the effective date of the district and only if the area to be added has been or is about to be developed and the development is primarily attributable to development that has occurred within the district, as certified by the Local Government Commission. The boundaries of the district may be reduced at any time, but the unit may agree with the holders of any project development financing debt instruments to restrict its power to reduce district boundaries.

(j) Plan Implementation. — In implementing a development financing plan, a unit may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof. A private agency that enters into a contract with a unit for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. (2003-403, s. 19; 2005-238, s. 1; 2005-407, s. 1; 2006-211, s. 3; 2006-252, s. 2.10.)

Editor's Note. — Session Laws 2003-403, s. 25, makes this section effective upon certification of approval of amendment to Article V, § 14 of the Constitution of North Carolina, as proposed in Session Laws 2003-403, s. 1.

A G.S. 158-7.3 was enacted by Session Laws 1993, c. 497, s. 19, but was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The section, therefore, never took effect.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2005-238, s. 15, provides: "The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes." Session Laws 2005-238, s. 1 added the next to the last sentence in subsection (c).

Session Laws 2005-238, s. 16, is a severability clause.

Legal Periodicals. — For note, "Tax Increment Financing in North Carolina: The Myth of the Countermajoritarian Difficulty," see 83 N.C. L. Rev. 1526 (2005).

§ 158-7.4. Interlocal agreements concerning economic development.

(a) Any two or more units of local government may enter into contracts or agreements to execute undertakings pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, under which each participating local government agrees to provide resources for the development of an industrial or commercial park or industrial or commercial site pursuant to G.S. 158-7.1. In consideration for that participation, the unit or units in which the park or site is located may agree to place the proceeds from some or all property taxes levied on the park or site into a common fund or transfer those proceeds to a nonprofit corporation or other entity. The proceeds placed into the common fund or transferred to the other entity may then be distributed among the participating local governments as provided in the contract or agreement.

(b) Any undertaking entered into pursuant to this section may be for that period that is agreed to by the participating local governments, up to a maximum of 99 years.

(c) Any undertaking entered into pursuant to this section is binding upon each participating local government for the duration of the contract or agreement. Any participating local government may bring an action to specifically enforce the contract or agreement. (2003-417, s. 2; 2005-72, s. 1.)

Cross References. — As to revenue and expenditures for joint undertakings by local governments, see G.S. 160A-466.

Editor's Note. — This section was enacted as G.S. 158-7.3 and was redesignated as G.S. 158-7.4 at the direction of the Revisor of Statutes.

ARTICLE 2.

Economic Development Commissions.

§ 158-8. Creation of municipal, county or regional commissions authorized; composition; joining or withdrawing from regional commissions.

The governing body of any municipality or the board of county commissioners of any county may by resolution create an economic development commission for said municipality or county. The governing bodies of any two or more municipalities and/or counties may by joint resolution, adopted by separate vote of each governing body concerned, create a regional economic development commission. A municipal or county economic development commission shall consist of from three to nine members, named for terms and compensation (if any) fixed by its respective governing body. The membership, compensation (if any), and terms of a regional economic development commission, and the formula for its financial support, shall be fixed by the joint resolution creating the commission. Additional governmental units may join a regional commission with the consent of all existing members. Any governmental unit may withdraw from a regional commission on two years' notice to the other members. The resolution creating a municipal, county, or regional economic development commission may be modified, amended, or repealed in the same manner as it was originally adopted. (1961, c. 722, s. 2.)

Local Modification. — Cherokee: 1973, c. 1406; Columbus: 1993 (Reg. Sess., 1994), c. 706, s. 1; Graham: 1973, c. 1406; Jackson: 1973, c. 1406; Nash: 1989, c. 697, s. 1; Swain: 1973, c. 1406; Union: 1993 (Reg. Sess., 1994), c. 706, s. 1.

Editor's Note. — Session Laws 2002-126, s. 8.3, provides: "The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

"The policy shall direct each task force to develop a five-year vision plan for its economic development region. At a minimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

"If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Laws 2004-124, s. 13.6(c), repealed Session Laws 2002-126, s. 8.3, effective July 1, 2004.

CASE NOTES

Contributions Held Due. — Where, from 1971 through February, 1982, defendant county participated as a member in plaintiff regional council's activities, attending meetings and workshops and receiving the benefits of plaintiff's plans and services, and during this time defendant made full payments of its proportionate share of plaintiff's budget as set forth in plaintiff's bylaws, and where, most significantly, defendant indicated in a letter of March 8, 1982, that the county board of commissioners unanimously voted to comply with the obligations incumbent on a withdrawing member, and furthermore, where defendant did not raise any material question of fact pertaining to plaintiff's request that defendant should be estopped from denying its obligation, grant of plaintiff's motion for summary judgment on its complaint seeking contributions due from defendant would be affirmed. Land-of-Sky Regional Council v. County of Henderson, 78 N.C. App. 85, 336 S.E.2d 653 (1985), cert. denied, 316 N.C. 553, 344 S.E.2d 7 (1986).

Cited in McClure v. County of Jackson, 185 N.C. App. 462, 648 S.E.2d 546, 2007 N.C. App. LEXIS 1814 (2007).

§ 158-8.1. Creation of Western North Carolina Regional Economic Development Commission.

(a) There is created the Western North Carolina Regional Economic Development Commission to serve Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Polk, Rutherford, Swain, Transylvania, and Yancey Counties, and any other county assigned to the Commission by the Department of Commerce as authorized by law. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year.

(b) The Commission shall consist of 19 members appointed as follows:

(1) Three members shall be appointed by the Governor;
(2) Two members shall be appointed by the Lieutenant Governor;
(3) Seven members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; and
(4) Seven members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(c) The appointing authority shall designate two of the initial appointees pursuant to subdivision (b)(1), one of the initial appointees pursuant to subdivision (b)(2), two of the initial appointees pursuant to subdivision (b)(3), and two of the initial appointees pursuant to subdivision (b)(4) to serve for terms ending June 30, 1995; the remainder of the initial appointees shall serve for terms ending June 30, 1997. Their successors shall serve for four-year terms ending on June 30 quadrennially thereafter. The appointing authority shall designate the additional appointees under subsections (b3) and (b4) that were added to the Commission membership pursuant to an act of the 1995 General Assembly to serve for terms ending June 30, 1999.

Any appointment to fill a vacancy on the Commission shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be in accordance with G.S. 120-122.

(c1) The initial meeting shall be called by the Secretary of the Department of Commerce.

(d) Members of the Commission who are State employees shall receive travel expenses as provided in G.S. 138-6. Other Commission members shall receive per diem of one hundred dollars ($100.00) a day for each day of service when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. The Commission may adopt policies authorizing additional per diem of one hundred dollars ($100.00) a day for non-State employee members' additional days of service including Commission subcommittee meetings or other Commission activities, plus reimbursement for related travel and subsistence as provided in G.S. 138-5.

(e) In addition to the powers and duties granted to economic development commissions in this Article, the Western North Carolina Regional Economic Development Commission shall:

(1) Survey Western North Carolina and determine the assets, liabilities, and resources that the region contributes to the economic development process.

(2) Develop and evaluate alternatives for Western North Carolina economic development.

(3) Develop a preferred economic development plan for the region and establish strategies for implementing the plan.

(4) Coordinate activities with and enter into contracts with any nonprofit corporation created to assist the Commission in carrying out its powers and duties.

(5) Repealed by Session Laws 1999-237, s. 16.5(a), effective July 1, 1999. (1993, c. 321, s. 309(a); c. 561, s. 17(a); 1993 (Reg. Sess., 1994), c. 769, ss. 28.7(j), 28.8(a), 28.8(b); 1995, c. 488, s. 49(a), (b); c. 507, s. 25.5(a); c. 509, ss. 103-105; 1999-237, s. 16.5(a).)

Cross References. — For note regarding the creation of a Regional Economic Development Commission Expansion Program and appropriation for allocation to regional economic development commissions, see the editor's note under G.S. 158-8.

Editor's Note. — Session Laws 2001-491, s. 1, provides: "This act shall be known as 'The Studies Act of 2001.'"

Session Laws 2001-491, ss. 18.1 to 18.10, creates the National Heritage Area Designation Commission. The Commission is directed to seek designation as a National Heritage Area of the 23 county mountain region of North Carolina comprised of the counties designated to be served by the Western North Carolina Regional Economic Development Commission under G.S. 158-8.1: Alleghany, Ashe, Avery, Burke, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes, and Yancey. In ss. 18.1 and 18.2 the General Assembly makes the following findings:

"Section 18.1. The General Assembly finds that the following physical and cultural features in the mountain region of Western North Carolina are of national significance:

"(1) The Great Smoky Mountains National Park is the most visited national park in America.

"(2) The Blue Ridge Parkway is the nation's longest scenic highway.

"(3) The Joyce Kilmer Memorial Forest is the last remaining stand of virgin timber in the eastern United States.

"(4) The Linville Gorge wilderness area is the first wilderness in the eastern United States and the deepest gorge east of the Mississippi River.

"(5) Mount Mitchell is the highest mountain in the eastern United States.

"(6) The New River is the second oldest river in the world and was designated as an American Heritage River in 1998.

"(7) Fontana Dam is the highest dam in eastern America that was built by the Tennessee Valley Authority and is known as one of the country's greatest engineering feats in history.

"(8) Grandfather Mountain is the oldest mountain in the eastern United States, was designated as an International Biosphere Reserve by the United Nations, and is the only mountain that is privately owned.

"(9) The Cherokee Indian Qualla Boundary is the home of the Eastern Band of the Cherokee Indians, and the Trail of Tears is a National Heritage Trail.

"(10) Roan Mountain is the world's largest natural Catawba rhododendron garden.

"(11) The Appalachian Trail is the longest national hiking trail in the United States.

"(12) Whiteside Mountain has the highest cliffs of perpendicular bare rock east of the Rockies.

"(13) The Nantahala River is the most popular white-water rafting river in America.

"(14) The Biltmore Estate is America's largest private residence.

"(15) The Cradle of Forestry in America National Historic Site is the first forestry school in America.

"(16) The Cherohala Skyway is a National Scenic Byway.

"(17) The Carl Sandburg Home is a National Historic Site.

"Section 18.2. The General Assembly further finds that:

"(1) The National Park Service's definition of a National Heritage Area is a place designated by Congress where natural, cultural, historic, and scenic resources combine to form a cohesive, nationally distinctive landscape arising from patterns of human activity shaped by geography. These patterns make National Heritage Areas representative of the national experience through the physical features that remain and the traditions that have evolved in them. Continued use of the National Heritage Area by people whose traditions helped to shape the landscape enhances their significance.

"(2) Designation by the United States Congress of the North Carolina Appalachian Heritage Area, the 23-county mountain region of Western North Carolina, as a National Heritage Area would recognize the nationally distinctive landscape of this area and the role of this distinctive landscape in defining the collective American cultural landscape. The natural, cultural, historic, and recreation resources in this 23-county region combine to form a cohesive, nationally distinctive landscape arising from patterns of human activity shaped by geography. These patterns make the mountain region of Western North Carolina representative of the national experience through the physical features that remain and the traditions that have evolved in the area. Continued use of this area by people whose traditions helped to shape the landscape enhances its significance.

"(3) Since 1916, the National Park Service has been the federal agency responsible for preserving nationally significant natural and historic resources for present and future generations.

"(4) The National Park Service provides technical expertise to assist in all stages of the process for seeking designation as a National Heritage Area.

"(5) Congress has designated 18 National Heritage Areas.

"(6) Residents, business interests, nonprofit organizations, and governments within the proposed National Heritage Area are interested and committed to completing the suitability and feasibility study that must be completed prior to Congress's designating a National Heritage Area.

"(7) The National Heritage Area designation by the United States Congress for the 23-county mountain region of Western North Carolina would help to preserve and celebrate the uniqueness of this area and its defining landscape in North Carolina and offers the potential to ensure key educational and inspirational opportunities in perpetuity, without compromising traditional local control over, and use of, the landscape."

Session Laws 2001-491, s. 18.9, provides that notwithstanding G.S. 158-8.1, the Western North Carolina Regional Economic Development Commission shall provide administrative and funding support to the National Heritage Area Designation Commission.

§ 158-8.2. Creation of North Carolina's Northeast Commission.

(a) There is created the North Carolina's Northeast Commission to facilitate economic development in Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties, and any other county assigned to the Commission by the Department of Commerce as authorized by law. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year.

(b) The Commission shall consist of 18 appointed members and one ex officio member, as provided below. Each appointed member shall be an experienced business person who resides for most of the year in one or more of the counties that are members of the Commission.

(1) Six members shall be appointed by the Governor.

(2) Six members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) Six members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
(4) The Secretary of Commerce, or a designee.
(5) Repealed by Session Laws 1999-237, s. 16.6(a).

Any person appointed to the Commission who is also a county commissioner may hold that office in addition to the offices permitted by G.S. 128-1.1. The appointing authorities are encouraged to discuss and coordinate their appointments in an effort to ensure as many counties served by the Commission are represented among the membership of the Commission.

(c) All members shall serve staggered two-year terms ending on June 30 biennially.

(d) Any appointment to fill a vacancy on the Commission shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be in accordance with G.S. 120-122.

(d1) The initial meeting shall be called by the Secretary of the Department of Commerce. The Commission shall meet no less than quarterly.

(e) The Commission shall elect annually from among its membership a four-member executive committee consisting of a chair, a vice-chair, a secretary, and a treasurer. Members shall serve one-year terms on the executive committee. The executive committee shall meet no less than quarterly.

(f) In addition to the powers and duties granted to economic development commissions in this Article, the North Carolina's Northeast Commission shall:

(1) Adopt and implement an economic development program, with the assistance of the economic development advisory board, as follows:
  a. Survey northeastern North Carolina and determine the assets, liabilities, and resources that the region contributes to the economic development process;
  b. Enhance economic development activities that use the area's natural resources;
  c. Develop and evaluate alternatives for northeastern North Carolina economic development;
  d. Develop a preferred economic development plan for the region and establish strategies for implementing the plan;
  e. Conduct feasibility studies to determine the nature and placement of economic developments for maximum economic impact;
  f. Identify potential sites for economic development; and
  g. Carry out other activities to develop and promote economic development.
(2) Repealed by Session Laws 1999-237, s. 16.6(a).
(3) Coordinate activities with and enter into contracts with any nonprofit corporation created to assist the Commission in carrying out its powers and duties.
(4) Repealed by Session Laws 1999-237, s. 16.5(b).

(g) Within the limits of funds available, the Commission may hire and fix the compensation of any personnel necessary to its operations, contract with consultants for any services as it may require, and contract with the State of North Carolina or the federal government, or any agency or department thereof, for any services as may be provided by those agencies. The Commission shall hire an employee to serve as president and chief executive officer. The Commission may carry out the provisions of any contracts it may enter.

Within the limits of funds available, the Commission may lease, rent, purchase, or otherwise obtain suitable quarters and office space for its staff, and may lease, rent, or purchase necessary furniture, fixtures, and other equipment.

(h) Members of the Commission who are State employees shall receive travel expenses as provided in G.S. 138-6. Other Commission members shall receive per diem of one hundred dollars ($100.00) a day for each day of service when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. (1993, c. 321, s. 309.1(a); c. 561, s. 17(b); 1993 (Reg. Sess., 1994), c. 769, ss. 28.7(k), 28.7(*l*), 28.8(c), 28.8(d), 28.9; 1995, c. 509, ss. 106-109; 1997-443, s. 11A.119(a); 1997-495, s. 87(a); 1999-237, ss. 16.5(b), 16.6(a); 2007-93, s. 3.)

Cross References. — For note regarding the creation of a Regional Economic Development Commission Expansion Program and appropriation for allocation to regional economic development commissions, see the editor's note under G.S. 158-8.

OPINIONS OF ATTORNEY GENERAL

North Carolina's Northeast Partnership is an "agency" within the meaning of § 132-1(a), and accordingly is fully subject to the Public Records Act; the Northeastern North Carolina Regional Economic Development Commission from which it emerged is an agency located administratively in the North Carolina Department of Commerce, although it has attempted to remove itself from the Department. See opinion of Attorney General to Melanie Thompson, Fiscal Manager, North Carolina's Northeast Partnership, 1999 N.C.A.G. 9 (3/9/99).

§ 158-8.3. Creation of Southeastern North Carolina Regional Economic Development Commission.

(a) There is created the Southeastern North Carolina Regional Economic Development Commission to serve Bladen, Brunswick, Columbus, Cumberland, Hoke, New Hanover, Pender, Richmond, Robeson, Sampson, and Scotland Counties, and any other county assigned to the Commission by the Department of Commerce as authorized by law. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year.

(b) The Commission shall consist of 15 members appointed as follows:

(1) Three members shall be appointed by the Governor;

(2) Two members shall be appointed by the Lieutenant Governor;

(3) Five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; and

(4) Five members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(c) The appointing authority shall designate two of the initial appointees pursuant to subdivision (b)(1) of this section, one of the initial appointees pursuant to subdivision (b)(2) of this section, two of the initial appointees pursuant to subdivision (b)(3) of this section, and two of the initial appointees pursuant to subdivision (b)(4) of this section to serve for terms ending June 30, 1995; the remainder of the initial appointees shall serve for terms ending June 30, 1997. Their successors shall serve for four-year terms ending on June 30 quadrennially thereafter.

Any appointment to fill a vacancy on the Commission shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(c1) The initial meeting shall be called by the Secretary of the Department of Commerce.

(d) Members of the Commission who are State employees shall receive travel expenses as provided in G.S. 138-6. Other Commission members shall receive per diem of one hundred dollars ($100.00) a day for each day of service when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. The Commission may adopt policies authorizing additional per diem of one hundred dollars ($100.00) a day for non-State employee members' additional days of service including Commission subcommittee meetings or other Commission activities, plus reimbursement for related travel and subsistence as provided in G.S. 138-5.

(e) In addition to the powers and duties granted to economic development commissions in this Article, the Southeastern North Carolina Regional Economic Development Commission shall:

(1) Survey southeastern North Carolina and determine the assets, liabilities, and resources that the region contributes to the economic development process;
(2) Develop and evaluate alternatives for southeastern North Carolina economic development;
(3) Develop a preferred economic development plan for the region and establish strategies for implementing the plan; and
(4) Coordinate activities with and enter into contracts with any nonprofit corporation created to assist the Commission in carrying out its powers and duties.
(5) Repealed by Session Laws 1999-237, s. 16.5(c), effective July 1, 1999.

(f) Within the limits of funds available, the Commission may hire and fix the compensation of any personnel necessary to its operations, contract with consultants for any services as it may require, and contract with the State of North Carolina or the federal government, or any agency or department thereof, for any services as may be provided by those agencies. With the approval of any unit of local government, the Commission may contract to use officers, employees, agents, and facilities of the unit of local government. The Commission may carry out the provisions of any contracts it may enter.

Within the limits of funds available, the Commission may lease, rent, purchase, or otherwise obtain suitable quarters and office space for its staff, and may lease, rent, or purchase necessary furniture, fixtures, and other equipment. (1993, c. 321, s. 309.2(a); c. 561, s. 17(c); 1993 (Reg. Sess., 1994), c. 769, ss. 28.7(m), 28.8(e), 28.8(f); 1995, c. 509, ss. 110, 111; 1997-155, s. 1; 1999-237, s. 16.5(c).)

Cross References. — For note regarding the creation of a Regional Economic Development Commission Expansion Program and appropriation for allocation to regional economic development commissions, see the editor's note under G.S. 158-8.

§ 158-8.4. Removal of commission members.

A commission created under G.S. 158-8.1, 158-8.2, or 158-8.3 may, by majority vote, remove a member of the commission if that member does not attend at least eighty percent (80%) of the regularly scheduled meetings of the commission during any full year of service of that member on the board, except that absences excused by the commission due to serious medical or family circumstances shall not be considered. If the commission votes to remove a member under this section, the vacancy will be filled in the same manner as the original appointment. (1997-495, s. 86.)

§ 158-8.5. Annual reporting requirement.

By February 15 of each year, the commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33 shall publish a report containing the information required by this section. As a condition on the receipt of State funds, the Charlotte Regional Partnership, Inc., the Piedmont Triad Regional

Partnership, and the Research Triangle Regional Partnership shall, by February 15 of each year, publish a report containing the information required by this section. The commissions and partnerships shall also submit a copy of the report to the Department of Commerce, the Office of State Budget and Management, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development Oversight Committee, and the Fiscal Research Division of the General Assembly. The report shall include all of the following:

(1) A summary of the preceding year's program activities, objectives, and accomplishments.
(2) The preceding fiscal year's itemized expenditures and fund sources. Itemized expenditures shall be reported separately for each fund source.
(3) A demonstration of how the commission's or partnership's regional economic development and marketing strategy aligns with the State's overall economic development and marketing strategies.
(4) A demonstration of how the commission's or partnership's involvement in promotion activities has generated leads.
(5) The most recent audited annual financial statement regarding State funds.
(6) A demonstration of the commission's efforts to obtain funds from local, private, and federal sources. (2006-263, s. 1; 2007-323, s. 13.7(g).)

Editor's Note. — Session Laws 2006-263, s. 3, made this section effective October 1, 2006.

§ 158-8.6. Uniform standards.

The Department of Commerce, in consultation with the commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33, the Charlotte Regional Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership, shall develop uniform standards for the use of State funds related to accounting procedures, personnel practices, and purchasing and contracts procedures. The commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33 shall follow these standards. As a condition on the receipt of State funds, the Charlotte Regional Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership shall follow these standards. (2006-263, s. 1.)

Editor's Note. — Session Laws 2006-263, s. 3, made this section effective October 1, 2006.

Session Laws 2006-263, s. 2, provides: "The Department of Commerce may hire a consultant to assist in the development of the uniform standards required by G.S. 158-8.6, as enacted by Section 1 of this act. As a condition on the receipt of State funds, the commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33, the Charlotte Regional Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership, shall pay the costs of developing the uniform standards required by G.S. 158-8.6, as enacted by Section 1 of this act, in equal shares up to a maximum aggregate amount of fifty thousand dollars ($50,000). The Department of Commerce shall pay from funds available in its 2006-2007 budget any costs for developing the uniform standards in excess of fifty thousand dollars ($50,000)."

§ 158-8.7. Use of State funds.

The commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33, the Charlotte Regional Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership, are subject to all of the provisions of G.S. 143-6.2. (2006-263, s. 1.)

Editor's Note. — Session Laws 2006-263, s. 3, made this section effective October 1, 2006.

§ 158-8.8. Orientation for board members.

The commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33 shall hold an orientation session for all newly appointed commission members. The orientation shall provide information on the duties and responsibilities of commission members and shall include information on the commission's policies and State law regarding conflicts of interest, financial disclosure, and ethical behavior. At least once a year, each of these commissions shall distribute to all commission members information on the commission's policies and State law regarding conflicts of interest, financial disclosure, and ethical behavior. (2006-263, s. 1.)

Editor's Note. — Session Laws 2006-263, s. 3, made this section effective October 1, 2006.

§ 158-9. Organization of commission; rules and regulations; committees; meetings.

Upon its appointment, the economic development commission shall promptly meet and elect from among its members a chairman and such other officers as it may choose, for such terms as it shall prescribe in its rules and regulations. The commission shall adopt such rules and regulations not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint such committees as the work of the commission may require. The commission shall meet regularly, at least once every three months, at places and dates specified in the rules. Special meetings may be called as specified in the rules. (1961, c. 722, s. 2.)

§ 158-10. Staff and personnel; contracts for services.

Within the limits of appropriated funds, the commission may hire and fix the compensation of any personnel necessary to its operations, contract with consultants for such services as it may require, and contract with the State of North Carolina or the federal government, or any agency or department thereof, for such services as may be provided by such agencies; and it is hereby empowered to carry out the provisions of such contracts as it may enter. (1961, c. 722, s. 2.)

§ 158-11. Office and equipment.

Within the limits of appropriated funds, the commission may lease, rent, or purchase, or otherwise obtain suitable quarters and office space for its staff, and may lease, rent, or purchase necessary furniture, fixtures, and other equipment. (1961, c. 722, s. 2.)

§ 158-12. Fiscal affairs generally; appropriations.

The commission may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any municipalities or counties, and by private and civic sources.

Each municipality or county shall have authority to appropriate funds to any local or regional economic development commission which it may have created.

These appropriations may be funded by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1961, c. 722, s. 2; 1973, c. 803, s. 44; c. 1446, s. 26.)

§ 158-12.1. Commission funds secured.

The Western North Carolina Regional Economic Development Commission, Research Triangle Regional Partnership, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, North Carolina's Northeast Commission, North Carolina's Eastern Region Development Commission, and Carolinas Partnership, Inc., may deposit money at interest in any bank, savings and loan association, or trust company in this State in the form of savings accounts, certificates of deposit, or such other forms of time deposits as may be approved for county governments. Investment deposits and money deposited in an official depository or deposited at interest shall be secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in accordance with this section, no public officer or employee may be held liable for any losses sustained by an institution because of the default or insolvency of the depository. This section applies to the regional economic development commissions listed in this section only for as long as the commissions are receiving State funds. (2000-67, s. 14.9; 2005-364, s. 3; 2007-93, s. 4; 2008-134, s. 77.)

Editor's Note. — Session Laws 2005-364, s. 4, provides: "Any costs associated with the change of the name of the Global TransPark Development Zone to North Carolina's Eastern Region by this act shall be borne by North Carolina's Eastern Region Development Commission."

Effect of Amendments. — Session Laws 2008-134, s. 77, effective July 28, 2008, substituted "Research Triangle Regional Partnership" for "Research Triangle Regional Commission" near the beginning.

§ 158-13. Powers and duties.

Any economic development commission created pursuant to this Article shall:

(1) Receive from any municipal, county, joint, or regional planning board or commission with jurisdiction within its area an economic development program for part or all of the area;

(2) Formulate projects for carrying out such economic development program, through attraction of new industries, encouragement of existing industries, encouragement of agricultural development, encouragement of new business and industrial ventures by local as well as foreign capital, and other activities of a similar nature;

(3) Conduct industrial surveys as needed, advertise in periodicals or other communications media, furnish advice and assistance to business and industrial prospects which may locate in its area, furnish advice and assistance to existing businesses and industries, furnish advice and assistance to persons seeking to establish new businesses or industries, and engage in related activities;

(4) Encourage the formation of private business development corporations or associations which may carry out such projects as securing and preparing sites for industrial development, constructing industrial buildings, or rendering financial or managerial assistance to businesses and industries; furnish advice and assistance to such corporations or associations;

(4a) Use grant funds to make loans for purposes permitted by the federal government, by the grant agreement and in furtherance of economic development; the economic development commission may delegate to another organization or agency the implementation of the grant's purposes, subject to approval by the federal agency involved and the commission's board of directors.

(5) Carry on such other activities as may be necessary in the proper exercise of the functions described herein. (1961, c. 722, s. 2; 1979, c. 775.)

Editor's Note. — Session Laws 2005-276, ss. 13.8(a)-(e), provides: "(a) By February 15 of each fiscal year, the seven regional economic development commissions shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

"(1) The preceding fiscal year's program activities, objectives, and accomplishments.

"(2) The preceding fiscal year's itemized expenditures and fund sources.

"(3) Demonstration of how the commission's regional economic development and marketing strategy aligns with the State's overall economic development and marketing strategies.

"(4) To the extent they are involved in promotion activities such as trade shows, visits to prospects and consultants, advertising and media placement, the commission shall demonstrate how they have generated qualified leads.

"(b) Each of the commissions shall provide to the Fiscal Research Division a copy of their annual audited financial statement within 30 days of issuance of the statement.

"(c) The reporting requirements for regional economic development commissions, as provided in subsection (a) of this section, shall be reviewed annually by the North Carolina Partnership for Economic Development, and recommendations for changes to the reporting requirements shall be made to the Fiscal Research Division, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

"(d) Regional economic development commissions shall receive quarterly allocations of the funds appropriated in this act to the Department of Commerce for regional economic development commissions.

"(e) Regional economic development commissions shall remain in the Department of Commerce's Budget Code 14601 with other State-aided nonprofit entities."

For prior similar provisions, see Session Laws 2003-284, s. 12.8 (a)-(f).

§ 158-14. Regional planning and economic development commissions authorized.

Any municipalities and/or counties desiring to exercise the powers granted by this Article may, at their option, create a regional planning and economic development commission, which shall have and exercise all of the powers and duties granted to a regional economic development commission under this Article and in addition the powers and duties granted to a regional planning commission under Article 23 of Chapter 153. In the event that such a combined commission is created, it shall keep separate books of accounts for appropriations and expenditures made pursuant to this Article and for appropriations and expenditures made pursuant to Article 23 of Chapter 153. The financial limitations set forth in each such Article shall govern expenditures made pursuant to such Article. (1961, c. 722, s. 2; 1965, c. 431, s. 2.)

Editor's Note. — Article 23 of Chapter 153, cited in the first and second sentences of this section, was repealed by Session Laws 1973, c. 822. See now Article 19 of Chapter 153A.

§ 158-15. Powers granted herein supplementary.

The powers granted to counties and municipalities by this Article shall be deemed supplementary to any powers heretofore or hereafter granted by any general or local act for the same or similar purposes, and in any case where the provisions of this Article conflict with or are different from the provisions of any other act, the board of county commissioners or the municipal governing board may in its discretion proceed in accordance with the provisions of this Article or, as an alternative method, in accordance with the provisions of such other act. (1961, c. 722, s. 2.)

ARTICLE 2A.

Multi-County Water Conservation and Infrastructure District.

§ 158-15.1. Multi-County Water Conservation and Infrastructure District.

(a) There is established the Multi-County Water Conservation and Infrastructure District, which is a public authority for the purpose of the Local Government Budget and Fiscal Control Act.

(b) The member counties of the Multi-County Water Conservation and Infrastructure District are Bertie, Caswell, Forsyth, Granville, Guilford, Halifax, Martin, Northampton, Person, Rockingham, Stokes, Surry, Vance, Warren, and Washington.

(c) The governing body of the Multi-County Water Conservation and Infrastructure District is the Multi-County Water Commission. One member of this Commission shall be appointed for a three-year term by the board of commissioners of each member county.

(d) All monies received by the State of North Carolina for sale of water under the Roanoke River Basin Compact, if enacted, shall be paid to the Multi-County Water Conservation and Infrastructure District.

(e) The District may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any political subdivision of this State or any other state, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. The nature, amount and condition, if any, attendant upon any donation or grant accepted pursuant to this subsection together with the identity of the donor or grantor, shall be detailed in the annual audit of the District.

(f) At times specified by the Multi-County Water Commission, net revenues after operating expenses of the District shall be paid to each of the fifteen member counties according to the following formula: (i) one-half pro-rata based on the population located within the Roanoke River basin area of each member county; and (ii) one-half pro-rata based on the land area located within the Roanoke River Basin area of each county.

(g) Member counties may use funds received under this section for public purposes relating to infrastructure development, economic development, and water conservation.

(h) The Commission may adopt such rules as may be needful for operation of its affairs, and shall employ and terminate personnel as if it were a county. (1995, c. 507, s. 26.12; 1996, 2nd Ex. Sess., c. 18, s. 24.22(a); 1997-443, s. 15.48(a).)

§§ 158-15.2 through 158-15.9: Reserved for future codification purposes.

ARTICLE 3.

Tax Elections for Industrial Development Purposes.

§ 158-16. Board of commissioners may call tax election; rate and purposes of tax.

The board of county commissioners in any county is authorized and empowered to call a special election to determine whether it be the will of the qualified voters of said county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed five cents (5¢) on each one hundred dollars ($100.00) valuation of property in said county, to be known as an "industrial development tax," the funds therefrom, if the levy be authorized by the voters of said county, to be used for the purpose of attracting new and diversified industries to said county, and for the encouragement of new business and industrial ventures by local as well as foreign capital, and for the purpose of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial plants in said county, and for the purpose of encouraging agricultural development in said county. (1959, c. 212, s. 1.)

Local Modification. — Mitchell: 1963, c. 157.

§ 158-17. Registration of voters; election under supervision of county board of elections.

There shall be no new registration of voters for such an election. Registration shall be open for registration of new voters in said county and registration of any and all legal residents of said county, who are or could legally be enfranchised as qualified voters for regular general elections, shall be carried out in accordance with the general election laws of the State of North Carolina as provided for local elections. Notice of such registration of new voters shall be published in a newspaper circulated in said county, once, not less than 55 days before and not more than 65 days before the election, stating the hours and days for registration. The special election, if called, shall be under the control and supervision of the county board of elections. (1959, c. 212, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 11.)

§ 158-18. Form of ballot; when ballots supplied; designation of ballot box.

The form of the question shall be substantially the words "For Industrial Development Tax," and "Against Industrial Development Tax," which alternates shall appear separated from each other on one ballot containing opposite, and to the left of each alternate, squares of appropriate size in one of which squares the voters may make a mark "X" to designate the voter's choice for or against such tax. Such ballot shall be printed on white paper and each polling place shall be supplied with a sufficient number of ballots not later than the day before the election. At such special election the election board shall cause to be placed at each voting precinct in said county a ballot box marked "Industrial Development Tax Election." (1959, c. 212, s. 1.)

§ 158-19. Counting of ballots; canvassing, certifying and announcing results of elections.

The duly appointed judges and other election officials who are named and fixed by the county board of elections shall count the ballots so cast in such election and the results of the election shall be officially canvassed, certified and announced by the proper officials of the board of elections, according to the manner of canvassing, certifying and announcing the elections held under the general election laws of the State. Except as herein otherwise provided, the registration and election herein provided for shall be conducted in accordance with the general election laws of the State as provided for local elections. (1959, c. 212, s. 1.)

§ 158-20. Authorized tax rate.

If a majority of those voting in such election favor the levying of such a tax, the board of commissioners of said county are authorized to levy a special tax at a rate not to exceed five cents (5¢) on each one hundred dollars ($100.00) of assessed value of real and personal property taxable in said county, and the General Assembly does hereby give its special approval for the levy of such special tax. (1959, c. 212, s. 1.)

Local Modification. — Harnett: 1961, c. 560; Mitchell: 1963, cc. 157, 506; Person: 1961, c. 701; Tyrrell: 1961, c. 228.

§ 158-21. Creation of industrial development commission; membership and terms of office; vacancies; meetings; selection of officers; bylaws and procedural rules and policies; authority of treasurer and required bond; subsidy or investment in business or industry forbidden.

If the majority of the qualified voters voting in such election favor the levying of such a tax, then and in that event, the county commissioners may create a commission to be known as the "Industrial Development Commission" for said county. Such commission shall be composed of nine members. The terms of office of the members of the commission shall be three years, with the exception of the first two years' existence of the commission, in which three shall be appointed to serve for a period of one year, three for a period of two years, and three for a period of three years; thereafter, all members shall be appointed for three years, and shall serve until their successors have been appointed and qualified. All appointments for unexpired terms resulting from resignation, death or other causes, shall be made by the county board of commissioners. The commission shall hold its first meeting within 30 days after its appointment as provided for in this Article, and the beginning date of all terms of office of the commissioners shall be the date on which the commission holds its first meeting. After the members of the commission shall have been appointed and at the time of the holding of the first meeting, they shall, by a majority vote, name and select from their membership their own chairman, vice-chairman, secretary and treasurer, and shall draw up and ratify their own bylaws and procedural rules and policies. The commission member who shall be named treasurer shall have supervision of all funds administered by the commission in any way whatsoever; shall sign and countersign all checks, drafts, bills of exchange, or any and all other negotiable instruments which shall properly be issued under his supervision; and shall furnish such surety bond as shall be designated by the board of county commissioners. No money, property or funds of the commission herein created shall be used directly or indirectly as a subsidy or investment in capital assets in any business, industry or business venture. (1959, c. 212, s. 1.)

§ 158-22. Bureau set up under supervision and control of industrial development commission; furnishing county commissioners with proposed budget.

Under the supervision and jurisdiction of the industrial development commission for said county there shall be set up a bureau, the purpose of which shall be as set forth in G.S. 158-16. The commission shall have charge of the activities of this bureau, full supervision of its operations, and full responsibility for its actions. The commission shall employ personnel for the bureau, supervise its purchases and expense accounts, and administer all the tax funds which shall be turned over to the commission by county authorities from the industrial development tax and any and all other funds which may come into its hands. The commission shall be empowered to lease, rent or purchase, or otherwise obtain suitable quarters and office space for an industrial development bureau, to lease, rent, or purchase necessary furniture, fixtures, and other equipment, to purchase advertising space in periodicals which may be selected for that purpose, and to otherwise engage in any and all activities which shall, in its discretion, promote the business and industrial development and general economic welfare of said county; and it shall have full power to exercise any and all other proper authority in connection with its duties and not expressly mentioned herein. Provided, that said commission shall provide the board of county commissioners 30 days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within 60 days after the expiration of the fiscal year ending on June 30. (1959, c. 212, s. 1.)

§ 158-23. Board of county commissioners may function and carry out duties of industrial development commission.

Nothing herein shall prevent the board of county commissioners itself from functioning and carrying out the duties of the industrial development commission as provided for herein. (1959, c. 212, s. 1.)

§ 158-24. Counties to which Article applies.

The provisions of this Article shall apply only to the following counties: Alexander, Burke, Caswell, Chowan, Edgecombe, Franklin, Harnett, Haywood, Hertford, Mitchell, Northampton, Onslow, Pasquotank, Perquimans, Person, Polk, Rockingham, Rutherford, Tyrrell, Vance and Warren. (1959, c. 212, s. 2; 1961, cc. 208, 228, 339, 560, 683, 701, 1011, 1058; 1963, c. 157, s. 2; cc. 443, 504, 506, 613, 1101; 1965, cc. 189, 523, 622.)

§§ 158-25 through 158-29: Reserved for future codification purposes.

ARTICLE 4.

North Carolina's Eastern Region.

§ 158-30. Title.

This Article shall be known as the "North Carolina's Eastern Region Act". (1993, c. 544, s. 1; 2005-364, s. 1.)

Name of Global TransPark Development Zone Changed to "North Carolina's Eastern Region." — Session Laws 2005-364, s. 1, effective October 1, 2005, revised this Article to amend the powers of the Global TransPark Development Commission and to change the name of the Global TransPark Development Zone to "North Carolina's Eastern Region."

Session Laws 2005-364, s. 4, provides: "Any costs associated with the change of the name of the Global TransPark Development Zone to North Carolina's Eastern Region by this act shall be borne by North Carolina's Eastern Region Development Commission."

Session Laws 2005-364, s. 4.1, provides: "The terms of office of the existing members of the Global TransPark Development Commission terminate September 30, 2005. New members of North Carolina's Eastern Region Development Commission shall be appointed for terms beginning October 1, 2005, and ending June 30, 2007, for those receiving two-year initial terms, and ending June 30, 2009, for those receiving four-year initial terms. The terms of the initial officers appointed under G.S. 158-35(e) shall expire June 30, 2006."

§ 158-31. Purpose.

The purpose of this Article is to allow the following counties, which have the potential to derive direct economic benefits from the North Carolina Global TransPark, to create a special economic development district, to be known as North Carolina's Eastern Region: Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Nash, Onslow, Pamlico, Pitt, Wayne, and Wilson.

The purpose of North Carolina's Eastern Region is to promote the development of the North Carolina Global TransPark and to promote and encourage economic development within the territorial jurisdiction of the Region by fostering or sponsoring development projects to provide land, buildings, facilities, programs, information and data systems, and infrastructure requirements for business and industry in the North Carolina Global TransPark outside of the Global TransPark Complex, and elsewhere in the Region. (1993, c. 544, s. 1; 1993 (Reg. Sess., 1994), c. 751, s. 1; 2005-364, s. 1.)

§ 158-32. Definitions.

The following definitions apply in this Article:

(1) Authority. — The North Carolina Global TransPark Authority created under Chapter 63A of the General Statutes.

(2) Commission. — North Carolina's Eastern Region Development Commission, the governing body of North Carolina's Eastern Region.

(3) Global TransPark Complex. — The approximately four to six thousand acre site designated by the Authority for a cargo airport and related facilities in Lenoir County. The site will contain a modern airport large enough to handle the largest aircraft and will be dedicated to the rapid movement of freight and passengers by air with intermodal connecting links with rail, highway, and water transportation facilities.

(4) North Carolina Global TransPark. — A large area surrounding and including the Global TransPark Complex, which will contain commercial and industrial sites providing attractive locations for business and industry of differing sizes and varying kinds.

(4a) Region. — North Carolina's Eastern Region, an economic development district created pursuant to this Article.

(5) Unit of Local Government. — A local subdivision or unit of government or a local public corporate entity, including any type of special district or public authority.

(6) Repealed by Session Laws 2005-364, s. 1, effective October 1, 2005. (1993, c. 544, s. 1; 2005-364, s. 1.)

§ 158-33. Creation of North Carolina's Eastern Region.

(a) Resolution to Create Region. — Any three or more of the counties listed in G.S. 158-31 may create North Carolina's Eastern Region as provided in this section. In order to create the Region, the governing bodies of the counties creating the Region must first adopt, on or before October 1, 1993, substantially similar resolutions stating their intent to organize the Region pursuant to this Article. Each resolution shall include articles of incorporation for the Region that shall set forth the following:

(1) The name of the Region, which shall be "North Carolina's Eastern Region."

(2) A statement that the Region is organized under this Article.

(3) The names of the organizing counties known to the county adopting the resolution.

(b) Public Hearing. — Each resolution may be adopted only after a public hearing on the question, notice of which hearing has been given by publication at least once after July 25, 1993, and not less than 10 days before the date set for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, set forth the proposed articles of incorporation of the Region, and state the time and place of the public hearing to be held on the resolution. No other publication or notice of the resolution is required.

(c) Incorporation of Region. — Each county that adopts a resolution as provided in this section shall file a certified copy of the resolution with the Secretary of State on or before October 15, 1993, together with proof of publication of notice of the hearing on the resolution. Each resolution must contain the county clerk's attestation that it was adopted by the board of commissioners. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that notices of the hearings were properly published, the Secretary of State shall file the resolutions and proofs of publication and shall issue a certificate of incorporation for the Region under the seal of the State. The Secretary of State shall record the certificate of incorporation in an appropriate book of record in the Secretary of State's office.

(d) Effect of Incorporation. — The issuance of the certificate of incorporation by the Secretary of State shall constitute North Carolina's Eastern Region a public body and body politic and corporate of the State. The certificate of incorporation shall be conclusive evidence that the Region has been duly created and established under this Article. (1993, c. 544, s. 1; 2005-364, s. 1; 2006-226, s. 26; 2006-264, s. 76.8.)

§ 158-33.1. Addition of counties to Region.

(a) Authority. — The Region shall allow an eligible county to participate in the Region as provided in this section. A county is eligible to participate in the Region under this section if G.S. 158-31 authorizes the county to create the Region, but the county failed to adopt a resolution stating its intent to create the Region by the October 1, 1993, deadline set in G.S. 158-33(b).

(b) Application. — The governing body of an eligible county may apply to participate in the Region under this section by adopting a resolution to participate in the Region. The resolution must comply with all the requirements of G.S. 158-33(a) and (b) except that it may be adopted at any time before October 1, 1994. After adopting the resolution, the county shall file a certified copy of the resolution with the Commission.

(c) Approval of Application. — Within one month after receipt of an application to join the Region pursuant to this section, the Commission shall meet to consider the application. At the meeting, the Commission shall approve the application if all of the following conditions are met:

(1) The applicant is an eligible county and has adopted a resolution that complies with subsection (b) of this section.

(2) The applicant agrees to pay a fee equal to the initiation fee paid by each of the counties that originally created the Region.

(3) The applicant agrees to make monthly payments in lieu of taxes as provided in subsection (f) of this section.

(d) Commission Resolution. — After the Commission votes to add a county to the Region, the Commission shall adopt a resolution that states its intent to add the county and includes amended articles of incorporation for the Region which set forth the name of the county to be added to the Region. The Commission shall file certified copies of this resolution with the Secretary of State.

(e) Effect of Amendment. — If the Secretary of State finds that the resolution conforms to the requirements of this Article, the Secretary of State shall file the resolution, issue an amended certificate of incorporation for the Region including the additional county, and record the amended certificate of incorporation. The amended certificate of incorporation for the Region shall become effective on the first day of the second month after it is issued. Upon the effective date of the amended certificate of incorporation for the Region, the new county becomes a fully participating member of the Region. If the Commission has levied a tax in the Region pursuant to G.S. 158-42, that tax applies within the new county beginning on the date the amended certificate of incorporation becomes effective.

(f) Payments in Lieu of Taxes. — A county that participates in the Region under this section is required to make monthly payments in lieu of taxes to the Region after the expiration of the tax levied pursuant to G.S. 158-42. Each payment shall be equal to the estimated net amount of tax that would have been collected in the county under G.S. 158-42 for that month if the tax were still in effect. Each payment is due within 15 days after the end of the month in which it accrues. The county is required to make monthly payments for a period equal to the number of months that the county was not participating in the Region while the tax was levied under G.S. 158-42. The requirement that a county make payments in lieu of taxes expires, however, on the effective date of a withdrawal from the Region by the county. For the purposes of this Article, payments in lieu of taxes shall be considered proceeds of the tax levied in G.S. 158-42 collected in the county making the payment. (1993 (Reg. Sess., 1994), c. 751, s. 2; 2005-364, s. 1.)

§ 158-34. Territorial jurisdiction of Region.

The territorial jurisdiction of the Region created pursuant to this Article shall be coterminous with the boundaries of the counties participating in the Region. (1993, c. 544, s. 1; 2005-364, s. 1.)

§ 158-35. Commission membership, officers, compensation.

(a) Commission Membership. — The governing body of the Region is the Commission. The members of the Commission must be residents of the Region and shall be appointed as follows:

(1) The board of commissioners of each county participating in the Region shall, in consultation with the county's local business community, appoint one member.

(2), (3) Repealed by Session Laws 2005-364, s. 1, effective October 1, 2005.

(4) The General Assembly shall appoint two members to the Commission on the recommendation of the Speaker of the House of Representatives and two members on the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The Governor shall appoint two members to the Commission. No two members appointed under this subdivision may be residents of the same county. The President Pro Tempore of the Senate, Speaker of the House of Representatives, and the Governor shall consult to assist in geographic diversity in those six appointments. In order to be eligible for appointment under this subdivision, a person must be a resident of the region. No person appointed under this subdivision is eligible to be chairperson or vice-chairperson.

(b) Terms. — Members of the Commission shall serve for staggered four-year terms. Three of the members initially appointed by the boards of county commissioners pursuant to subdivision (a)(1) of this section shall serve an initial term of two years. The three members to serve initial terms of two years shall be determined by lot at the organizational meeting of the Commission. Each of the initial appointees by the General Assembly and Governor pursuant to subdivision (a)(4) of this section shall serve an initial term of two years.

(c) Removal; Vacancies. — A member of the Commission may be removed with or without cause by the appointing body. In addition, a majority of the Commission members may, by majority vote, remove a member of the Commission if that member does not attend at least three-quarters of the regularly scheduled meetings of the Commission during any consecutive 12-month period of service of that member on the Commission, except that absences excused by the Commission due to serious medical or family circumstances shall not be considered. If the Commission votes to remove a member under this subsection, the vacancy shall be filled in the same manner as the original appointment. Appointments to fill vacancies shall be made for the remainder of the unexpired term by the respective appointing authority. All members shall serve until their successors are appointed and qualified, unless removed from office.

(d) Dual Office Holding. — Service on the Commission may be in addition to any other office a person is entitled to hold.

(e) Officers. — The Commission shall annually elect from its membership a chairperson and a vice-chairperson, and shall annually elect a secretary and a treasurer. After the Commission has been duly organized and its officers elected as provided in this section, the secretary of the Commission shall certify to the Secretary of State the names and addresses of the officers as well as the address of the principal office of the Commission.

(f) Compensation. — The members of the Commission shall receive no compensation other than travel, subsistence, and reasonable per diem expenses determined by the Commission for attendance at Commission meetings and other official Region functions. (1993, c. 544, s. 1; 1998-217, s. 48; 2001-424, ss. 20.13(a), (b); 2001-496, s. 3.5; 2003-94, s. 1; 2005-364, s. 1.)

Editor's Note. — Session Laws 2005-364, s. 4.1, provides: "The terms of office of the existing members of the Global TransPark Development Commission terminate September 30, 2005. New members of North Carolina's Eastern Region Development Commission shall be appointed for terms beginning October 1, 2005, and ending June 30, 2007, for those receiving two-year initial terms, and ending June 30, 2009, for those receiving four-year initial terms. The terms of the initial officers appointed under G.S. 158-35(e) shall expire June 30, 2006."

§ 158-36. Voting.

A majority of the Commission members constitutes a quorum for the transaction of business. Each voting member of the Commission shall have one vote. Except as otherwise provided in this Article, the Commission may transact business only by majority vote of the members present and voting. (1993, c. 544, s. 1; 2005-364, s. 1.)

§ 158-37. Powers of the Region.

(a) The general powers of the Region include the following:

(1) The powers of a corporate body, including the power to sue and be sued and to adopt and use a common seal.

(2) To adopt bylaws and resolutions in accordance with this Article for its organization and internal management, including the power to create and appoint an executive and other committees and to vest authority in the executive and other committees, as the Commission deems advisable.

(3) To employ persons as necessary and to fix their compensation within the limit of available funds.

(4) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of a unit of local government for purposes and upon terms agreed upon with the unit of local government.

(5) To make contracts, deeds, leases with or without option to purchase, conveyances, and other instruments, including contracts with the United States, the State of North Carolina, and units of local government.

(6) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise or property or any interest in a franchise or property, within the limit of available funds.

(7) To transfer, lease as lessor with or without option to purchase, exchange, or otherwise dispose of any franchise or property or any interest in a franchise or property, within the limit of available funds.

(8) To surrender to the State of North Carolina any property no longer required by the Region.

(b) The economic development powers of the Region include the following, to the extent appropriate to carry out its purposes as provided in this Article:

(1) To levy a temporary annual motor vehicle registration tax on vehicles with a tax situs within the Region, as provided in G.S. 158-42.

(2) To acquire, construct, improve, maintain, repair, operate, or administer any component part of a public infrastructure system or facility within the Region, directly or by contract with a third party.

(3) Except as otherwise provided in this Article, to exercise the powers granted to a local government for development by G.S. 158-7.1, except the power to levy a property tax.

(4) To make grants and loans to support economic development projects authorized by this Article within the Region.

(5) To promote travel and tourism, and natural resource-based attractions, within the Region.

(6) To contract with units of local government within the Region to administer the issuance of permits and approvals required of businesses.

(7) To provide employee training programs to prepare workers for employment in the Region.

(8) To gather and maintain information of an economic, a business, or a commercial character that would be useful to businesses within the Region.

(9) To prepare specific site studies to assess the appropriateness of any area within the Region for use or development by a business and to provide opportunities for businesses to examine sites.

(10) To exercise the powers of a regional planning commission as provided in G.S. 153A-395 and the powers of a regional economic development commission as provided in Article 2 of this Chapter, but the Region does not have the authority to establish land-use zoning in any county.

(11) To carry out the purposes of a consolidation and governmental study commission as provided in Article 20 of Chapter 153A of the General Statutes.

(12) To enter in a reasonable manner land, water, or premises within the Region to make surveys, soundings, drillings, or examinations. Such an entry shall not constitute trespass, but the Region shall be liable for actual damages resulting from such an entry.

(13) To monitor and encourage the use of utility corridors adjacent to intrastate and interstate highways within the Region that are four-lane, divided, limited-access highways.

(14) To plan for and assist in the extension of natural gas within the Region.

(15) To assist in the placement of an information highway within the Region.

(16) To do all other things necessary or appropriate to carry out its purposes as provided in this Article. (1993, c. 544, s. 1; 1993 (Reg. Sess., 1994), c. 745, ss. 30, 31; 2005-364, s. 1.)

§ 158-38. Fiscal accountability.

The Region is a public authority subject to the provisions of Chapter 159 of the General Statutes. (1993, c. 544, s. 1; 2005-364, s. 1.)

§ 158-39. Funds.

The establishment and operation of the Region are governmental functions and constitute a public purpose. The State of North Carolina and any unit of local government may appropriate or otherwise provide funds to support the establishment and operation of the Region. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in property to the Region. The Region may apply for grants from the State of North Carolina, the United States, or any department, agency, or instrumentality of the State or the United State s. Any department of State government may allocate to the Region any funds the use of which is not restricted by law. (1993, c. 544, s. 1; 2005-364, s. 1.)

§ 158-40. Tax exemption.

Property owned by the Region is exempt from taxation. This tax exemption does not apply to the lease, or other arrangement that amounts to a leasehold interest, of Region property to a private party, or to the income of the lessee, unless the property is leased solely for the purpose of the Region, in which case the activities of the lessee are considered the activities of the Region. (1993, c. 544, s. 1; 2005-364, s. 1.)

§ 158-41. Withdrawal; termination.

(a) Withdrawal. — A county participating in the Region may, by resolution, withdraw from the Region. A resolution withdrawing from the Region may not become effective before the end of the fiscal year in which it is adopted. Upon adoption of a resolution withdrawing from the Region, the board of commissioners of the county shall provide a copy of the resolution to the Secretary of State, the Commission, the Authority, and every other county participating in the Region. Withdrawal does not entitle a county to early distribution of its beneficial interest in Region assets, but a county that has withdrawn retains its right to any distributions that may be made to participating counties pursuant to subsection (b) of this section on the same basis as if it had not withdrawn. For all other purposes, a county that has withdrawn from the Region no longer participates in the Region.

(b) Termination. — The Commission may dissolve the Region and terminate its existence at any time. If the Region is dissolved and terminated or is otherwise unable to expend the tax proceeds received pursuant to G.S. 158-42, the Commission shall liquidate the assets of the Region to the extent possible and distribute all Region assets to the counties of the Region in proportion to the amount of tax collected in each county. The assets of the Region that exceed the amount of tax collected by the counties and are attributable to an appropriation made to the Region by the General Assembly shall revert to the General Fund and may not be distributed to the counties. A county may use funds distributed to it pursuant to this subsection only for economic development projects and infrastructure construction projects. In calculating the amount to be refunded to each county, the Region shall first allocate amounts loaned and not yet repaid as follows:

(1) Amounts loaned for a project in a county will be allocated to that county to the extent of its beneficial ownership of the principal of the trust account created under G.S. 158-42 and the county will become the owner of the right to repayment of the amount loaned to the extent of its beneficial ownership of the principal of the trust account created under G.S. 158-42.

(2) Amounts not allocated pursuant to subdivision (1) shall be allocated among the remaining counties in proportion to the amount of tax collected in each county under G.S. 158-42, and the remaining counties shall become the owners of the right to repayment of the amounts loaned in proportion to the amount of tax collected in each county under G.S. 158-42.

Notes and other instruments representing the right to repayment shall, upon dissolution of the Region, be held and collected by the State Treasurer, who shall disburse the collections to the counties as provided in this subsection.

The Commission shall distribute those assets that it is unable to liquidate among the Region counties insofar as practical on an equitable basis, as determined by the Commission. Upon termination, the State of North Carolina shall succeed to any remaining rights, obligations, and liabilities of the Region not assigned to the Region counties. (1993, c. 544, s. 1; 2005-364, s. 1.)

§ 158-42. Temporary Region vehicle registration tax.

(a) Levy. — The Commission may, by resolution, after not less than 10 days' public notice and a public hearing, levy an annual registration tax of five dollars ($5.00) on motor vehicles with a tax situs within the Region. A tax levied under this section is in addition to any other motor vehicle license or registration tax.

The tax applies to vehicles required to pay a tax under G.S. 20-88, except trailers, and G.S. 20-87(1), (2), (4), (5), (6), and (7). The tax situs of a motor vehicle for the purpose of this section is its ad valorem tax situs. If the vehicle is not subject to ad valorem tax, its tax situs for the purpose of this section is the ad valorem tax situs it would have if it were subject to ad valorem tax.

(b) Effective Date; Expiration. — The effective date of a tax levied under this section shall be no earlier than July 1, 1994. The effective date of a tax levied under this section must be the first day of a calendar month set by the Commission in the resolution levying the tax, and shall be no earlier than the first day of the third calendar month after the adoption of the resolution.

The authority of the Region to levy a tax under this section expires five years after the effective date of the first tax levied under this section. A tax levied under this section expires when the Region's authority to levy the tax expires. The expiration of the tax does not affect the rights or liabilities of the Region, a taxpayer, or another person arising under this section before the expiration of the tax; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under this section before the expiration of the tax.

(c) Repeal of Tax. — The Commission may, by resolution, repeal a tax levied under this section. The effective date of the repeal must be the first day of a calendar month set by the Commission in the resolution repealing the tax, and shall be no earlier than the first day of the third calendar month after the adoption of the resolution. Repeal of the tax does not affect the date the Region's authority to levy the tax expires under subsection (b) of this section. Repeal of the tax does not affect the rights or liabilities of the Region, a taxpayer, or another person arising under this section before the effective date of the repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under this section before the effective date of the repeal.

(d) Administration. — The Division of Motor Vehicles of the Department of Transportation shall collect and administer a tax levied under this section. Immediately after adopting a resolution levying or repealing a tax under this section, the Commission shall deliver a certified copy of the resolution to the Division of Motor Vehicles. If the Secretary of State issues an amended certificate of incorporation adding a county to the Region pursuant to G.S. 158-33.1, the Commission shall deliver a certified copy of the amended certificate immediately to the Division of Motor Vehicles. If the Commission receives a resolution from a county withdrawing from the Region pursuant to G.S. 158-41, the Commission shall deliver a certified copy of the resolution immediately to the Division of Motor Vehicles.

A tax levied under this section is due at the same time and subject to the same restrictions as the tax levied in G.S. 20-87 and G.S. 20-88. The tax shall be prorated in accordance with G.S. 20-95. The Commissioner of Motor Vehicles may adopt rules necessary to administer the tax.

(e) Distribution of Tax Proceeds. — The Commissioner of Motor Vehicles shall credit the proceeds of the tax levied under this section to a special account and distribute the net proceeds on a quarterly basis to the Region. Interest on the special account shall be credited quarterly to the Highway Fund to reimburse the Division of Motor Vehicles for the cost of collecting and administering the tax. The Commissioner of Motor Vehicles shall provide the Region with an accounting of the percentage of proceeds collected in each county of the Region in each quarter.

(f) Use of Tax Proceeds. — The Region may use the proceeds of the tax levied under this section only for economic development projects and infrastructure construction projects that are within the territorial jurisdiction of the Region but not within the Global TransPark Complex. The Region shall use the tax proceeds only for public purposes authorized by this Article.

The Region shall place fifteen percent (15%) of the tax proceeds distributed to it under this section in a general funds account and the remaining eighty-five percent (85%) in an interest-bearing trust account. Each county shall be the beneficial owner of a share of the principal of the trust account in proportion to the amount of tax proceeds collected in that county.

The Region may not disburse the principal of the trust account except pursuant to a contract that provides that, within a reasonable time not to exceed 20 years, the Region will recover or be repaid the amount disbursed. The Region may, in its discretion, set reasonable terms and conditions for the repayment of the principal disbursed, including provisions for securing the debt and the payment of interest. (1993, c. 544, s. 1; 1993 (Reg. Sess., 1994), c. 751, s. 3; c. 761, s. 33; 1995, c. 465, s. 1; 2005-364, s. 1.)

Chapter 159.

Local Government Finance.

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SUBCHAPTER I. SHORT TITLE AND DEFINITIONS.

Article 1.

Short Title and Definitions.

§ 159-1. Short title and definitions.

(a) This Chapter may be cited as "The Local Government Finance Act."

(b) The words and phrases defined in this section have the meanings indicated when used in this Chapter, unless the context clearly requires another meaning, or unless the word or phrase is given a more restrictive meaning by definition in another Article herein.

(1) "Chairman" means the chairman of the Local Government Commission.
(2) "City" includes towns and incorporated villages.
(3) "Clerk" means an officer or employee of a local government or public authority charged by law or direction of the governing board with the duty of keeping the minutes of board meetings and conserving records evidencing official actions of the board.
(4) "Commission" means the Local Government Commission.
(5) "Publish," "publication," and other forms of the word "publish" mean insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements.
(6) "Secretary" means the secretary of the Local Government Commission.

(c) Words in the singular number include the plural, and in the plural include the singular. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender. (1927, c. 81, s. 2; 1931, c. 60, s. 2; 1971, c. 780, s. 1.)

Local Modification. — (As to Chapter 159) Cabarrus Memorial Hospital: 1989 (Reg. Sess., 1990), c. 982.

Editor's Note. — Many of the cases cited in the annotations to this Chapter were decided under former similar statutory provisions before the repeal in 1971 of former Chapter 159 and enactment of this Chapter.

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

CASE NOTES

Cited in Cross v. Residential Support Servs., Inc., 123 N.C. App. 616, 473 S.E.2d 676 (1996).

§ 159-2. Computation of time.

(a) Notwithstanding any other provisions of law, whenever in this Chapter an act is to be done within a given period of time, the period of time shall be computed according to the rules set out in this section.

(b) When an act is to be done within a given number of days before or after a given day, the period is computed by counting forward beginning with the day following the given day, or counting backward beginning with the day next before the given day. Saturdays, Sundays, and holidays are counted as any other day.

(c) The word "month" means 30 days, unless the words "calendar month" are used, in which case the number of days in the month may vary according to the calendar.

(d) The word "year" means the calendar year.

(e) The word "day," when used to denote a period of time within which an act may be done, means a period of 24 hours beginning at 12:00 midnight.

(f) When a time of day is given, the time is local time in the City of Raleigh, North Carolina. (1971, c. 780, s. 1.)

SUBCHAPTER II. LOCAL GOVERNMENT COMMISSION.

Article 2.

Local Government Commission.

§ 159-3. Local Government Commission established.

(a) The Local Government Commission consists of nine members. The State Treasurer, the State Auditor, the Secretary of State, and the Secretary of Revenue each serve ex officio; the remaining five members are appointed to four-year terms as follows: three by the Governor, one by the General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the Speaker of the House in accordance with G.S. 120-121. Of the three members appointed by the Governor, one shall be or have been the mayor or a member of the governing board of a city and one shall be or have been a member of a county board of commissioners. The State Treasurer is chairman ex officio of the Local Government Commission. Membership on the Commission is an office that may be held concurrently with one other office, as permitted by G.S. 128-1.1.

(b) The Commission shall meet at least quarterly in the City of Raleigh, and may hold special meetings at any time or place upon notice to each member given in person or by mail not later than the fifth day before the meeting. The notice need not state the purpose of the meeting.

Action of the Commission shall be taken by resolution adopted by majority vote of those present and voting. A majority of the Commission constitutes a quorum.

(c) The appointed members of the Commission are entitled to the per diem compensation and allowances prescribed by G.S. 138-5. All members are entitled to reimbursement for necessary travel and other expenses.

(d) The Commission may call upon the Attorney General for legal advice in relation to its powers and duties.

(e) The Local Government Commission shall operate as a division of the Department of the State Treasurer.

(f) The Commission may adopt rules and regulations to carry out its powers and duties. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130; 1969, c. 445, s. 1; 1971, c. 780, s. 1; 1973, c. 474, s. 2; c. 476, s. 193; 1995, c. 490, s. 30(a).)

Cross References. — For section regarding useful life guidelines, see G.S. 115C-529. As to report on guaranteed energy savings contracts, see G.S. 143-64.17G.

State Government Reorganization. — The Local Government Commission was transferred to the Department of State Treasurer by G.S. 143A-33, enacted by Session Laws 1971, c. 864.

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-4. Executive committee; appeal.

(a) The State Auditor, the State Treasurer, the Secretary of State, and the Secretary of Revenue shall constitute the executive committee of the Local Government Commission. The executive committee is vested with all the powers of the Commission when it is not in session, except that the executive committee may not overrule, reverse, or disregard any action of the full Commission. Action of the executive committee shall be taken by resolution adopted by a majority of those present and voting. Any three members of the executive committee constitute a quorum. The chairman may call meetings of the executive committee at any time.

(b) Any member of the Commission or any person affected by an action of the executive committee may appeal to the full Commission by filing a request for review with the chairman within five days after the action is taken. Review of executive committee action by the full Commission shall be de novo. (1931, c. 60, ss. 8, 10; 1933, c. 31, s. 2; 1953, c. 675, s. 27; 1971, c. 780, s. 1; 1973, c. 476, s. 193.)

§ 159-5. Secretary and staff of the Commission.

The chairman shall appoint a secretary of the Commission, and may appoint such other deputies and assistants as may be necessary, who shall be responsible to the chairman through the secretary. The secretary and his deputies and assistants shall have and may exercise any power that the chairman himself may exercise. All actions taken by the secretary, including the signing of any documents and papers provided for in this Chapter, shall be effective as though the chairman himself had taken such action or signed such documents or papers. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130; 1969, c. 445, s. 1; 1971, c. 780, s. 1; 1983, c. 717, s. 91.)

§ 159-6. Fees of the Commission.

(a) The Commission may charge and collect fees for services rendered and for all expenses incurred by the Commission in connection with approving or denying an application for an issue of other than general obligation bonds or notes, participating in the sale, award or delivery of such issue or carrying out any other of its powers and duties with respect to such issue or the issuer thereof, pursuant to the laws of the State of North Carolina.

(b) The Commission shall establish rules and regulations concerning the setting and collection of such fees. In establishing the amount of or method of determining such fees, the Commission shall take into account, among other things, the scope of its statutory responsibilities and the nature and extent of its services for such issue or issuer or class thereof.

(c) Such fees collected by the Commission shall be incorporated into the budget of the State Treasurer and shall be expended for costs incurred by the Commission in carrying out its statutory responsibilities in the issuance of revenue bonds.

(d) Apart from the above fees, the Commission is authorized to receive reimbursement for all expenses incurred in the sale or issuance of general obligation bonds and notes by assessing and collecting fees.

(e) In addition to any other fees authorized by this section, the Commission may charge and collect fees for services rendered and expenses incurred in reviewing and processing petitions of counties or cities concerning use of local sales and use tax revenue in accordance with G.S. 105-487(c). (1981 (Reg. Sess., 1982), c. 1175; 1983, c. 908, s. 2.)

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

ARTICLE 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

§ 159-7. Short title; definitions; local acts superseded.

(a) This Article may be cited as "The Local Government Budget and Fiscal Control Act."

(b) The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning.

(1) "Budget" is a proposed plan for raising and spending money for specified programs, functions, activities or objectives during a fiscal year.

(2) "Budget ordinance" is the ordinance that levies taxes and appropriates revenues for specified purposes, functions, activities, or objectives during a fiscal year.

(3) "Budget year" is the fiscal year for which a budget is proposed or a budget ordinance is adopted.

(4) "Debt service" is the sum of money required to pay installments of principal and interest on bonds, notes, and other evidences of debt accruing within a fiscal year, to maintain sinking funds, and to pay installments on debt instruments issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General Statutes accruing within a fiscal year.

(5), (6) Repealed by Session Laws 1975, c. 514, s. 2.

(7) "Fiscal year" is the annual period for the compilation of fiscal operations, as prescribed in G.S. 159-8(b).

(8) "Fund" is a fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources, together with all related liabilities and residual equities or balances, and changes therein, for the purpose of carrying on specific activities or attaining certain

objectives in accordance with special regulations, restrictions, or limitations.

(9) Repealed by Session Laws 1975, c. 514, s. 2.

(10) "Public authority" is a municipal corporation (other than a unit of local government) that is not subject to the State Budget Act (Chapter 143C of the General Statutes) or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject to the State Budget Act, and (iii) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

(11) Repealed by Session Laws 1975, c. 514, s. 2.

(12) "Sinking fund" means a fund held for the retirement of term bonds.

(13) "Special district" is a unit of local government (other than a county, city, town, or incorporated village) that is created for the performance of limited governmental functions or for the operation of a particular utility or public service enterprises.

(14) "Taxes" do not include special assessments.

(15) "Unit," "unit of local government," or "local government" is a municipal corporation that is not subject to the State Budget Act (Chapter 143C of the General Statutes) and that has the power to levy taxes, including a consolidated city-county, as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

(16) "Vending facilities" has the same meaning as it does in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means.

(c) It is the intent of the General Assembly by enactment of this Article to prescribe for local governments and public authorities a uniform system of budget adoption and administration and fiscal control. To this end and except as otherwise provided in this Article, all provisions of general laws, city charters, and local acts in effect as of July 1, 1973 and in conflict with the provisions of Part 1 or Part 3 of this Article are repealed. No general law, city charter, or local act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of Part 1 or Part 3 of this Article unless it expressly so provides by specific reference to the appropriate section.

(d) Except as expressly provided herein, this Article does not apply to school administrative units. The adoption and administration of budgets for the public school system and the management of the fiscal affairs of school administrative units are governed by the School Budget and Fiscal Control Act, Chapter 115, Article 9. However, this Article and the School Budget and Fiscal Control Act shall be construed together to the end that the administration of the fiscal affairs of counties and school administrative units may be most effectively and efficiently administered. (1927, c. 146, ss. 1, 2; 1955, c. 724; 1971, c. 780, s. 1; 1973, c. 474, ss. 3, 4; 1975, c. 437, s. 12; c. 514, s. 2; 1981, c. 685, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 173; 1987, c. 282, ss. 30, 31; c. 796, s. 3(1); 1989, c. 756, s. 3; 1995, c. 461, s. 9; 2006-203, s. 125.)

Local Modification. — Scotland: 1979, c. 187; (As to Article 3) city of Northwest: 1993, c. 222, s. 3 (fiscal year 1993-94); (As to Article 3) town of Archer Lodge: 2009-466, s. 2; town of Arlington: 2001-16, s. 6(b) (for fiscal year 2001-2002); (As to Article 3 for fiscal year 2007-2008 only) town of Butner: 2007-269, s. 1.1; (As to Article 3) town of Cedar Point: 1987 (Reg. Sess., 1988), c. 1005; town of Dobbins Heights: 1983, c. 658; town of Duck: 2001-394, s. 1 (for fiscal years 2001-2002, 2002-2003); (As to Art. 3) town of Eastover: 2007-267, s. 1 (for fiscal year

2007-2008 and contingent on preclearance under s. 5 of the Voting Rights Act); (As to Article 3) town of Fairview: 2001-428, s. 2 (for fiscal year 2001-2002); town of Hampstead: 2007-329, s. 1 (for fiscal year 2007-2008); town of Jonesville: 2001-16, s. 6(b) (for fiscal year 2001-2002); town of Leland: 1989, c. 564, s. 3; town of Lewisville: (As to Article 3) 1991, c. 116 s. 1; town of Midland: 2000-91, s. 2 (for fiscal year 2000-01); (As to Article 3) town of Midway: 2006-37, s. 1; (As to Article 3) town of Millers Creek: 2001-45, s. 2 (for fiscal year 2000-2001); town of Mineral Springs: 1999-175, s. 1 (for fiscal years 1998-1999 and 1999-2000); town of Red Cross: 2002-56, s. 2 (for fiscal years 2001-2003); (As to Article 3) town of Rimertown: 1999-284, s. 2; (As to Articles 3 and 19) town of St. James: 1999-241, s. 1; (As to Article 3) town of Sandy Creek: 1987 (Reg. Sess., 1988), c. 1007, s. 3; (As to Article 3) town of Sandyfield: 1993 (Reg. Sess., 1994), c. 729, s. 3 (for fiscal year 1994-95); (As to Article 3) town of Santeetlah: 1987 (Reg. Sess., 1988), c. 1012; (As to Article 3) town of Sawmills: 1987, c. 648; town of Stokesdale: 1989, c. 488 s. 2; (As to Article 3) town of Swannanoa: 2009-467, s. 1; town of Whisett (As to Article 3): 1991, c. 684; (As to Article 3) village of Marvin: 1993 (Reg. Sess., 1994), c. 641, s. 2; (As to Article 3) village of Sneads Ferry: 2009-431, s. 1; (As to Article 3) village of St. Helena: 1987 (Reg. Sess., 1988), c. 942, s. 2; (As to Part 1 of Article 3) village of Wesley Chapel: 1998-43, s. 2 (for fiscal year 1998-99).

Cross References. — As to the Local Government Fiscal Information Act, see G.S. 120-30.41 through 120-30.48.

Editor's Note. — Chapter 115, Article 9, referred to in subsection (d) of this section, was repealed by Session Laws 1975, c. 437, s. 1. For present provisions covering the repealed article, see G.S. 115C-422 through 115C-452.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 125, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subdivision (b)(10), substituted "State Budget Act (Chapter 143C of the General Statutes)" for "Executive Budget Act (Article 1 of Chapter 143 of the General Statutes)" and "State Budget Act" for "Executive Budget Act"; in subdivision (b)(15), substituted "State Budget Act (Chapter 143C of the General Statutes)" for "Executive Budget Act (Article 1 of Chapter 143 of the General Statutes)"; and, substituted "G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means" for "G.S. 143-12.1" in subdivision (b)(16).

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

For survey of 1978 constitutional law, see 57 N.C.L. Rev. 958 (1979).

CASE NOTES

Applied in Holt v. Albemarle Reg'l Health Servs. Bd., 188 N.C. App. 111, 655 S.E.2d 729, 2008 N.C. App. LEXIS 95 (2008).

Cited in Hubbard v. County of Cumberland, 143 N.C. App. 149, 544 S.E.2d 587, 2001 N.C. App. LEXIS 235 (2001).

OPINIONS OF ATTORNEY GENERAL

A Single-County Mental Health Program Is a Public Authority. — See opinion of Attorney General to Mr. Harlan E. Boyles, Local Government Commission, 44 N.C.A.G. 185 (1974).

District health department has authority to operate public transit on fare paying basis, without establishment of a Transportation Authority. Section 62-260(a)(1) specifically exempts political subdivisions of this State from regulation by the North Carolina Utilities Commission. See opinion of Attorney General to Mr. David D. King, Director of Division of Public Transportation, North Carolina Department of Transportation, 55 N.C.A.G. 76 (1986).

§ 159-8. Annual balanced budget ordinance.

(a) Each local government and public authority shall operate under an annual balanced budget ordinance adopted and administered in accordance with this Article. A budget ordinance is balanced when the sum of estimated net revenues and appropriated fund balances is equal to appropriations. Appropriated fund balance in any fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year. It is the intent of this Article that, except for moneys expended pursuant to a project ordinance or accounted for in an intragovernmental service fund or a trust and agency fund excluded from the budget ordinance under G.S. 159-13(a), all moneys received and expended by a local government or public authority should be included in the budget ordinance. Therefore, notwithstanding any other provision of law, no local government or public authority may expend any moneys, regardless of their source (including moneys derived from bond proceeds, federal, state, or private grants or loans, or special assessments), except in accordance with a budget ordinance or project ordinance adopted under this Article or through an intragovernmental service fund or trust and agency fund properly excluded from the budget ordinance.

(b) The budget ordinance of a unit of local government shall cover a fiscal year beginning July 1 and ending June 30. The budget ordinance of a public authority shall cover a fiscal year beginning July 1 and ending June 30, except that the Local Government Commission, if it determines that a different fiscal year would facilitate the authority's financial operations, may enter an order permitting an authority to operate under a fiscal year other than from July 1 to June 30. If the Commission does permit an authority to operate under an altered fiscal year, the Commission's order shall also modify the budget calendar set forth in G.S. 159-10 through 159-13 so as to provide a new budget calendar for the altered fiscal year that will clearly enable the authority to comply with the intent of this Part. (1971, c. 780, s. 1; 1973, c. 474, s. 5; 1975, c. 514, s. 3; 1979, c. 402, s. 1; 1981, c. 685, s. 2.)

CASE NOTES

Effect of Town Council Appropriating Funds Outside Its Authority. — Where a town's resolution appropriating a certain percentage of its alcoholic beverage control revenue to county school board was outside the authority of the town council, the town council could not be estopped from terminating the unauthorized payments without notice. Watauga County Bd. of Educ. v. Town of Boone, 106 N.C. App. 270, 416 S.E.2d 411 (1992).

§ 159-9. Budget officer.

Each local government and public authority shall appoint a budget officer to serve at the will of the governing board. In counties or cities having the manager form of government, the county or city manager shall be the budget officer. Counties not having the manager form of government may impose the duties of budget officer upon the county finance officer or any other county officer or employee except the sheriff, or in counties having a population of more than 7,500, the register of deeds. Cities not having the manager form of government may impose the duties of budget officer on any city officer or employee, including the mayor if he agrees to undertake them. A public authority or special district may impose the duties of budget officer on the chairman or any member of its governing board or any other officer or employee. (1971, c. 780, s. 1; 1973, c. 474, s. 6.)

§ 159-10. Budget requests.

Before April 30 of each fiscal year (or an earlier date fixed by the budget officer), each department head shall transmit to the budget officer the budget requests and revenue estimates for his department for the budget year. The budget request shall be an estimate of the financial requirements of the department for the budget year, and shall be made in such form and detail, with such supporting information and justifications, as the budget officer may prescribe. The revenue estimate shall be an estimate of all revenues to be realized by department operations during the budget year. At the same time, the finance officer or department heads shall transmit to the budget officer a complete statement of the amount expended for each category of expenditure in the budget ordinance of the immediately preceding fiscal year, a complete statement of the amount estimated to be expended for each category of expenditure in the current year's budget ordinance by the end of the current fiscal year, the amount realized from each source of revenue during the immediately preceding fiscal year, and the amount estimated to be realized from each source of revenue by the end of the current fiscal year, and such other information and data on the fiscal operations of the local government or public authority as the budget officer may request. (1927, c. 146, s. 5; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

CASE NOTES

Cited in In re Wesleyan Educ. Center, 68 N.C. App. 742, 316 S.E.2d 87 (1984); Hubbard v. County of Cumberland, 143 N.C. App. 149, 544 S.E.2d 587, 2001 N.C. App. LEXIS 235 (2001).

§ 159-11. Preparation and submission of budget and budget message.

(a) Upon receipt of the budget requests and revenue estimates and the financial information supplied by the finance officer and department heads, the budget officer shall prepare a budget for consideration by the governing board in such form and detail as may have been prescribed by the budget officer or the governing board. The budget shall comply in all respects with the limitations imposed by G.S. 159-13(b), and unless the governing board shall have authorized or requested submission of an unbalanced budget as provided in subsection (c) of this section, the budget shall be balanced.

(b) The budget, together with a budget message, shall be submitted to the governing board not later than June 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the governmental goals fixed by the budget for the budget year, should explain important features of the activities anticipated in the budget, should set forth the reasons for stated changes from the previous year in program goals, programs, and appropriation levels, and should explain any major changes in fiscal policy.

(c) The governing board may authorize or request the budget officer to submit a budget containing recommended appropriations in excess of estimated revenues. If this is done, the budget officer shall present the appropriations recommendations in a manner that will reveal for the governing board the nature of the activities supported by the expenditures that exceed estimated revenues.

(d) The budget officer shall include in the budget a proposed financial plan for each intragovernmental service fund, as required by G.S. 159-13.1, and information concerning capital projects and grant projects authorized or to be authorized by project ordinances, as required by G.S. 159-13.2.

(e) In each year in which a general reappraisal of real property has been conducted, the budget officer shall include in the budget, for comparison purposes, a statement of the revenue-neutral property tax rate for the budget. The revenue-neutral property tax rate is the rate that is estimated to produce revenue for the next fiscal year equal to the revenue that would have been produced for the next fiscal year by the current tax rate if no reappraisal had occurred. To calculate the revenue-neutral tax rate, the budget officer shall first determine a rate that would produce revenues equal to those produced for the current fiscal year and then increase the rate by a growth factor equal to the average annual percentage increase in the tax base due to improvements since the last general reappraisal. This growth factor represents the expected percentage increase in the value of the tax base due to improvements during the next fiscal year. The budget officer shall further adjust the rate to account for any annexation, deannexation, merger, or similar event. (1927, c. 146, s. 6; 1955, cc. 698, 724; 1969, c. 976, s. 1; 1971, c. 780, s. 1; 1975, c. 514, s. 4; 1979, c. 402, s. 2; 2003-264, s. 1.)

§ 159-12. Filing and publication of the budget; budget hearings.

(a) On the same day that he submits the budget to the governing board, the budget officer shall file a copy of it in the office of the clerk to the board where it shall remain available for public inspection until the budget ordinance is adopted. The clerk shall make a copy of the budget available to all news media in the county. He shall also publish a statement that the budget has been submitted to the governing board, and is available for public inspection in the office of the clerk to the board. The statement shall also give notice of the time and place of the budget hearing required by subsection (b) of this section.

(b) Before adopting the budget ordinance, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear. (1927, c. 146, s. 7; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

§ 159-13. The budget ordinance; form, adoption, limitations, tax levy, filing.

(a) Not earlier than 10 days after the day the budget is presented to the board and not later than July 1, the governing board shall adopt a budget ordinance making appropriations and levying taxes for the budget year in such sums as the board may consider sufficient and proper, whether greater or less than the sums recommended in the budget. The budget ordinance shall authorize all financial transactions of the local government or public authority except

(1) Those authorized by a project ordinance,
(2) Those accounted for in an intragovernmental service fund for which a financial plan is prepared and approved, and
(3) Those accounted for in a trust or agency fund established to account for moneys held by the local government or public authority as an agent or common-law trustee or to account for a retirement, pension, or similar employee benefit system.

The budget ordinance may be in any form that the board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source.

(b) The following directions and limitations shall bind the governing board in adopting the budget ordinance:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.
(2) The full amount of any deficit in each fund shall be appropriated.
(3) A contingency appropriation shall not exceed five percent (5%) of the total of all other appropriations in the same fund, except there is no limit on contingency appropriations for public assistance programs

required by Chapter 108A. Each expenditure to be charged against a contingency appropriation shall be authorized by resolution of the governing board, which resolution shall be deemed an amendment to the budget ordinance setting up an appropriation for the object of expenditure authorized. The governing board may authorize the budget officer to authorize expenditures from contingency appropriations subject to such limitations and procedures as it may prescribe. Any such expenditures shall be reported to the board at its next regular meeting and recorded in the minutes.

(4) No appropriation may be made that would require the levy of a tax in excess of any constitutional or statutory limitation, or expenditures of revenues for purposes not permitted by law.

(5) The total of all appropriations for purposes which require voter approval for expenditure of property tax funds under Article V, Sec. 2(5), of the Constitution shall not exceed the total of all estimated revenues other than the property tax (not including such revenues required by law to be spent for specific purposes) and property taxes levied for such purposes pursuant to a vote of the people.

(6) The estimated percentage of collection of property taxes shall not be greater than the percentage of the levy actually realized in cash as of June 30 during the preceding fiscal year. For purposes of the calculation under this subdivision only, the levy for the registered motor vehicle tax under Article 22A of Chapter 105 of the General Statutes shall be based on the nine-month period ending March 31 of the preceding fiscal year, and the collections realized in cash with respect to this levy shall be based on the 12-month period ending June 30 of the preceding fiscal year.

(7) Estimated revenues shall include only those revenues reasonably expected to be realized in the budget year, including amounts to be realized from collections of taxes levied in prior fiscal years.

(8) Repealed by Session Laws 1975, c. 514, s. 6.

(9) Appropriations made to a school administrative unit by a county may not be reduced after the budget ordinance is adopted, unless the board of education of the administrative unit agrees by resolution to a reduction, or unless a general reduction in county expenditures is required because of prevailing economic conditions. Before a board of county commissioners may reduce appropriations to a school administrative unit as part of a general reduction in county expenditures required because of prevailing economic conditions, it must do all of the following:

a. Hold a public meeting at which the school board is given an opportunity to present information on the impact of the reduction.

b. Take a public vote on the decision to reduce appropriations to a school administrative unit.

(10) Appropriations made to another fund from a fund established to account for property taxes levied pursuant to a vote of the people may not exceed the amount of revenues other than the property tax available to the fund, except for appropriations from such a fund to an appropriate account in a capital reserve fund.

(11) Repealed by Session Laws 1975, c. 514, s. 6.

(12) Repealed by Session Laws 1981, c. 685, s. 4.

(13) No appropriation of the proceeds of a bond issue may be made from the capital project fund account established to account for the proceeds of the bond issue except (i) for the purpose for which the bonds were issued, (ii) to the appropriate debt service fund, or (iii) to an

account within a capital reserve fund consistent with the purposes for which the bonds were issued. The total of other appropriations made to another fund from such a capital project fund account may not exceed the amount of revenues other than bond proceeds available to the account.

(14) No appropriation may be made from a utility or public service enterprise fund to any other fund than the appropriate debt service fund unless the total of all other appropriations in the fund equal or exceed the amount that will be required during the fiscal year, as shown by the budget ordinance, to meet operating expenses, capital outlay, and debt service on outstanding utility or enterprise bonds or notes.

(15) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the governing board the right to limit or not to make such appropriation.

(16) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

(17) No appropriations may be made from a county reappraisal reserve fund except for the purposes for which the fund was established.

(18) No appropriation may be made from a service district fund to any other fund except (i) to the appropriate debt service fund or (ii) to an appropriate account in a capital reserve fund unless the district has been abolished.

(19) No appropriation of the proceeds of a debt instrument may be made from the capital project fund account established to account for such proceeds except for the purpose for which such debt instrument was issued. The total of other appropriations made to another fund from such a capital project fund account may not exceed the amount of revenues other than debt instrument proceeds available to the account.

Notwithstanding subdivisions (9), (10), (12), (14), (17), or (18) of this subsection, any fund may contain an appropriation to another fund to cover the cost of (i) levying and collecting the taxes and other revenues allocated to the fund, and (ii) building maintenance and other general overhead and administrative expenses properly allocable to functions or activities financed from the fund.

(c) The budget ordinance of a local government shall levy taxes on property at rates that will produce the revenue necessary to balance appropriations and revenues, after taking into account the estimated percentage of the levy that will not be collected during the fiscal year. The budget ordinance of a public authority shall be balanced so that appropriations do not exceed revenues.

(d) The budget ordinance shall be entered in the minutes of the governing board and within five days after adoption copies thereof shall be filed with the finance officer, the budget officer, and the clerk to the governing board. (1927, c. 146, s. 8; 1955, cc. 698, 724; 1969, c. 976, s. 2; 1971, c. 780, s. 1; 1973, c. 474, ss. 7-9; c. 489, s. 3; 1975, c. 437, ss. 13, 14; c. 514, ss. 5, 6; 1981, c. 685, ss. 3-5, 10; 1987, c. 796, s. 3(2); 1989, c. 756, s. 2; 1999-261, s. 1; 2000-140, s. 80; 2002-126, s. 6.7(a).)

Editor's Note. — Subdivision (b)(12), referred to in the last paragraph of subsection (b) of this section, was repealed by Session Laws 1981, c. 685, s. 4.

CASE NOTES

The statutory limitation on the legal right to transfer or allocate funds from one project to another is exceeded only where a board used funds derived from the sale of school bonds for nonschool purposes. Since in the instant case all expenditures were for school purposes, the individual defendants, as members of the Board of Education or Board of Commissioners, were not acting outside the scope of their duties. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

Applied in Hughey v. Cloninger, 37 N.C. App. 107, 245 S.E.2d 543 (1978).

Cited in In re Wesleyan Educ. Center, 68 N.C. App. 742, 316 S.E.2d 87 (1984); Hubbard v. County of Cumberland, 143 N.C. App. 149, 544 S.E.2d 587, 2001 N.C. App. LEXIS 235 (2001).

§ 159-13.1. Financial plan for intragovernmental service funds.

(a) If a local government or public authority establishes and operates one or more intragovernmental service funds, it need not include such a fund in its budget ordinance. However, at the same time it adopts the budget ordinance, the governing board shall approve a balanced financial plan for each intragovernmental service fund. A financial plan is balanced when estimated expenditures do not exceed estimated revenues.

(b) The budget officer shall include in the budget he submits to the board, pursuant to G.S. 159-11, a proposed financial plan for each intragovernmental service fund to be operated during the budget year by the local government or public authority. The proposed financial plan shall be in such form and detail as prescribed by the budget officer or governing board.

(c) The approved financial plan shall be entered in the minutes of the governing board, as shall each amendment to the plan approved by the board. Within five days after approval, copies of the plan and copies of each amendment thereto shall be filed with the finance officer, the budget officer, and the clerk to the governing board.

(d) Any change in a financial plan must be approved by the governing board. (1975, c. 514, s. 7.)

§ 159-13.2. Project ordinances.

(a) Definitions. —

(1) In this section "capital project" means a project financed in whole or in part by the proceeds of bonds or notes or debt instruments or a project involving the construction or acquisition of a capital asset.

(2) "Grant project" means a project financed in whole or in part by revenues received from the federal and/or State government for operating or capital purposes as defined by the grant contract.

(b) Alternative Budget Methods. — A local government or public authority may, in its discretion, authorize and budget for a capital project or a grant project either in its annual budget ordinance or in a project ordinance adopted pursuant to this section. A project ordinance authorizes all appropriations necessary for the completion of the project and neither it nor any part of it need be readopted in any subsequent fiscal year. Neither a bond order nor an order authorizing any debt instrument constitutes a project ordinance.

(c) Adoption of Project Ordinances. — If a local government or public authority intends to authorize a capital project or a grant project by a project ordinance, it shall not begin the project until it has adopted a balanced project ordinance for the life of the project. A project ordinance is balanced when revenues estimated to be available for the project equal appropriations for the project. A project ordinance shall clearly identify the project and authorize its undertaking, identify the revenues that will finance the project, and make the appropriations necessary to complete the project.

(d) Project Ordinance Filed. — Each project ordinance shall be entered in the minutes of the governing board. Within five days after adoption, copies of the ordinance shall be filed with the finance officer, the budget officer, and the clerk to the governing board.

(e) Amendment. — A project ordinance may be amended in any manner so long as it continues to fulfill all requirements of this section.

(f) Inclusion of Project Information in Budget. — Each year the budget officer shall include in the budget information in such detail as he or the governing board may require concerning each grant project or capital project (i) expected to be authorized by project ordinance during the budget year and (ii) authorized by previously adopted project ordinances which will have appropriations available for expenditure during the budget year. (1975, c. 514, s. 8; 1979, c. 402, s. 3; 1987, c. 796, s. 3(3), 3(4).)

§ 159-14. Trust and agency funds; budgets of special districts.

(a) Budgets of Special Districts. — If the tax-levying power of a special district is by law exercised on its behalf by a county or city, and if the county or city governing board is vested by law with discretion as to what rate of tax it will levy on behalf of the special district, the governing board of the special district shall transmit to the governing board of the county or city on or before June 1 a request to levy taxes on its behalf for the budget year at a stated rate. The county or city governing board shall then determine what rate of tax it will approve, and shall so notify the district governing board not later than June 15. Failure of the county or city governing board to act on the district's request on or before June 15 and to so notify the district governing board by that date shall be deemed approval of the full rate requested by the district governing board. Upon receiving notification from the county or city governing board as to what rate of tax will be approved or after June 15 if no such notification is received, the district governing board shall complete its budget deliberations and shall adopt its budget ordinance.

If the tax-levying power of a special district is by law exercised on its behalf by a county or city, and if the county or city governing board has no discretion as to what rate of tax it will levy on behalf of the special district, the governing board of the district shall notify the city or county by June 15 of the rate of tax it wishes to have levied. If the district does not notify the county or city governing board on or before June 15 of the rate of tax it wishes to have levied, the county or city is not required to levy a tax for the district for the fiscal year.

If the taxes of a special district are collected on its behalf by a county or city, and if the county or city governing board has no power to approve the district tax levy, the district governing board shall adopt its budget ordinance not later than July 1 and on or before July 15 shall notify the county or city collecting its taxes of the rate of tax it has levied. If the district does not notify the county or city governing board on or before July 15 of the rate of tax it has levied, the county or city is not required to collect the district's taxes for the fiscal year.

(b) Transfers from Certain Trust and Agency Funds. — Except for transfers to the appropriate special district or public authority, a unit of local government may not transfer moneys from a fund established to account for taxes collected on behalf of a special district or from a fund established to account for special assessments collected on behalf of a public authority unless the special district or public authority has ceased to function. (1971, c. 780, s. 1; 1973, c. 474, ss. 10, 11; 1975, c. 514, s. 9.)

§ 159-15. Amendments to the budget ordinance.

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives revenues that are substantially more or less than the amount anticipated, the governing body may, before January 1 following adoption of the budget, amend the budget ordinance to reduce or increase the property tax levy to account for the unanticipated increase or reduction in revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes. (1927, c. 146, s. 13; 1955, cc. 698, 724; 1971, c. 780, s. 1; 1973, c. 474, s. 12; 2001-308, s. 3; 2002-126, s. 30A.2.)

Editor's Note. — Session Laws 2001-308, s. 3, effective July 1, 2001, and pursuant to s. 4 of the act expiring October 1, 2001, read: "Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

"If after July 1 the local government receives additional and unanticipated revenues, the governing body may amend the budget ordinance to reduce the property tax levy to account for the unanticipated revenues.

"The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes."

The section is set out above as it read prior to the amendment by Session Laws 2001-308, s. 3.

§ 159-16. Interim budget.

In case the adoption of the budget ordinance is delayed until after July 1, the governing board shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local government or public authority for the interval between the beginning of the budget year and the adoption of the budget ordinance. Interim appropriations so made shall be charged to the proper appropriations in the budget ordinance. (1927, c. 146, s. 14; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

§ 159-17. Ordinance procedures not applicable to budget or project ordinance adoption.

Notwithstanding the provisions of any city charter, general law, or local act:

(1) Any action with respect to the adoption or amendment of the budget ordinance or any project ordinance may be taken at any regular or special meeting of the governing board by a simple majority of those present and voting, a quorum being present;

(2) No action taken with respect to the adoption or amendment of the budget ordinance or any project ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Article;

(3) The adoption and amendment of the budget ordinance or any project ordinance and the levy of taxes in the budget ordinance are not subject to the provisions of any city charter or local act concerning initiative or referendum.

During the period beginning with the submission of the budget to the governing board and ending with the adoption of the budget ordinance, the governing board may hold any special meetings that may be necessary to complete its work on the budget ordinance. Except for the notice requirements of G.S. 143-318.12, which continue to apply, no provision of law concerning the call of special meetings applies during that period so long as (i) each member of the board has actual notice of each special meeting called for the purpose of considering the budget, and (ii) no business other than consideration of the budget is taken up. This section does not allow the holding of closed meetings or executive sessions by any governing board otherwise prohibited by law from holding such a meeting or session, and may not be construed to do so.

No general law, city charter, or local act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this section unless it expressly so provides by specific reference to this section. (1971, c. 780, s. 1; 1973, c. 474, s. 13; 1979, c. 402, ss. 4, 5; c. 655, s. 2.)

Local Modification. — Wilmington/New Hanover County Consolidated Government: 1987, c. 643; city of Wilmington: 1983, c. 367.

§ 159-17.1. Vending facilities.

Moneys received by a public authority, special district, or unit of local government on account of operation of vending facilities shall be deposited, budgeted, appropriated, and expended in accordance with the provisions of this Article. (1983 (Reg. Sess., 1984), c. 1034, s. 174.)

Part 2. Capital Reserve Funds.

§ 159-18. Capital reserve funds.

Any local government or public authority may establish and maintain a capital reserve fund for any purposes for which it may issue bonds. A capital reserve fund shall be established by resolution or ordinance of the governing board which shall state (i) the purposes for which the fund is created, (ii) the approximate periods of time during which the moneys are to be accumulated for each purpose, (iii) the approximate amounts to be accumulated for each purpose, and (iv) the sources from which moneys for each purpose will be derived. (1943, c. 593, ss. 3, 5; 1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1.)

Local Modification. — Guilford: 2007-255, s. 2; Mecklenburg: 2007-255, s. 2; Wake: 2007-255, s. 2; city of Greensboro: 2007-255, s. 2; city of Raleigh: 2007-255, s. 2.

Legal Periodicals. — For comment on former Article 10A of Chapter 153, corresponding to this Part, see 21 N.C.L. Rev. 357 (1943).

For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

CASE NOTES

Constitutionality of Former Statute. — Former G.S. 115-80.1, authorizing a county board of commissioners to levy an ad valorem tax for a county school capital reserve fund, to be used for the purpose of anticipating school capital outlays, was a valid exercise of legislative authority; the creation of such a fund is for a "necessary expense" within the meaning of N.C. Const., Art. V, § 4(2), and does not require a vote of the people. Yoder v. Board of Comm'rs, 7 N.C. App. 712, 173 S.E.2d 529 (1970).

Without the establishment of a capital reserve fund, the requirements of former Article 10A of Chapter 153, corresponding to this Part, never came into play. Davis v. Iredell County, 9 N.C. App. 381, 176 S.E.2d 361 (1970).

Cited in South Shell Inv. v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988).

§ 159-19. Amendments.

The resolution or ordinance may be amended from time to time in the same manner in which it was adopted. Amendments may, among other provisions, authorize the use of moneys accumulated or to be accumulated in the fund for capital outlay purposes not originally stated. (1943, c. 593, s. 7; 1967, c. 1189; 1971, c. 780, s. 1; 1973, c. 474, s. 14.)

§ 159-20. Funding capital reserve funds.

Capital reserve funds may be funded by appropriations from any other fund consistent with the limitations imposed in G.S. 159-13(b). When moneys or investment securities, the use of which is restricted by law, come into a capital reserve fund, the identity of such moneys or investment securities shall be maintained by appropriate accounting entries. (1943, c. 593, s. 4; 1945, c. 464, s. 2; 1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1; 1973, c. 474, s. 15.)

§ 159-21. Investment.

The cash balances, in whole or in part, of capital reserve funds may be deposited at interest or invested as provided by G.S. 159-30. (1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1.)

§ 159-22. Withdrawals.

Withdrawals from a capital reserve fund may be authorized by resolution or ordinance of the governing board of the local government or public authority. No withdrawal may be authorized for any purpose not specified in the resolution or ordinance establishing the fund or in a resolution or ordinance amending it. The withdrawal resolution or ordinance shall authorize an appropriation from the capital reserve fund to an appropriate appropriation in one of the funds maintained pursuant to G.S. 159-13(a). No withdrawal may be made which would result in an appropriation for purposes for which an adequate balance of eligible moneys or investment securities is not then available in the capital reserve fund. (1943, c. 593, ss. 11, 16; 1945, c. 464, s. 2; 1949, c. 196, s. 3; 1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1; 1973, c. 474, s. 16.)

§ 159-23: Reserved for future codification purposes.

Part 3. Fiscal Control.

§ 159-24. Finance officer.

Each local government and public authority shall appoint a finance officer to hold office at the pleasure of the appointing board or official. The finance officer may be entitled "accountant," "treasurer," "finance director," "finance officer," or any other reasonably descriptive title. The duties of the finance officer may be imposed on the budget officer or any other officer or employee on whom the duties of budget officer may be imposed. (1971, c. 780, s. 1; 1973, c. 474, s. 17.)

Local Modification. — (As to Part 3) Durham: 1993 (Reg. Sess., 1994), c. 666, s. 1; (As to Part 3) city of Durham: 1993 (Reg. Sess., 1994), c. 616, s. 1.

Cross References. — As to the Local Government Fiscal Information Act, see G.S. 120-30.41 through 120-30.48.

§ 159-25. Duties of finance officer; dual signatures on checks; internal control procedures subject to Commission regulation.

(a) The finance officer shall have the following powers and duties:

(1) He shall keep the accounts of the local government or public authority in accordance with generally accepted principles of governmental accounting and the rules and regulations of the Commission.

(2) He shall disburse all funds of the local government or public authority in strict compliance with this Chapter, the budget ordinance, and each project ordinance and shall preaudit obligations and disbursements as required by this Chapter.

(3) As often as may be requested by the governing board or the manager, he shall prepare and file with the board a statement of the financial condition of the local government or public authority.

(4) He shall receive and deposit all moneys accruing to the local government or public authority, or supervise the receipt and deposit of money by other duly authorized officers or employees.

(5) He shall maintain all records concerning the bonded debt and other obligations of the local government or public authority, determine the amount of money that will be required for debt service or the payment of other obligations during each fiscal year, and maintain all sinking funds.

(6) He shall supervise the investment of idle funds of the local government or public authority.

(7) He shall perform such other duties as may be assigned to him by law, by the manager, budget officer, or governing board, or by rules and regulations of the Commission.

All references in other portions of the General Statutes, local acts, or city charters to county, city, special district, or public authority accountants, treasurers, or other officials performing any of the duties conferred by this section on the finance officer shall be deemed to refer to the finance officer.

(b) Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer and countersigned by another official of the local government or public authority designated for this purpose by the governing board. If the board makes no other designation, the chairman of the board or chief executive officer of the local government or public authority shall countersign these checks and drafts. The governing board of a unit or authority may waive the requirements of this subsection if the board determines that the internal control procedures of the unit or authority will be satisfactory in the absence of dual signatures.

(c) The Local Government Commission has authority to issue rules and regulations having the force of law governing procedures for the receipt, deposit, investment, transfer, and disbursement of money and other assets by units of local government and public authorities, may inquire into and investigate the internal control procedures of a local government or public authority, and may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements or mishandling of public moneys. (1971, c. 780, s. 1; 1973, c. 474, ss. 18-20; 1975, c. 514, s. 10; 1987, c. 796, s. 3(5).)

CASE NOTES

Detailed Accounts to Be Kept. — Under the provisions of the former County Fiscal Control Act, it was the duty of a county accountant to keep detailed accounts of appropriations and disbursements of county funds and to certify on each warrant or order drawn against the county that provision had been made for its payment and appropriation duly made or a bond or note duly authorized as required by the act. Avery County v. Braswell, 215 N.C. 270, 1 S.E.2d 864 (1939).

Certification of Vouchers. — The duties of a county accountant in certifying county vouchers under the former County Fiscal Control Act were special in character and were in addition to and not in substitution for the duties and functions of other county officers, and even if it were conceded that the signing of the voucher by the chairman of the county board was malfeasance, the accountant and his surety could not avoid liability on the ground that some other officer was guilty of negligence or malfeasance. Avery County v. Braswell, 215 N.C. 270, 1 S.E.2d 864 (1939).

Summary judgment was inappropriate on plaintiffs' claim that defendant county failed to comply with its duties under the budget ordinance where it was unclear from the record whether the board continued to approve and appropriate in their budget ordinance each year the longevity pay plan originally proposed by the sheriff and adopted by the county in 1980. Hubbard v. County of Cumberland, 143 N.C. App. 149, 544 S.E.2d 587, 2001 N.C. App. LEXIS 235 (2001), cert. denied, 354 N.C. 69, 553 S.E.2d 40 (2001).

Submission of Charges to Jury. — Where the evidence showed that expenditures contained both valid and invalid items, the court properly submitted the charges of approving an invalid claim and failure to preaudit to the jury. State v. Davis, 48 N.C. App. 526, 269 S.E.2d 291, cert. denied and appeal dismissed, 301 N.C. 237, 283 S.E.2d 134 (1980).

County Not Entitled to Sovereign Immunity. — Defendant county has a statutory duty to provide the salaries to which it has committed itself in the enacted budget ordinance and may not, after having availed itself of the services provided by the law enforcement officers, claim sovereign immunity as a defense to its statutory and contractual commitment. Hubbard v. County of Cumberland, 143 N.C. App. 149, 544 S.E.2d 587, 2001 N.C. App. LEXIS 235 (2001), cert. denied, 354 N.C. 69, 553 S.E.2d 40 (2001).

Applied in State v. Davis, 45 N.C. App. 72, 262 S.E.2d 827 (1980).

§ 159-26. Accounting system.

(a) System Required. — Each local government or public authority shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget ordinance and each project ordinance as originally adopted and subsequently amended.

(b) Funds Required. — Each local government or public authority shall establish and maintain in its accounting system such of the following funds and ledgers as are applicable to it. The generic meaning of each type of fund or ledger listed below is that fixed by generally accepted accounting principles.

(1) General fund.

(2) Special Revenue Funds. — One or more separate funds shall be established for each of the following classes: (i) functions or activities financed in whole or in part by property taxes voted by the people, (ii) service districts established pursuant to the Municipal or County Service District Acts, and (iii) grant project ordinances. If more than one function is accounted for in a voted tax fund, or more than one district in a service district fund, or more than one grant project in a project fund, separate accounts shall be established in the appropriate fund for each function, district, or project.

(3) Debt service funds.

(4) A Fund for Each Utility or Enterprise Owned or Operated by the Unit or Public Authority. — If a water system and a sanitary sewerage system are operated as a consolidated system, one fund may be established and maintained for the consolidated system.
(5) Internal service funds.
(6) Capital Project Funds. — Such a fund shall be established to account for the proceeds of each bond order or order authorizing any debt instrument and for all other resources used for the capital projects financed by the bond or debt instrument proceeds. A unit or public authority may account for two or more bond orders or orders authorizing any debt instrument in one capital projects fund, but the proceeds of each such order and the other revenues associated with that order shall be separately accounted for in the fund.
(7) Trust and agency funds, including a fund for each special district, public authority, or school administrative unit whose taxes or special assessments are collected by the unit.
(8) A ledger or group of accounts in which to record the details relating to the general fixed assets of the unit or public authority.
(9) A ledger or group of accounts in which to record the details relating to the general obligation bonds and notes and other long-term obligations of the unit.

In addition, each unit or public authority shall establish and maintain any other funds required by other statutes or by State or federal regulations.

(c) Basis of Accounting. — Except as otherwise provided by regulation of the Commission, local governments and public authorities shall use the modified accrual basis of accounting in recording transactions.

(d) Encumbrance Systems. — Except as otherwise provided in this subsection, no local government or public authority is required to record or show encumbrances in its accounting system. Each city or town with a population over 10,000 and each county with a population over 50,000 shall maintain an accounting system that records and shows the encumbrances outstanding against each category of expenditure appropriated in its budget ordinance. Any other local government or any public authority may record and show encumbrances in its accounting system. In determining a unit's population, the most recent federal decennial census shall be used.

(e) Commission Regulations. — The Commission may prescribe rules and regulations having the force of law as to:
(1) Features of accounting systems to be maintained by local governments and public authorities.
(2) Bases of accounting, including identifying in detail the characteristics of a modified accrual basis, identifying what revenues are susceptible to accrual, and permitting or requiring use of a basis other than modified accrual in a fund that does not account for the receipt of a tax.
(3) Definitions of terms not clearly defined in this Article.

The Commission may vary these rules and regulations according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. (1971, c. 780, s. 1; 1975, c. 514, ss. 11, 16; 1979, c. 402, s. 6; 1981, c. 685, ss. 6, 7; 1987, c. 796, s. 3(6).)

§ 159-27. Distribution of tax collections among funds according to levy.

(a) The finance officer shall distribute property tax collections among the appropriate funds, according to the budget ordinance, at least monthly.

(b) Taxes collected during the current fiscal year, that were levied in any one of the two immediately preceding fiscal years, shall be distributed to the appropriate funds according to the levy of the fiscal year in which they were levied. If any fund for which such taxes were levied is not being maintained in the current fiscal year, the proportionate share of the tax that would have been distributed to the discontinued fund shall be allocated (i) to the fund from which the activity or function for which the tax was levied is then being financed, or (ii) to the general fund if the activity or function for which the tax was levied is no longer being performed.

(c) Taxes collected during the current fiscal year, that were levied in any prior fiscal year other than one of the two immediately preceding fiscal years, may be distributed in the discretion of the governing board either (i) to the general fund, or (ii) in accordance with subsection (b) of this section. This subsection shall not repeal any portion of a local act or city charter inconsistent herewith and in effect on July 1, 1973.

(d) This section applies to taxes levied by a unit of local government on behalf of another unit, including school administrative units. (1971, c. 780, s. 1; 1973, c. 474, s. 21; 1975, c. 437, s. 15.)

§ 159-27.1. Use of revenue bond project reimbursements; restrictions.

The finance officer of a unit shall deposit any funds received by the unit as a reimbursement of a loan or advance made by the unit pursuant to G.S. 159-83(a)(8a) in the fund from which the unit originally derived the funds to make the loan or advance.

If the funds originally loaned or advanced were proceeds of a bond issue, any funds received as reimbursement shall be applied as required by this section. The funds shall be applied as provided in the instrument securing payment of the bond issue if the instrument contains applicable provisions. Otherwise, the funds shall be applied to either (i) the same general purposes as those for which the bond issue was authorized, or (ii) payment of debt service on the bond issue, including principal, interest, and premium, if any, upon redemption, or payment of the purchase price of bonds for retirement at not more than their face value and accrued interest. After all the bonds of the issue have been paid or satisfied in full, any funds received as reimbursement shall be deposited in the general fund of the unit and may be used for any general fund purpose. (1991, c. 508, s. 3; c. 761, s. 29.)

§ 159-28. Budgetary accounting for appropriations.

(a) Incurring Obligations. — No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project or a grant project authorized by a project ordinance unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the governing board, shall take substantially the following form:

> "This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

____
(Signature of finance officer)."

Certificates in the form prescribed by G.S. 153-130 or 160-411 as those sections read on June 30, 1973, or by G.S. 159-28(b) as that section read on June 30, 1975, are sufficient until supplies of forms in existence on June 30, 1975, are exhausted.

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

(b) Disbursements. — When a bill, invoice, or other claim against a local government or public authority is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget ordinance or a capital project or a grant project authorized by a project ordinance, the finance officer may approve the claim only if

(1) He determines the amount to be payable and
(2) The budget ordinance or a project ordinance includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

The finance officer may approve a bill, invoice, or other claim requiring disbursement from an intragovernmental service fund or trust or agency fund not included in the budget ordinance, only if the amount claimed is determined to be payable. A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (c) of this section, by the governing board. The finance officer shall establish procedures to assure compliance with this subsection.

(c) Governing Board Approval of Bills, Invoices, or Claims. — The governing board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local government or public authority that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget ordinance or in a project ordinance, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The governing board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(d) Payment. — A local government or public authority may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository or by a bank wire transfer from an official depository. Except as provided in this subsection each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the governing board (or signed by the chairman or some other member of the board pursuant to subsection (c) of this section). The certificate shall take substantially the following form:

"This disbursement has been approved as required by the Local Government Budget and Fiscal Control Act.

____
(Signature of finance officer)."

Certificates in the form prescribed by G.S. 153-131 or 160-411.1 as those sections read on June 30, 1973, or by G.S. 159-28(a) as that section read on

June 30, 1975, are sufficient until supplies in existence on June 30, 1975, are exhausted.

No certificate is required on payroll checks or drafts on an imprest account in an official depository, if the check or draft depositing the funds in the imprest account carried a signed certificate.

(e) Penalties. — If an officer or employee of a local government or public authority incurs an obligation or pays out or causes to be paid out any funds in violation of this section, he and the sureties on his official bond are liable for any sums so committed or disbursed. If the finance officer or any properly designated deputy finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, he and the sureties on his official bond are liable for any sums illegally committed or disbursed thereby. (1971, c. 780, s. 1; 1973, c. 474, ss. 22, 23; 1975, c. 514, s. 12; 1979, c. 402, ss. 7, 8.)

Editor's Note. — Chapter 153, of which G.S. 153-130 and 153-131, referred to in this section, were a part, and Chapter 160, of which G.S. 160-411 and 160-411.1, also referred to in this section, were a part, have been repealed. See now Chapters 153A and 160A.

CASE NOTES

Scope of Section. — This section sets forth the requirements and obligations that must be met before a county may incur contractual obligations. Cincinnati Thermal Spray, Inc. v. Pender County, 101 N.C. App. 405, 399 S.E.2d 758 (1991).

G.S. 159-28's provision requiring a county finance officer's pre-audit certificate that the county had unencumbered funds sufficient to pay the obligation agreed to in a contract did not, when a worker settled a workers' compensation claim against a county and no pre-audit certificate was attached to the settlement, place the worker on constructive notice that the agreement had to be approved by others, as no such certificate was required for an agreement to submit a formalized settlement agreement to the North Carolina Industrial Commission. Lee v. Wake County, 165 N.C. App. 154, 598 S.E.2d 427, 2004 N.C. App. LEXIS 1148 (2004), cert. denied, 359 N.C. 190, 607 S.E.2d 275 (2004).

Under the sequence of Workers' Comp. R. N.C. Indus. Comm'n art. X, R. 502(1) and N.C. Mediated Settlement & Neutral Evaluation Conferences, N.C. Indus. Comm'n R. 4(d), in the settlement of a workers' compensation claim against a county, the pre-audit certificate certifying that a county has unencumbered funds with which to pay an obligation, will naturally be executed, if at all, after the settlement conference, when the amount of the county's liability is known, and as part of the general formalizing of the documents for submission to the North Carolina Industrial Commission, so an otherwise valid memorandum of agreement settling such a claim is not rendered void by the fact that it does not bear a pre-audit certificate, and an agreement to prepare a formalized settlement compromise agreement for the Industrial Commission's consideration does not require a pre-audit certificate to enable the Commission to direct the submission of a formalized compromise settlement agreement. Lee v. Wake County, 165 N.C. App. 154, 598 S.E.2d 427, 2004 N.C. App. LEXIS 1148 (2004), cert. denied, 359 N.C. 190, 607 S.E.2d 275 (2004).

Failure to Show Existence of Certificate. — Where plaintiff made no showing that the certificate of compliance by the county board of commissioners required by subsection (a) of this section authorizing construction of water and sewer existed, no valid contract was formed as a result of alleged discussions between plaintiff and employee of county with regard to provision of adequate water and sewer systems for plaintiff's proposed facility. Cincinnati Thermal Spray, Inc. v. Pender County, 101 N.C. App. 405, 399 S.E.2d 758 (1991).

Where the lease agreement entered between the plaintiff computer supplier and the defendant county failed to comply with the pre-audit certificate requirements of this section, the court held that no valid contract was formed between the plaintiff and defendant county and that the county, therefore, had not waived its sovereign immunity to be sued. Data Gen. Corp. v. County of Durham, 143 N.C. App. 97, 545 S.E.2d 243, 2001 N.C. App. LEXIS 218 (2001).

Health board's dismissal of director for the omission a preaudit certificate on contracts was an error, as the board did not establish that the omission could produce disruption of work, a threat to persons or property, or any other serious effect that required immediate action. Steeves v. Scot. County Bd. of Health, 152 N.C. App. 400, 567 S.E.2d 817, 2002 N.C. App.

LEXIS 913 (2002), cert. denied, 356 N.C. 444, 573 S.E.2d 512 (2002).

Summary judgment for a county was affirmed as a police officer could not obtain damages for breach of a memorandum requiring the county to pay her a special allowance since the memorandum did not include a preaudit certificate as required by G.S.159-28(a). Finger v. Gaston County, 178 N.C. App. 367, 631 S.E.2d 171, 2006 N.C. App. LEXIS 1396 (2006).

Because preaudit certificate was never signed by a finance officer as required by section, the settlement agreement did not meet the requirements of G.S. 159-28(a), and the trial court erred in granting company's motion to enforce the settlement agreement with the county. Cabarrus County v. Systel Bus. Equip. Co., 171 N.C. App. 423, 614 S.E.2d 596, 2005 N.C. App. LEXIS 1201 (2005), cert. denied, 360 N.C. 61, 621 S.E.2d 177 (2005).

Later-Incurred Financial Obligation. — Where an obligation incurred by a town did not result in a financial obligation in the year in which the subject contract was signed, the lack of a pre-audit certificate did not invalidate the town's contract. Myers v. Town of Plymouth, 135 N.C. App. 707, 522 S.E.2d 122, 1999 N.C. App. LEXIS 1237 (1999).

Applied in State v. Davis, 45 N.C. App. 72, 262 S.E.2d 827 (1980); Watauga County Bd. of Educ. v. Town of Boone, 106 N.C. App. 270, 416 S.E.2d 411 (1992).

Cited in County of Moore v. Humane Soc'y of Moore County, Inc., 157 N.C. App. 293, 578 S.E.2d 682, 2003 N.C. App. LEXIS 644 (2003).

§ 159-28.1. Facsimile signatures.

The governing board of a local government or public authority may provide by appropriate resolution or ordinance for the use of facsimile signature machines, signature stamps, or similar devices in signing checks and drafts and in signing the preaudit certificate on contracts or purchase orders. The board shall charge the finance officer or some other bonded officer or employee with the custody of the necessary machines, stamps, plates, or other devices, and that person and the sureties on his official bond are liable for any illegal, improper, or unauthorized use of them. (1975, c. 514, s. 13.)

§ 159-29. Fidelity bonds.

(a) The finance officer shall give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the governing board, not less than fifty thousand dollars ($50,000). The premium on the bond shall be paid by the local government or public authority.

(b) Each officer, employee, or agent of a local government or public authority who handles or has in his custody more than one hundred dollars ($100.00) of the unit's or public authority's funds at any time, or who handles or has access to the inventories of the unit or public authority, shall, before being entitled to assume his duties, give a faithful performance bond with sufficient sureties payable to the local government or public authority. The governing board shall determine the amount of the bond, and the unit or public authority may pay the premium on the bond. Each bond, when approved by the governing board, shall be deposited with the clerk to the board.

If another statute requires an officer, employee, or agent to be bonded, this subsection does not require an additional bond for that officer, employee, or agent.

(c) A local government or public authority may adopt a system of blanket faithful performance bonding as an alternative to individual bonds. If such a system is adopted, statutory requirements of individual bonds, except for elected officials and for finance officers and tax collectors by whatever title known, do not apply to an officer, employee, or agent covered by the blanket bond. However, although an individual bond is required for an elected official, a tax collector, or finance officer, such an officer or elected official may also be included within the coverage of a blanket bond if the blanket bond protects against risks not protected against by the individual bond. (1971, c. 780, s. 1; 1975, c. 514, s. 14; 1987 (Reg. Sess., 1988), c. 975, s. 32; 2005-238, s. 2.)

Editor's Note. — Session Laws 2005-238, s. 15, provides: "The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes." Session Laws 2005-238, s. 2, set a new minimum requirement of $50,000.

Session Laws 2005-238, s. 16, is a severability clause.

CASE NOTES

As to approval of bond in smaller amount than required by former statute, see Ellis v. Brown, 217 N.C. 787, 9 S.E.2d 467 (1940), decided under the former County Fiscal Control Act.

Cited in Town of Scotland Neck v. Western Sur. Co., 301 N.C. 331, 271 S.E.2d 501 (1980).

§ 159-30. Investment of idle funds.

(a) A local government or public authority may deposit at interest or invest all or part of the cash balance of any fund. The finance officer shall manage investments subject to whatever restrictions and directions the governing board may impose. The finance officer shall have the power to purchase, sell, and exchange securities on behalf of the governing board. The investment program shall be so managed that investments and deposits can be converted into cash when needed.

(b) Moneys may be deposited at interest in any bank, savings and loan association, or trust company in this State in the form of certificates of deposit or such other forms of time deposit as the Commission may approve. Investment deposits, including investment deposits of a mutual fund for local government investment established under subdivision (c)(8) of this section, shall be secured as provided in G.S. 159-31(b).

(b1) In addition to deposits authorized by subsection (b) of this section, the finance officer may deposit any portion of idle funds in accordance with all of the following conditions:

(1) The funds are initially deposited through a bank or savings and loan association that is an official depository and that is selected by the finance officer.

(2) The selected bank or savings and loan association arranges for the deposit of funds in certificates of deposit for the account of the local government or public authority in one or more federally insured banks or savings and loan associations wherever located, provided that no funds shall be deposited in a bank or savings and loan association that at the time holds other deposits from the local government or public authority.

(3) The full amount of principal and any accrued interest of each certificate of deposit are covered by federal deposit insurance.

(4) The selected bank or savings and loan association acts as custodian for the local government or public authority with respect to the certificates of deposit issued for the local government's or public authority's account.

(5) At the same time that the local government or public authority funds are deposited and the certificates of deposit are issued, the selected bank or savings and loan association receives an amount of deposits from customers of other federally insured financial institutions wherever located equal to or greater than the amount of the funds invested by the local government or public authority through the selected bank or savings and loan association.

(c) Moneys may be invested in the following classes of securities, and no others:

(1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.

(2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.

(3) Obligations of the State of North Carolina.

(4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the secretary may impose.

(5) Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Commissioner of Banks of the Department of Commerce of the State of North Carolina, be fully collateralized.

(6) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.

(7) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.

(8) Participating shares in a mutual fund for local government investment; provided that the investments of the fund are limited to those qualifying for investment under this subsection (c) and that said fund is certified by the Local Government Commission. The Local Government Commission shall have the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment.

(9) A commingled investment pool established and administered by the State Treasurer pursuant to G.S. 147-69.3.

(10) A commingled investment pool established by interlocal agreement by two or more units of local government pursuant to G.S. 160A-460 through G.S. 160A-464, if the investments of the pool are limited to those qualifying for investment under this subsection (c).

(11) Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.

(12) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934,

which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:

a. Such obligations that are subject to such repurchase agreement are delivered (in physical or in book entry form) to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price, and, provided further, that the financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;

b. A valid and perfected first security interest in the obligations which are the subject of such repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the local government or public authority have been established for the benefit of the local government or public authority or its assignee;

c. Such securities are free and clear of any adverse third party claims; and

d. Such repurchase agreement is in a form satisfactory to the local government or public authority.

(13) In connection with funds held by or on behalf of a local government or public authority, which funds are subject to the arbitrage and rebate provisions of the Internal Revenue Code of 1986, as amended, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law; provided, the investments of any such fund are limited to those bearing one of the two highest ratings of at least one nationally recognized rating service and not bearing a rating below one of the two highest ratings by any nationally recognized rating service which rates the particular fund.

(d) Investment securities may be bought, sold, and traded by private negotiation, and local governments and public authorities may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program. Securities and deposit certificates shall be in the custody of the finance officer who shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

(e) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

(f) Registered securities acquired for investment may be released from registration and transferred by signature of the finance officer.

(g) A local government, public authority, an entity eligible to participate in the Local Government Employee's Retirement System, or a local school administrative unit may make contributions to the Local Government Other Post-Employment Benefits Fund established in G.S. 147-69.4.

(h) A unit of local government employing local law enforcement officers may make contributions to the Local Government Law Enforcement Special Separation Allowance Fund established in G.S. 147-69.5. (1957, c. 864, s. 1; 1967, c. 798, ss. 1, 2; 1969, c. 862; 1971, c. 780, s. 1; 1973, c. 474, ss. 24, 25; 1975, c. 481; 1977, c. 575; 1979, c. 717, s. 2; 1981, c. 445, ss. 1-3; 1983, c. 158, ss. 1, 2; 1987, c. 672, s. 1; 1989, c. 76, s. 31; c. 751, s. 7(46); 1991 (Reg. Sess., 1992), c. 959, s. 77; c. 1007, s. 40; 1993, c. 553, s. 55; 2001-193, s. 16; 2001-487, s. 14(o); 2005-394, s. 2; 2007-384, ss. 4, 9.)

Local Modification. — Guilford: 2007-255, s. 2; Mecklenburg: 2007-255, s. 2; Pitt: 1999-48, s. 1; Wake: 2007-255, s. 2; city of Durham: 1999-101, s. 3; 2002-31, ss. 1-3; city of Fayetteville: 2003-318, s. 4; city of Greensboro: 2007-255, s. 2; city of Raleigh: 2007-255, s. 2; city of Winston-Salem: 1989 (Reg. Sess., 1990), c. 1026; 1991 (Reg. Sess., 1992), c. 951; 1998-36, s. 2; Forsyth Board of County Commissioners: 1998-44, s. 3.

Cross References. — As to investing sinking funds in bonds guaranteed by the United States, see G.S. 53-44. As to investment by community colleges and technical institutes, see G.S. 115D-58.6. As to the State Refunding Bond Act, see G.S. 142-29.1, et seq.

Editor's Note. — Subsection (g), as enacted by Session Laws 2007-384, s. 9, was redesignates as subsection (h) at the direction of the Revisor of Statutes.

Session Laws 1987, c. 672, s. 2 provided: "The foregoing section of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by any other laws, and shall not be regarded as in derogation of any powers now existing."

OPINIONS OF ATTORNEY GENERAL

The proposal of a county hospital system to lend money to a separately licensed acute care hospital was authorized by law. See opinion of Attorney General to Granger R. Barrett, Cumberland County Attorney, and Wilson Hayman, Poyner & Spruill, L.L.P., 2002 N.C. AG LEXIS 14 (2/19/02).

§ 159-30.1. Trust for other post-employment benefits.

(a) Trust. — A local government, a public authority, an entity eligible to participate in the Local Government Employee's Retirement System, or a local school administrative unit may establish and fund an irrevocable trust for the purpose of paying post-employment benefits for which the entity is liable. The irrevocable trust must be established by resolution or ordinance of the entity's governing board. The resolution or ordinance must state the purposes for which the trust is created and the method of determining and selecting the Fund's trustees. The resolution or ordinance establishing the trust may be amended from time to time, but an amendment may not authorize the use of monies in the trust for a purpose not stated in the resolution or ordinance establishing the trust.

(b) Restrictions. — Monies in an irrevocable trust established under subsection (a) of this section may be appropriated only for the purposes for which the trust was established. Monies in the trust are not subject to the claims of creditors of the entity that established the trust. An entity that establishes a trust may not deposit money in the trust if the total amount held in trust would exceed the entity's actuarial liability, determined in accordance with the standards of the Governmental Accounting Standards Board, for the purposes for which the trust was established. (2007-384, s. 5.)

Editor's Note. — Session Laws 2007-384, s. 11.(a), made this section effective August 19, 2007.

§ 159-30.2. Trust for law enforcement special separation allowance benefits.

(a) Trust. — A unit of local government employing local law enforcement officers may establish and fund an irrevocable trust for the purpose of paying law enforcement special separation allowance benefits for which the unit of local government is liable. The irrevocable trust must be established by resolution or ordinance of the unit's governing board. The resolution or ordinance must state the purposes for which the trust is created and the method of determining and selecting the Fund's trustees. The resolution or ordinance establishing the trust may be amended from time to time, but an amendment may not authorize the use of monies in the trust for a purpose not stated in the resolution or ordinance establishing the trust.

(b) Restrictions. — Monies in an irrevocable trust established under subsection (a) of this section may be appropriated only for the purposes for which the trust was established. Monies in the trust are not subject to the claims of creditors of the entity that established the trust. A unit of local government that establishes a trust may not deposit money in the trust if the total amount held in trust would exceed the unit's actuarial liability, determined in accordance with the standards of the Governmental Accounting Standards Board, for the purpose for which the trust was established. (2007-384, s. 10.)

Editor's Note. — Session Laws 2007-384, s. 11.(a), made this section effective August 19, 2007.

§ 159-31. Selection of depository; deposits to be secured.

(a) The governing board of each local government and public authority shall designate as its official depositories one or more banks, savings and loan associations, or trust companies in this State or, with the written permission of the secretary, a national bank located in another state. In addition, a unit or public authority, with the written permission of the secretary, may designate a state bank or trust company located in another state as an official depository for the purpose of acting as fiscal agent for the unit or public authority. The names and addresses of the depositories shall be reported to the secretary. It shall be unlawful for any public moneys to be deposited in any place, bank, or trust company other than an official depository, except as permitted by G.S. 159-30(b); however, public moneys may be deposited in official depositories in Negotiable Order of Withdrawal (NOW) accounts.

(b) The amount of funds on deposit in an official depository or deposited at interest pursuant to G.S. 159-30(b) shall be secured by deposit insurance, surety bonds, letters of credit issued by a Federal Home Loan Bank, or investment securities of such nature, in a sufficient amount to protect the local government or public authority on account of deposit of funds made therein, and in such manner, as may be prescribed by rule or regulation of the Local Government Commission. When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by a local government or public authority because of the default or insolvency of the depository. No security is required for the protection of funds remitted to and received by a bank, savings and loan association, or trust company acting as fiscal agent for the payment of principal and interest on bonds or notes, when the funds are remitted no more than 60 days prior to the

maturity date. (1927, c. 146, s. 19; 1929, c. 37; 1931, c. 60, s. 32; c. 296, s. 7; 1935, c. 375, s. 1; 1939, c. 129, s. 1; c. 134; 1953, c. 675, s. 28; 1955, cc. 698, 724; 1971, c. 780, s. 1; 1973, c. 474, s. 26; 1979, c. 637, s. 1; 1981, c. 447, s. 2; 1983, c. 158, s. 3; 1999-74, s. 1.)

Local Modification. — Guilford: 2007-255, s. 2; Mecklenburg: 2007-255, s. 2; Wake: 2007-255, s. 2; city of Greensboro: 2007-255, s. 2; city of Raleigh: 2007-255, s. 2.

Cross References. — As to deposits by community colleges and technical institutes, see G.S. 115D-58.7.

§ 159-32. Daily deposits.

Except as otherwise provided by law, all taxes and other moneys collected or received by an officer or employee of a local government or public authority shall be deposited in accordance with this section. Each officer and employee of a local government or public authority whose duty it is to collect or receive any taxes or other moneys shall deposit his collections and receipts daily. If the governing board gives its approval, deposits shall be required only when the moneys on hand amount to as much as two hundred fifty dollars ($250.00), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made with the finance officer or in an official depository. Deposits in an official depository shall be immediately reported to the finance officer by means of a duplicate deposit ticket. The finance officer may at any time audit the accounts of any officer or employee collecting or receiving taxes or other moneys, and may prescribe the form and detail of these accounts. The accounts of such an officer or employee shall be audited at least annually. (1927, c. 146, s. 19; 1929, c. 37; 1939, c. 134; 1955, cc. 698, 724; 1971, c. 780, s. 1; 1973, c. 474, s. 27.)

Local Modification. — City of Greensboro: 1995, c. 79, s. 1; city of Winston-Salem: 1995 (Reg. Sess., 1996), c. 639, s. 1.

§ 159-32.1. Electronic payment.

A unit of local government, public hospital, or public authority may, in lieu of payment by cash or check, accept payment by electronic payment as defined in G.S. 147-86.20 for any tax, assessment, rate, fee, charge, rent, interest, penalty, or other receivable owed to it. A unit of local government, public hospital, or public authority may pay any negotiated discount, processing fee, transaction fee, or other charge imposed by a credit card, charge card, or debit card company, or by a third-party merchant bank, as a condition of contracting for the unit's or the authority's acceptance of electronic payment. A unit of local government, public hospital, or public authority may impose the fee or charge as a surcharge on the amount paid by the person using electronic payment. (1999-434, s. 5.)

§ 159-33. Semiannual reports on status of deposits and investments.

Each officer having custody of any funds of any local government or public authority shall report to the secretary of the Local Government Commission on January 1 and July 1 of each year (or such other dates as he may prescribe) the amounts of funds then in his custody, the amounts of deposits of such funds in depositories, and a list of all investment securities and time deposits held by the local government or public authority. In like manner, each bank or trust company acting as the official depository of any unit of local government or public authority may be required to report to the secretary a description of the surety bonds or investment securities securing such public deposits. If the secretary finds at any time that any funds of any unit or authority are not properly deposited or secured, or are invested in securities not eligible for investment, he shall notify the officer or depository in charge of the funds of the failure to comply with law or applicable regulations of the Commission. Upon such notification, the officer or depository shall comply with the law or regulations within 30 days, except as to the sale of securities not eligible for investment which shall be sold within nine months at a price to be approved by the secretary. The Commission may extend the time for sale of ineligible securities, but no one extension may cover a period of more than one year. (1931, c. 60, s. 33; 1971, c. 780, s. 1; 1979, c. 637, s. 2.)

§ 159-33.1. Semiannual reports of financial information.

The finance officer of each unit and public authority shall submit to the secretary on January 1 and July 1 of each year (or such other dates as the secretary may prescribe) a statement of financial information concerning the unit or public authority. The secretary may prescribe the information to be included in the statement and may prescribe the form of the statement. (1973, c. 474, s. 28.)

§ 159-34. Annual independent audit; rules and regulations.

(a) Each unit of local government and public authority shall have its accounts audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Commission as qualified to audit local government accounts. When specified by the secretary, the audit shall evaluate the performance of a unit of local government or public authority with regard to compliance with all applicable federal and State agency regulations. This audit, combined with the audit of financial accounts, shall be deemed to be the single audit described by the “Federal Single Audit Act of 1984”. The auditor shall be selected by and shall report directly to the governing board. The audit contract or agreement shall (i) be in writing, (ii) include the entire entity in the scope of the audit, except that an audit for purposes other than the annual audit required by this section should include an accurate description of the scope of the audit, (iii) require that a typewritten or printed report on the audit be prepared as set forth herein, (iv) include all of its terms and conditions, and (v) be submitted to the secretary for his approval as to form, terms, conditions, and compliance with the rules of the Commission. As a minimum, the required report shall include the financial statements prepared in accordance with generally accepted accounting principles, all disclosures in the public interest required by law, and the auditor’s opinion and comments relating to financial statements. The audit shall be performed in conformity with generally accepted auditing standards. The finance officer shall file a copy of the audit report with the secretary, and shall submit all bills or claims for audit fees and costs to the secretary for his approval. Before giving his approval the secretary shall determine that the audit and audit report substantially conform to the requirements of this section. It shall be unlawful for any unit of local government or public authority to pay or permit the payment of such bills or claims without this approval. Each officer and employee of the local government or local public authority having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a governing board or any other public officer or employee shall conceal, falsify, or refuse to deliver or divulge any books, records, or information, with an attempt thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a Class 1 misdemeanor.

(b) The Local Government Commission has authority to issue rules and regulations for the purpose of improving the quality of auditing and the quality and comparability of reporting pursuant to this section or any similar section of the General Statutes. The rules and regulations may consider the needs of the public for adequate information and the performance that the auditor has demonstrated in the past, and may be varied according to the size, purpose or function of the unit, or any other criteria reasonably related to the purpose or substance of the rules or regulation.

(c) Notwithstanding any other provision of law, except for Article 5A of Chapter 147 of the General Statutes pertaining to the State Auditor, all State departments and agencies shall rely upon the single audit accepted by the secretary as the basis for compliance with applicable federal and State regulations. All State departments and agencies which provide funds to local governments and public authorities shall provide the Commission with documents that the Commission finds are in the prescribed format describing standards of compliance and suggested audit procedures sufficient to give adequate direction to independent auditors retained by local governments and public authorities to conduct a single audit as required by this section. The secretary shall be responsible for the annual distribution of all such standards of compliance and suggested audit procedures proposed by State departments and agencies and any amendments thereto. Further, the Commission with the cooperation of all affected State departments and agencies shall be responsible for the following:

(1) Procedures for the timely distribution of compliance standards developed by State departments and agencies, reviewed and approved by the Commission to auditors retained by local governments and public authorities.

(2) Procedures for the distribution of single audits for local governments and public authorities such that they are available to all State departments and agencies which provide funds to local units.

(3) The acceptance of single audits on behalf of all State departments and agencies; provided that, the secretary may subsequently revoke such acceptance for cause, whereupon affected State departments and agencies shall no longer rely upon such audit as the basis for compliance with applicable federal and State regulations. (1971, c. 780, s. 1; 1975, c. 514, s. 15; 1979, c. 402, s. 9; 1981, c. 685, ss. 8, 9; 1987, c. 287; 1993, c. 257, s. 20; c. 539, s. 1081; 1994, Ex. Sess., c. 24, s. 14(c); 2001-160, s. 1.)

Local Modification. — Dare (Special Leash Law District): 1989 (Reg. Sess., 1990), c. 963, s. 7.

§ 159-35. Secretary of Local Government Commission to notify units of debt service obligations.

(a) The secretary shall mail to each local government and public authority not later than May 1 of each year a statement of its debt service obligations for the coming fiscal year, including sums to be paid into sinking funds.

(b) The secretary shall mail to each local government and public authority not later than 30 days prior to the due date of each installment of principal or interest on outstanding debt, a statement of the amount of principal and interest so payable, the due date, the place to which the payments should be sent, and a summary of the legal penalties for failing to meet debt service obligations.

(c) The secretary shall mail to each unit of local government not later than 30 days prior to the due date of each payment due to the State under debt instruments issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General Statutes a statement of the amount so payable, the due date, the amount of any moneys due to the unit of local government that will be withheld by the State and applied to the payment, the amount due to be paid by the unit of local government from local sources, the place to which payment should be sent, and a summary of the legal penalties for failing to honor the debt instrument according to its terms. Failure of the secretary timely to mail such statement or otherwise comply with the provisions of this subsection (c) shall not affect in any manner the obligation of a unit of local government to make payments to the State in accordance with any such debt instrument. (1931, c. 60, ss. 36, 37; 1971, c. 780, s. 1; 1987, c. 796, s. 3(7); 1989, c. 756, s. 4.)

§ 159-36. Failure of local government to levy debt service taxes or provide for payment of debt.

(a) If any local government or public authority fails or refuses to levy taxes or allocate other revenues in an amount sufficient to meet all installments of principal and interest falling due on its debt during the budget year, or to adequately maintain its sinking funds, the Commission shall enter an order directing and commanding the governing board of the local government or public authority to enact a budget ordinance levying the necessary taxes or raising the necessary revenue by whatever means are legally available. If the governing board shall fail or refuse to comply with the Commission's order within 10 days, the order shall have the same legal force and effect as if the actions therein commanded had been taken by the governing board, and the appropriate officers and employees of the local government or public authority shall proceed to collect the tax levy or implement the plan for raising the revenue to the same extent as if such action had been authorized and directed by the governing board. Any officer, employee, or member of the governing board of any local government or public authority who willfully fails or refuses to implement an order of the Local Government Commission issued pursuant to this section forfeits his office or position.

(b) This section does not apply to contractual obligations undertaken by a unit of local government in a debt instrument issued pursuant to Chapter 159G of the General Statutes unless such debt instrument is secured by a pledge of the faith and credit of the unit of local government. (1971, c. 780, s. 1; 1987, c. 796, s. 3(8).)

§ 159-37. Reports on status of sinking funds.

Each unit or public authority maintaining any sinking fund shall transmit to the secretary upon his request financial reports on the status of the fund and the means by which moneys are obtained for deposit therein. The secretary shall determine from this information whether the sinking funds are being properly maintained, and if he shall find that they are not, he shall order the unit to take such action as may be necessary to maintain the funds in accordance with law. (1931, c. 60, s. 31; 1971, c. 780, s. 1.)

§ 159-38. Local units authorized to accept their bonds in payment of certain claims and judgments.

Any unit of local government or public authority may accept its own bonds, at par, in settlement of any claim or judgment that it may have against any person, firm, corporation, or association due to funds held in an insolvent bank, trust company, or savings and loan association. (1933, c. 376; 1971, c. 780, s. 1.)

Part 4. Public Hospitals.

§ 159-39. Special regulations pertaining to public hospitals.

(a) For the purposes of this Part, "public hospital" means any hospital that

(1) Is operated by a county, city, hospital district, or hospital authority, or

(2) Is owned by a county, city, hospital district or hospital authority and operated by a nonprofit corporation or association, a majority of whose board of directors or trustees are appointed by the governing body of a county, city, hospital district, or hospital authority, or

(3) On whose behalf a county or city has issued and has outstanding general obligation or revenue bonds, or to which a county or city makes current appropriations (other than appropriations for the cost of medical care to prisoners or indigents).

(b) Except as provided in this Part, none of the provisions of Parts 1, 2, and 3 of this Article apply to public hospitals.

(c) Each public hospital shall operate under an annual balanced budget. A budget is balanced when the sum of appropriations is equal to the sum of estimated net revenues and appropriated fund balances.

(d) The governing board of each public hospital shall appoint or designate a finance officer, who shall have the following powers and duties:

(1) He shall prepare the annual budget for presentation to the governing board of the public hospital and shall administer the budget as approved by the board.

(2) He shall keep the accounts of the hospital in accordance with generally accepted principles of accounting.

(3) He shall prepare and file a statement of the financial condition of the hospital as revealed by its accounts upon the request of the hospital governing board or the governing board of any county, city, or other unit of local government that has issued on behalf of the hospital and has outstanding its general obligation or revenue bonds or makes current appropriations to the hospital (other than appropriations for the cost of medical care to prisoners or indigents).

(4) He shall receive and deposit all moneys accruing to the hospital, or supervise the receipt and deposit of money by other duly authorized officers or employees of the hospital.

(5) He shall supervise the investment of idle funds of the hospital.

(6) He shall maintain all records concerning the bonded debt of the hospital, if any, determine the amount of money that will be required for debt service during each fiscal year, and maintain all sinking funds, but shall not be responsible for records concerning the bonded debt of any county, city, or other unit of local government incurred on behalf of the hospital.

(e) The Local Government Commission has authority to issue rules and regulations governing procedures for the receipt, deposit, investment, transfer, and disbursement of money and other assets by public hospitals, may inquire into and investigate the internal control procedures of a public hospital, and may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements, mishandling of funds, or continued operating deficits.

(f) The accounting system of a public hospital shall be so designed that the true financial condition of the hospital can be determined therefrom at any time. As soon as possible after the close of each fiscal year, the accounts shall be audited by a certified public accountant or by an accountant certified by the Local Government Commission as qualified to audit local government accounts. The auditor shall be selected by and shall report directly to the hospital governing board. The audit contract or agreement shall be in writing, shall include all its terms and conditions, and shall be submitted to the secretary of the Local Government Commission for his approval as to form, terms and conditions. The terms and conditions of the audit shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a written report embodying financial statements and his opinion and comments relating thereto. The finance officer shall file a copy of the audit with the secretary of the Local Government Commission and with the finance officer of any county, city, or other unit of local government that has issued on behalf of the hospital and has outstanding its general obligation or revenue bonds or makes current appropriations to the hospital (other than appropriations for the cost of medical care to prisoners or indigents).

(g) A public hospital may deposit or invest at interest all or part of its cash balance pursuant to G.S. 159-30 and may deposit any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, with the State Treasurer for investment pursuant to G.S. 147-69.2.

(h) Public hospitals are subject to G.S. 159-31 with regard to selection of an official depository and security of deposits.

(i) Public hospitals are subject to G.S. 159-32 with regard to daily deposits.

(i1) Public hospitals may accept electronic payments pursuant to G.S. 159-32.1.

(j) Public hospitals are subject to G.S. 159-33 with regard to semiannual reports to the Local Government Commission on the status of deposits and investments.

(k) Any hospital district or hospital authority having outstanding general obligation or revenue bonds is subject to G.S. 159-35, 159-36, 159-37, and 159-38. (1973, c. 474, s. 28.1; c. 1215; 1999-434, s. 5.1; 2005-417, s. 1.)

Editor's Note. — Session Laws 1999-377, s. 4, effective August 4, 1999, provides that any hospital continuing to operate under Article 2 of Chapter 131 of the General Statutes pursuant to Section 3 of Chapter 775 of the 1983 Session Laws shall be considered to be a "public hospital" within the meaning of G.S. 159-39 and to be a "unit of local government" within the meaning of G.S. 160A-20.

CASE NOTES

Applied in National Medical Enters., Inc. v. Sandrock, 72 N.C. App. 245, 324 S.E.2d 268 (1985).

Cited in News & Observer Publishing Co. v. Wake County Hosp. Sys., 55 N.C. App. 1, 284 S.E.2d 542 (1981); Cohn v. Wilkes Gen. Hosp., 127 F.R.D. 117 (W.D.N.C. 1989); Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005).

Part 5. Nonprofit Corporations Receiving Public Funds.

§ 159-40. Special regulations pertaining to nonprofit corporations receiving public funds.

(a) If a city or county grants or appropriates one thousand dollars ($1,000) or more in any fiscal year to a nonprofit corporation or organization, the city or county may require that the nonprofit corporation or organization have an audit performed for the fiscal year in which the funds are received and may require that the nonprofit corporation or organization file a copy of the audit report with the city or county.

(b) Any nonprofit corporation or organization which receives one thousand dollars ($1,000) or more in State funds shall, at the request of the State Auditor, submit to an audit by the office of the State Auditor for the fiscal year in which such funds were received.

(c) Every nonprofit corporation or organization which has an audit performed pursuant to this section shall file a copy of the audit report with the office of the State Auditor.

(d) The provisions of this section shall not apply to sheltered workshops or to Adult Development Activity Programs or to private residential facilities for the mentally retarded and developmentally disabled or to Developmental Day Care Centers or to any nonprofit corporation or organization whose sole use of public funds is to provide hospital services or operate as a volunteer fire department, rescue squad, ambulance squad, or which operates as a junior college, college or university duly accredited by the southern regional accrediting association.

(e) Repealed by Session Laws 1979, c. 905. (1977, c. 687, s. 1; 1977, 2nd Sess., c. 1195, s. 1; 1979, c. 905.)

Part 6. Joint Municipal Power Agencies and Joint Municipal Assistance Agencies.

§ 159-41. Special regulations pertaining to joint municipal power agencies.

(a) For the purposes of this Part, "joint agency" means a public body corporate and politic organized in accordance with the provisions of Chapter 159B, or the combination or recombination of any joint agencies so organized.

(b) Except as provided in this Part, none of the provisions of Article 3 of this Chapter shall apply to joint agencies. Whenever the provisions of this Part and the provisions of Chapter 159B of the General Statutes shall conflict, the provisions of Chapter 159B shall govern.

(c) Each joint agency shall operate under an annual balanced budget resolution adopted by the governing board and entered into the minutes. A budget is balanced when the sum of the appropriations is equal to the sum of estimated net revenues and appropriated fund balances. The budget resolution of a joint agency shall cover a fiscal year beginning January 1 and ending December 31, except that the Local Government Commission, if it determines that a different fiscal year would facilitate the agency's financial operations, may enter an order permitting an agency to operate under a fiscal year other than from January 1 to December 31.

(d) The following directions and limitations shall bind the governing board in adopting the budget resolution:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.

(2) The full amount of any deficit in each fund shall be appropriated.
(3) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated.
(4) The sum of estimated net revenue and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balances in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenue, as those figures stand at the close of the fiscal year preceding the budget year.

(e) The governing board of the joint agency may amend the budget resolution at any time after its adoption and may authorize its designated finance officer to transfer moneys from one appropriation to another, subject to such limitations and procedures as it may prescribe. All such transfers will be reported to the governing board or its executive committee at its next regular meeting and shall be entered in the minutes.

(f) Joint agencies are subject to the following sections of Article 3 of this Chapter, to the same extent as a "public authority," provided, however, the term "budget ordinance" as used in such sections shall be interpreted for the purposes of this Part to mean the budget resolution of a joint agency:
(1) G.S. 159-9, provided, however, that the governing board of an agency may designate as budget officer someone other than a member of the governing board or an officer or employee of the agency.
(2) G.S. 159-12, provided, however, that the provision relating to making the budget available to the news media of a county shall not apply to a joint agency.
(3) G.S. 159-13.2.
(4) G.S. 159-16.
(5) G.S. 159-18.
(6) G.S. 159-19.
(7) G.S. 159-21.
(8) G.S. 159-22, provided, however, that the provision restricting transfers to funds maintained pursuant to G.S. 159-13(a) shall not apply to a joint agency.
(9) G.S. 159-24.
(10) G.S. 159-25.
(11) G.S. 159-26.
(12) G.S. 159-28.
(13) G.S. 159-28.1.
(14) G.S. 159-29.
(15) G.S. 159-30.
(16) G.S. 159-31.
(17) G.S. 159-32.
(18) G.S. 159-33.
(19) G.S. 159-33.1.
(20) G.S. 159-34.
(21) G.S. 159-36.
(22) G.S. 159-38. (1979, c. 685, s. 1.)

Part 7. Public Housing Authorities.

§ 159-42. Special regulations pertaining to public housing authorities.

(a) Definition. — As used in this Part, the term "housing authority" means any entity as defined in G.S. 157-3(1) that is not subject to G.S. 157-4.2.

(b) Applicability. — Except as provided in this Part, none of the provisions of Parts 1, 2, or 3 of this Article apply to housing authorities in compliance with this Part.

(c) Annual Budget. — Each housing authority shall operate under an annual budget. The budget shall take the form of estimated revenues plus fund balances available for the program, as defined by the U.S. Department of Housing and Urban Development regulations or their successors, that are equal to or greater than estimated expenditures. The proposed budget shall be available for public inspection in a manner consistent with G.S. 159-12(a). Before adopting the budget, the housing authority governing board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear. The governing board shall cause notice of the public hearing to be published in a newspaper of general circulation in the area once a week for two consecutive weeks prior to the public hearing.

(d) Project Ordinances. — The annual budget shall not include those estimated revenues and expenditures accounted for in a project ordinance. A housing authority shall adopt a project ordinance, as defined by G.S. 159-13.2, for those programs which span two or more fiscal years. The form of the project ordinance shall be in accordance with the relevant funding agency guidelines for that project. The estimated revenues plus fund balances available for a project shall be equal to or greater than the estimated expenditures. The estimated revenues and expenditures related to approved projects for a fiscal year may be included in the annual budget on an informational basis.

(e) Finance Officer. — The housing authority governing board shall appoint or designate a finance officer with the following powers and duties:

(1) Preparation of the annual budget for presentation to the governing board.
(2) Administration of the approved budget.
(3) Maintenance of the accounts and other financial records in accordance with generally accepted principles of accounting.
(4) Preparation and filing of statements of the financial condition, at least annually and at other times as requested by the governing board.
(5) Receipt and deposit, or supervision of the receipt and deposit, of all moneys accruing to the housing authority.
(6) Supervision of the investment of the idle funds of the housing authority.
(7) Maintenance of all records concerning the bonded debt of the housing authority, if any.
(8) Maintenance of any sinking funds of the housing authority.

(f) Accounting Procedures. — A housing authority must comply with federal rules and regulations issued by the U.S. Department of Housing and Urban Development pertaining to procedures for the receipt, deposit, investment, transfer, and disbursement of money and other assets. The Commission may inquire into and investigate, with reasonable cause, the internal control procedures of a housing authority. The Commission may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlement, mishandling of funds, or continued operating deficits.

(g) Audits. — The accounting system of a housing authority shall be so designed that the true financial condition of the housing authority can be determined at any time. As soon as possible after the close of each fiscal year, the accounts shall be independently audited by a certified public accountant. The auditor shall be selected by the housing authority governing board and shall report directly to that body. The audit contract or agreement shall be in writing and shall include all its terms and conditions. The terms and conditions of the audit shall include the scope of the audit and the requirement that upon completion of the examination the auditor shall prepare a written report embodying the financial statements and the auditor's opinion and comments relating thereto. The finance officer shall file a copy of the audit with the Secretary of the Commission.

(h) Bonding of Employees. — The bonding requirements of G.S. 159-29 shall apply to the finance officer and those employees of the housing authority handling or having custody of more than one hundred dollars ($100.00) at any one time or those employees who have access to the inventories of the housing authority.

(i) Investments. — A housing authority may deposit or invest, at interest, all or part of its cash balance pursuant to U.S. Department of Housing and Urban Development regulations.

(j) Official Depository. — Housing authorities shall comply with G.S. 159-31, except in those circumstances where the statute is in conflict with U.S. Department of Housing and Urban Development guidance, which shall control.

(k) Deposits and Payments. — Housing authorities shall comply with G.S. 159-32, 159-32.1, and 159-33. (2001-206, s. 1.)

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 4.

Local Government Bond Act.

Part 1. Operation of Article.

§ 159-43. Short title; legislative intent.

(a) This Article may be cited as "The Local Government Bond Act."

(b) It is the intent of the General Assembly by enactment of this Article to prescribe a uniform system of limitations upon and procedures for the exercise by all units of local government in North Carolina of the power to borrow money secured by a pledge of the taxing power. To this end, all provisions of special, local, or private acts in effect as of July 1, 1973, authorizing the issuance of bonds or notes secured by a pledge of the taxing power or prescribing procedures therefor are repealed. No special, local, or private act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this Article unless it expressly so provides by specific reference to the appropriate section of this Article. (1971, c. 780, s. 1; 1973, c. 494, s. 2.)

Cross References. — As to the Local Government Fiscal Information Act, see G.S. 120-30.41 through 120-30.48. As to issuance of capital appreciation bonds pursuant to The Local Government Bond Act, see G.S. 159-99.

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 882, s. 6 and Session Laws 1989, c. 90, provided that all actions and proceedings heretofore taken by units of local government relating to the authorization of general obligation refunding bonds, secured by a pledge of the taxing power and issued pursuant to the Local Government Bond Act, and revenue refunding bonds, secured by a pledge of revenues and issued pursuant to The State and Local Government Revenue Bond Act, and the sale and delivery of all such bonds pursuant to Article 7, as amended, of Chapter 159 of the General Statutes of North Carolina, in order to provide funds to purchase, at a discount, bonds of such units owned by the Farmers Home Administration, including without limitation, the introduction and adoption of bond orders, the holding of public hearings with respect to such bond orders, the passage of resolutions providing for the issuance and the sale, both public and private, of such refunding bonds, and the delivery of any such refunding bonds were in all respects approved, ratified, validated, and confirmed.

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

CASE NOTES

Provisions Governing General Obligation Bond Must Be Followed. — When an ordinance regulating a public enterprise is adopted by a local government to finance the public enterprise, the procedures supplied in the General Statutes for adopting such an ordinance must likewise be followed; when a general obligation bond is issued by a local government, the provisions of this Chapter must be followed; and when a local government purchases equipment, the applicable statutes regarding competitive bidding, where applicable, must likewise be followed. There is no statute or law that mandates notice and hearing requirements for ordinances requiring mandatory connections and fixing related connection charges and user fees. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Cited in Peacock v. Shinn, 139 N.C. App. 487, 533 S.E.2d 842, 2000 N.C. App. LEXIS 991 (2000).

§ 159-44. Definitions.

The words and phrases defined in this section shall have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

(1) "Finance officer" means the officer performing the duties of finance officer of a unit of local government pursuant to G.S. 159-24 of the Local Government Budget and Fiscal Control Act.

(2) "Governing board" or "board" means the governing body of a unit of local government.

(3) "Sinking fund" means a fund held for the retirement of term bonds.

(4) "Unit," "unit of local government," or "local government" means counties; cities, towns, and incorporated villages; consolidated city-counties, as defined by G.S. 160B-2(1); sanitary districts; mosquito control districts; hospital districts; merged school administrative units described in G.S. 115C-513; metropolitan sewerage districts; metropolitan water districts; county water and sewer districts; regional public transportation authorities; and special airport districts.

(5) "Utility or public service enterprise" includes:
  a. Electric power transmission and distribution systems;
  b. Water supply facilities and distribution systems;
  c. Sewage collection and disposal systems;
  d. Gas transmission and distribution systems;
  e. Public transportation systems, including but not limited to bus lines, ferries, and mass transit systems;
  f. Solid waste collection and disposal systems and facilities;
  g. Cable television systems;
  h. Off-street parking facilities and systems;
  i. Public auditoriums, coliseums, stadiums and convention centers;
  j. Airport;
  k. Hospitals and other health-related facilities; and
  l. Structural and natural stormwater and drainage systems of all types. (1971, c. 780, s. 1; 1973, c. 494, s. 3; 1977, c. 466, s. 2; 1979, c. 727, s. 2; 1989, c. 643, s. 3; c. 740, s. 3; 1991, c. 325, s. 4; 1995, c. 461, s. 10; 1997-456, s. 27.)

Editor's Note. — Session Laws 1991, c. 325, s. 9 interpreted the 1991 amendment to this section, which inserted "merged school administrative units described in G.S. 115C-513" in subdivision (4), by providing:

"Interpretation of Act."

"(a) Additional method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"(b) Statutory references. References in this act to specific sections or Chapters of the General Statutes are intended to be references to such sections as they may be amended from time to time by the General Assembly.

"(c) Liberal construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect these purposes.

"(d) Inconsistent provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, this act shall be controlling.

"(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Subdivisions (5)(i) through (5)(xii) of this section were renumbered as subdivisions (5)a. through (5)l. pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 159-45. All general obligation bonds subject to Local Government Bond Act.

No unit of local government in this State shall have authority to enter into any contract or agreement, whether oral or written, whereby it borrows money and makes an express or implied pledge of its power to levy taxes as security for repayment of the loan, except by the issuance of its bonds in accordance with the limitations and procedures prescribed in this Article or by the issuance of its negotiable notes in accordance with the limitations and procedures prescribed in Article 9 of this Chapter or by the issuance of debt instruments in accordance with the limitations and procedures prescribed in Chapter 159G of the General Statutes. (1971, c. 780, s. 1; 1987, c. 796, s. 2(1).)

§ 159-46. Faith and credit pledged.

The faith and credit of the issuing unit are hereby pledged for the payment of the principal of and interest on all bonds issued under this Article and debt instruments secured by a pledge of its faith and credit in accordance with the limitations and procedures prescribed in Chapter 159G of the General Statutes according to their terms, and the power and obligation of the issuing unit to levy taxes and raise other revenues for the prompt payment of installments of principal and interest or for the maintenance of sinking funds shall be unrestricted as to rate or amount, notwithstanding any other provisions of law whether general, special, local, or private. (1971, c. 780, s. 1; 1987, c. 796, s. 2(2).)

Cross References. — For statute authorizing counties, with the approval of the Local Government Commission, to avail themselves of the Federal Bankruptcy Act, see G.S. 23-48.

CASE NOTES

Applicability. — A fair reading of the language of this section and G.S. 159-54 indicates that this Act applies to general obligation bonds which pledge the faith and credit of the county. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

A tax must be levied only if revenue from other sources is inadequate to repay the principal and interest on the bonds outstanding. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Authorization of Tax Distinguished from Approval of Order Imposing Tax. — Where the ballot that the voters considered indicated that the voters were asked only to authorize a tax rather than to approve an order imposing a tax, the County Commissioners were not compelled to impose a tax and were free, under these facts, to charge reasonable fees and charges to repay the bonds in lieu of the levy of a tax. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

§ 159-47. Additional security for utility or public service enterprise bonds.

(a) The revenues of a utility or public service enterprise owned or leased by a unit of local government shall be applied in accordance with the following priorities:

(1) First, to pay the operating, maintenance, and capital outlay expenses of the utility or enterprise.

(2) Second, to pay when due the interest on and principal of outstanding bonds issued for capital projects that are or were a part of the utility or enterprise.

(3) Third, for any other lawful purpose.

Notwithstanding the foregoing provisions, a county which owns or leases hospitals or other health-related facilities and has not issued any general obligation bonds during the period July 1, 1973, to July 1, 1974, for a capital project that is or was a part of such hospitals or other health-related facilities shall have the option of applying the revenues of such hospitals or other health-related facilities in accordance with a bond order adopted under the Local Government Revenue Bond Act.

(b) In the discretion of the governing board of the issuing unit, the bond order may pledge the revenues (or any portion of the revenues) of a utility or public service enterprise to the payment of the interest on and principal of bonds issued under this Article to finance capital projects that are to become a part of the utility or enterprise.

(c) In the discretion of the governing board of the issuing unit, a bond order authorizing the issuance of bonds under this Article to finance capital projects that are to become a part of a utility or public service enterprise owned or leased by the issuing unit may state that the revenues of the utility or enterprise may be pledged to the payment of the interest on and principal of the bonds if and to the extent that the governing board of the unit shall thereafter determine by resolution (prior to the issuance of the bonds), and that a tax sufficient to pay the principal of and interest on the bonds shall be annually levied and collected by the issuing unit on all taxable property within its taxing jurisdiction, but that in the event that any revenues of the utility or enterprise shall be pledged to the payment of the bonds, the tax may be reduced by the amount of utility or enterprise revenues available for the payment of the principal and interest. A pledge of utility or enterprise revenues pursuant to this subsection shall be made by resolution of the governing board of the issuing unit after the bond order is adopted and before bonds are issued thereunder.

(d) When a pledge of utility or enterprise revenues is made pursuant to this section, the issuing unit shall have, with respect to the utility or enterprise whose revenues are pledged, all of the powers set out in G.S. 159-83 and G.S. 159-89. (1971, c. 780, s. 1; 1973, c. 1326.)

CASE NOTES

"Operating Expenses". — Payments by defendant city to the defendants, basketball team and team owner, did not violate the priority of payments outlined in this section, because the money constituted operating expenses which were appropriately paid first from the pool of Coliseum revenue. Peacock v. Shinn, 139 N.C. App. 487, 533 S.E.2d 842, 2000 N.C. App. LEXIS 991 (2000), cert. denied, 353 N.C. 267, 546 S.E.2d 110 (2000).

§ 159-48. For what purposes bonds may be issued.

(a) Each unit of local government is authorized to borrow money and issue its bonds under this Article in evidence thereof for any one or more of the following purposes:

(1) To suppress riots, insurrections, or any extraordinary breach of law and order.
(2) To supply an unforeseen deficiency in the revenue when taxes actually received or collected during the fiscal year fall below collection estimates made in the annual budget ordinance within the limits prescribed in G.S. 159-13.
(3) To meet emergencies threatening the public health or safety, as conclusively determined in writing by the Governor.
(4) To refund outstanding revenue bonds or revenue bond anticipation notes.
(5) To refund outstanding general obligation bonds or general obligation bond anticipation notes.
(6) To fund judgments for specified sums of money entered against the unit by a court of competent jurisdiction.
(7) To fund valid, existing obligations of the unit not incurred by the borrowing of money.

(b) Each county and city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

(1) Providing airport facilities, including without limitation related land, landing fields, runways, clear zones, lighting, navigational and signal systems, hangars, terminals, offices, shops, and parking facilities.
(2) Providing armories for the North Carolina National Guard.
(3) Providing auditoriums, coliseums, arenas, stadiums, civic centers, convention centers, and facilities for exhibitions, athletic and cultural events, shows, and public gatherings.
(4) Providing beach improvements, including without limitation jetties, seawalls, groins, moles, sand dunes, vegetation, additional sand, pumps and related equipment, and drainage channels, for the control of beach erosion and the improvement of beaches.
(5) Providing cemeteries.
(6) Providing facilities for fire fighting and prevention, including without limitation headquarters buildings, station buildings, training facilities, hydrants, alarm systems, and communications systems.
(7) Providing hospital facilities, including without limitation general, tuberculosis, mental, chronic disease, and other types of hospitals and related facilities such as laboratories, outpatient departments, nurses' homes and training facilities, and central service facilities operated in connection with hospitals; facilities for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices; facilities specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered workshops for the mentally retarded; nursing homes; and in connection with the foregoing, laundries, nurses', doctors', or interns' residences, administrative buildings, research facilities, maintenance, storage, and utility facilities, auditoriums, dining halls, food service and preparation facilities, fire prevention facilities, mental and physical health care facilities, dental care facilities, nursing schools, mental teaching facilities, offices, parking facilities, and other supporting service structures.

(8) Providing land for corporate purposes.
(9) Providing facilities for law enforcement, including without limitation headquarters buildings, station buildings, jails and other confinement facilities, training facilities, alarm systems, and communications systems.
(10) Providing library facilities, including without limitation fixed and mobile libraries.
(11) Providing art galleries, museums, and art centers, and providing for historic properties.
(12) Providing parking facilities, including on- and off-street parking, and in connection therewith any area or place for the parking and storing of automobiles and other vehicles open to public use, with or without charge, including without limitation meters, buildings, garages, driveways, and approaches.
(13) Providing parks and recreation facilities, including without limitation land, athletic fields, parks, playgrounds, recreation centers, shelters, stadiums, arenas, permanent and temporary stands, golf courses, swimming pools, wading pools, marinas, and lighting.
(14) Providing public building, including without limitation buildings housing courtrooms, other court facilities, and council rooms, office buildings, public markets, public comfort stations, warehouses, and yards.
(15) Providing public vehicles, including without limitation those for law enforcement, fire fighting and prevention, sanitation, street paving and maintenance, safety and public health, and other corporate purposes.
(16) Providing for redevelopment through the acquisition of land and the improvement thereof for assisting local redevelopment commissions.
(17) Providing sanitary sewer systems, including without limitation community sewerage facilities for the collection, treatment, and disposal of sewage or septic tank systems and other on-site collection and disposal facilities or systems.
(18) Providing solid waste disposal systems, including without limitation land for sanitary landfills, incinerators, and other structures and buildings.
(19) Providing storm sewers and flood control facilities, including without limitation levees, dikes, diversionary channels, drains, catch basins, and other facilities for storm water drainage.
(20) Providing voting machines.
(21) Providing water systems, including without limitation facilities for the supply, storage, treatment, and distribution of water.
(22) Providing for any other purpose for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.
(23) Providing public transportation facilities, including without limitation equipment for public transportation, buses, surface and belowground railways, ferries, and garage facilities.
(24) Providing industrial parks, land suitable for industrial or commercial purposes, shell buildings, in order to provide employment opportunities for citizens of the county or city.
(25) Providing property to preserve a railroad corridor.
(26) **(For effective date, see note)** Undertaking public activities in or for the benefit of a development financing district pursuant to a development financing plan.

(c) Each county is authorized to borrow money and issue its bonds under this Article in evidence of the debt for the purpose of, in the case of subdivisions

(1) through (4b) of this subsection, paying any capital costs of any one or more of the purposes and, in the case of subdivisions (5) and (6) of this subsection, to finance the cost of the purpose:

(1) Providing community college facilities, including without limitation buildings, plants, and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages.

(2) Providing courthouses, including without limitation offices, meeting rooms, court facilities and rooms, and detention facilities.

(3) Providing county homes for the indigent and infirm.

(4) Providing school facilities, including without limitation schoolhouses, buildings, plants and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles.

(4a) Providing improvements to subdivision and residential streets pursuant to G.S. 153A-205.

(4b) Providing land for present or future county corporate, open space, community college, and public school purposes.

(5) Providing for the octennial revaluation of real property for taxation.

(6) Providing housing projects for persons of low or moderate income, including construction or acquisition of projects to be owned by a county, redevelopment commission, or housing authority and the provision of loans, grants, interest supplements, and other programs of financial assistance to such persons. A housing project may provide housing for persons of other than low or moderate income if at least forty percent (40%) of the units in the project are exclusively reserved for persons of low or moderate income. No rent subsidy may be paid from bond proceeds.

(d) Each city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

(1) Repealed by Session Laws 1977, c. 402, s. 2.

(2) Providing cable television systems.

(3) Providing electric systems, including without limitation facilities for the generation, transmission, and distribution of electric light and power.

(4) Providing gas systems, including without limitation facilities for the production, storage, transmission and distribution of gas, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such systems may be located either within the State or without.

(5) Providing streets and sidewalks, including without limitation bridges, viaducts, causeways, overpasses, underpasses, and alleys; paving, grading, resurfacing, and widening streets; sidewalks, curbs and gutters, culverts, and drains; traffic controls, signals, and markers; lighting; and grade crossings and the elimination thereof and grade separations.

(6) Improving existing systems or facilities for the transmission or distribution of telephone services.

(7) Providing housing projects for the benefit of persons of low income, or moderate income, or low and moderate income, including without

limitation (i) construction or acquisition of projects to be owned by a city, redevelopment commission or housing authority, and (ii) loans, grants, interest supplements and other programs of financial assistance to persons of low income, or moderate income, or low and moderate income, and developers of housing for persons of low income, or moderate income, or low and moderate income. A housing project may provide housing for persons of other than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for housing for the exclusive use of persons of low income. No rent subsidy may be paid from bond proceeds.

(e) Each sanitary district, mosquito control district, hospital district, merged school administrative unit described in G.S. 115C-513; metropolitan sewerage district, metropolitan water district, county water and sewer district, regional public transportation authority and special airport district is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the purposes for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(f) For any of the purposes authorized by subsections (b), (c), (d), or (e) of this section, a unit may do any of the following that it considers necessary or convenient:

(1) Acquire, construct, erect, provide, develop, install, furnish, and equip; and
(2) Reconstruct, remodel, alter, renovate, replace, refurnish, and reequip; and
(3) Enlarge, expand, and extend; and
(4) Demolish, relocate, improve, grade, drain, landscape, pave, widen, and resurface.

(g) Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same bond order. However, bonds for any of the purposes listed in any subdivision of any subsection of this section shall be deemed to be for one purpose and may be authorized by the same bond order. In addition, nothing herein may be deemed to prohibit the combining of purposes from any of such paragraphs and the authorization of bonds therefor by the same bond order to the extent that the purposes are not unrelated.

(h) As used in this section, "capital costs" include, without limitation, the following:

(1) The costs of doing any or all of the things mentioned in subsection (f) of this section; and
(2) The costs of all property, both real and personal and both improved and unimproved, plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, franchises, and licenses used or useful in connection with the purpose authorized; and
(3) The costs of demolishing or moving structures from land acquired and acquiring any lands to which such structures are to be moved; and
(4) Financing charges, including estimated interest during construction and for six months thereafter; and
(5) The costs of plans, specifications, studies and reports, surveys, and estimates of costs and revenues; and
(6) The costs of bond printing and insurance; and
(7) Administrative and legal expenses; and
(8) Any other services, costs, and expenses necessary or incidental to the purpose authorized.

(i) This section does not authorize any unit to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the borrowing of money and the issuance of bonds within the limitations set out herein to finance programs, functions, joint undertakings, or services authorized by other portions of the General Statutes or by city charters. (1917, c. 138, s. 16; 1919, c. 178, s. 3(16); C.S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1939, c. 231, ss. 1, 2(c); 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 4; c. 1037; 1975, c. 549, s. 1; c. 821, s. 1; 1977, c. 402, ss. 1, 2; c. 811; 1979, c. 619, s. 3; c. 624, s. 1; c. 727, s. 3; 1985, c. 639, s. 2; 1987, c. 464, s. 7; c. 564, s. 10; 1989, c. 600, s. 7; c. 740, s. 4; 1991, c. 325, s. 5; 1997-6, s. 19; 1999-366, s. 4; 1999-378, s. 1; 2003-403, s. 3; 2009-281, s. 1.)

Cross References. — As to property taxes to provide for drainage projects or programs, see G.S. 160A-209.

Editor's Note. — Session Laws 1987, c. 577, s. 1 amended Session Laws 1985, c. 639, s. 4, as amended by Session Laws 1985 (Reg. Sess., 1986), cc. 846, 848, 849, 858, 874, 911, 916 and 921 and Session Laws 1987, c. 203, which formerly made subdivision (b)(24) of this section applicable only to certain counties, municipalities and towns, to read solely: "This act shall become effective January 1, 1986." Thus subdivision (b)(24) now has statewide application.

Session Laws 1991, c. 325, s. 9 interpreted the 1991 amendment to this section, which inserted "merged school administrative unit described in G.S. 115C-513" in subsection (e), by providing:

"Interpretation of Act."

"(a) Additional method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"(b) Statutory references. References in this act to specific sections or Chapters of the General Statutes are intended to be references to such sections as they may be amended from time to time by the General Assembly.

"(c) Liberal construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect these purposes.

"(d) Inconsistent provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, this act shall be controlling.

"(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

An amendment to this section, which would have added a new subdivision (b)(26) regarding undertaking public activities in or for the benefit of a development financing district, by Session Laws 1993, c. 497, s. 3, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to this section, therefore, never took effect.

Session Laws 1999-366, s. 1, provides: "The General Assembly finds and declares that the purpose of this act is to provide authority for counties in North Carolina to provide funds for residential housing construction, new or rehabilitated, and to provide for the sale or rental of housing to persons and families of low and moderate income. The General Assembly finds and declares that there exists in counties in the State a serious shortage of decent, safe, and sanitary residential housing available at low prices or rentals to persons and families of low and moderate income. This shortage is inimical to the health, safety, welfare, and prosperity of all residents of the State and to the sound growth of North Carolina communities."

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, and the addition of subdivision (b)(26) to this section by Session Laws 2003-403, s. 3, were adopted by vote of the people at the general election held on November 2, 2004.

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" in subdivision (b)(2).

CASE NOTES

Editor's Note. — *The cases cited below were decided under former statutory provisions similar to this section.*

Constitutionality of Former § 153-77. — Former G.S. 153-77, specifying the purposes for which county bonds could be issued, was constitutional. Evans v. Mecklenburg County, 205 N.C. 560, 172 S.E. 323 (1934).

Construction of County Water and Sewer Systems. — The General Assembly may grant to a county the authority to issue bonds for the construction of water and sewer systems when "approved by a majority of those who shall vote thereon in any election held for such purpose," as required by N.C. Const., Art. V, § 4(2). Ramsey v. Board of Comm'rs, 246 N.C. 647, 100 S.E.2d 55 (1957).

Erection and Maintenance of Municipal Public Hospital. — The authority to issue valid bonds for the erection and maintenance of a public hospital with the approval of its voters was conferred on a municipality by former G.S. 160-230 and 160-378, and where other relevant statutes had been duly followed, the bonds so issued were a valid obligation of the town issuing them, and their issuance would not be enjoined by the courts. Burleson v. Board of Aldermen, 200 N.C. 30, 156 S.E. 241 (1930).

Erection of Schoolhouses and Purchase of Land for School Purposes by Counties. — The counties of the State are authorized to issue bonds and notes for the erection of schoolhouses and for the purchase of land necessary for school purposes, and to levy taxes for the payment of principal and interest on the same, not as municipal corporations, organized primarily for purposes of local government, but as administrative agencies of the State, employed by the General Assembly to discharge the duty imposed upon it by the Constitution to provide a state system of public schools. Frazier v. Board of Comm'rs, 194 N.C. 49, 138 S.E. 433 (1927); Bridges v. City of Charlotte, 221 N.C. 472, 20 S.E.2d 825 (1942).

Indebtedness for teachers' salaries was held to come within the purview of an earlier statute authorizing issuance of bonds for the funding or refunding of valid indebtedness. Hampton v. Board of Educ., 195 N.C. 213, 141 S.E. 744 (1928).

Validity of Refunding Bonds. — Where a county under power conferred by special statute has borrowed money from time to time for the maintenance and equipment of its public schools, its bonds to refund the indebtedness so incurred are valid if issued in conformity with the provisions of the applicable statute. Hartsfield v. Craven County, 194 N.C. 358, 139 S.E. 698 (1927).

Cited in South Shell Inv. v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988).

§ 159-49. When a vote of the people is required.

Bonds may be issued under this Article only if approved by a vote of the qualified voters of the issuing unit as provided in this Article, except that voter approval shall not be required for:

(1) Bonds issued for any purpose authorized by G.S. 159-48(a)(1), (2), (3), or (5).

(2) Bonds issued by a county, county water and sewer district created under Article 6 of Chapter 162A of the General Statutes, metropolitan water district created under Article 4 of Chapter 162A of the General Statutes, or city for any purpose authorized by G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), (d), or (e) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), (22), or (23) or by G.S. 159-48(d)(2)) in an aggregate principal sum not exceeding two thirds of the amount by which the outstanding indebtedness of the issuing county, county water and sewer district, metropolitan water district, or city has been reduced during the next preceding fiscal year.

Pursuant to Article V, Sec. 4(2) of the Constitution, the General Assembly hereby declares that the purposes authorized by G.S. 159-48(a)(4), (6), and (7) and by G.S. 159-48(b), (c), (d), and (e) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), (22), or (23) or by G.S. 159-48(d)(2)) are purposes for which bonds may be issued without a vote of the people, to the extent of two thirds of the amount by which the outstanding indebtedness of the issuing county, county water and sewer district, metropolitan water district, or city was reduced in the last preceding fiscal year. (1971, c. 780, s. 1; 1973, c. 494, s. 5; 1977, c. 402, s. 3; 1989, c. 470.)

Cross References. — As to when an election is or is not required under the "necessary expense limitation" of N.C. Const., Art. V, § 4(2), see note to N.C. Const., Art. V, § 4.

Part 2. Procedure for Issuing Bonds.

§ 159-50. Notice of intent to make application for issuance of voted bonds; objection by citizens and taxpayers.

When a unit of local government proposes to issue bonds that must be approved by a vote of the people, it shall first publish a notice of its intent to make application to the Commission for approval of the issue. The notice shall be published once not less than 10 days before the application is filed. The notice shall state (i) that the board intends to file an application with the Commission for approval of a bond issue, (ii) in brief and general terms the purpose of the proposed issue, (iii) the maximum amount of bonds to be issued, and (iv) that any citizen or taxpayer of the issuing unit may, within seven days after the date of the publication, file with the governing board and the Commission a statement of any objections he may have to the issue. The Commission may prescribe the form of the notice.

Any citizen or taxpayer of the issuing unit who objects to the proposed bond issue in whole or in part may, within seven days from the date of publication of the notice, file a written statement of his objections with the board and the Commission. The statement shall set forth each objection to the proposed bond issue and shall contain the name and address of the person filing it. The Commission shall consider the statement of objections along with the application and shall notify the objector and the board of its disposition of each objection.

Failure to comply with this section shall not affect the validity of any bonds otherwise issued in accordance with the law. This section shall not apply to bonds that need not be submitted to a vote of the people. (1953, c. 1121; 1971, c. 780, s. 1.)

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-51. Application to Commission for approval of bond issue; preliminary conference; acceptance of application.

No bonds may be issued under this Article unless the issue is approved by the Local Government Commission. The governing board of the issuing unit shall file an application for Commission approval of the issue with the secretary of the Commission. If the issuing unit is a regional public transportation authority, the application must be accompanied by resolutions of the special tax board of that authority and of each of the boards of county commissioners of the counties organizing the authority approving of the application. The application shall state such facts and have attached to it such documents concerning the proposed bonds and the financial condition of the issuing unit as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference to consider the proposed bond issue. If the issuing unit is a merged school administrative unit described in G.S. 115C-513, each county in which the merged unit is located may attend the preliminary conference.

After an application in proper form has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section. (1953, c. 1121; 1971, c. 780, s. 2; 1989, c. 740, s. 5; 1991, c. 325, s. 6; c. 666, s. 6.)

Editor's Note. — As to validation of certain proceedings not complying with former G.S. 159-7, see Session Laws 1959, c. 318.

Session Laws 1991, c. 325, s. 9 interpreted the 1991 amendment to this section by c. 325, s. 6, which added the second sentence of the second paragraph, by providing:

"Interpretation of Act."

"(a) Additional method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"(b) Statutory references. References in this act to specific sections or Chapters of the General Statutes are intended to be references to such sections as they may be amended from time to time by the General Assembly.

"(c) Liberal construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect these purposes.

"(d) Inconsistent provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, this act shall be controlling.

"(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

CASE NOTES

Cited in Wright v. County of Macon, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

§ 159-52. Approval of application by Commission.

(a) In determining whether a proposed bond issue shall be approved, the Commission may consider:

(1) Whether the project to be financed from the proceeds of the bond issue is necessary or expedient.
(2) The nature and amount of the outstanding debt of the issuing unit.
(3) The unit's debt management procedures and policies.
(4) The unit's tax and special assessments collection record.
(5) The unit's compliance with the Local Government Budget and Fiscal Control Act.
(6) Whether the unit is in default in any of its debt service obligations.
(7) The unit's present tax rates, and the increase in tax rate, if any, necessary to service the proposed debt.
(8) The unit's appraised and assessed value of property subject to taxation.
(9) The ability of the unit to sustain the additional taxes necessary to service the debt.
(10) The ability of the Commission to market the proposed bonds at reasonable interest rates.
(11) If the proposed issue is for a utility or public service enterprise, the probable net revenues of the project to be financed and the extent to which the revenues of the utility or enterprise, after addition of the revenues of the project to be financed, will be sufficient to service the proposed debt.
(12) Whether the amount of the proposed debt will be adequate to accomplish the purpose for which it is to be incurred.

The Commission may inquire into and give consideration to any other matters which it may believe to have a bearing on whether the issue should be approved.

(b) The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

(1) That the proposed bond issue is necessary or expedient.
(2) That the amount proposed is adequate and not excessive for the proposed purpose of the issue.
(3) That the unit's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
(4) That the increase in taxes, if any, necessary to service the proposed debt will not be excessive.
(5) That the proposed bonds can be marketed at reasonable rates of interest.

If the Commission tentatively decides to deny the application because it is of the opinion that any one or more of these conclusions cannot be supported from the information presented to it, it shall so notify the unit filing the application. If the unit so requests, the Commission shall hold a public hearing on the application at which time any interested persons shall be heard. The Commission may appoint a hearing officer to conduct the hearing, and to present a summary of the testimony and his recommendations for the Commission's consideration. (1931, c. 60, ss. 12, 13; 1971, c. 780, s. 1.)

§ 159-53. Order approving or disapproving an application.

(a) After considering an application, and conducting a public hearing thereon if one is requested under G.S. 159-52(b), the Commission shall enter its order either approving or denying the application. An order approving an issue shall not be regarded as an approval of the legality of the bonds in any respect.

(b) If the Commission shall enter an order denying an application, the proceedings under this Subchapter shall be at an end. (1931, c. 60, s. 14; 1971, c. 780, s. 1.)

§ 159-54. The bond order.

After or at the same time the application is filed and accepted for submission to the Commission, a bond order shall be introduced before the governing board of the issuing unit. The bond order shall state:

(1) Briefly and generally and without specification of location or material of construction, the purpose for which the bonds are to be issued, but not more than one purpose may be stated. For funding or refunding bonds a brief description of the debt, judgment, or obligation to be funded or refunded shall be sufficient.
(2) The maximum aggregate principal amount of the bonds.
(3) That taxes will be levied in an amount sufficient to pay the principal and interest of the bonds.
(4) The extent, if any, to which utility or enterprise revenues are, or may be, pledged to payment of interest on and principal of the bonds pursuant to G.S. 159-47.
(5) That a sworn statement of debt has been filed with the clerk and is open to public inspection.
(6) If the bonds are to be approved by the voters, that the bond order will take effect when approved by the voters.
(7) If the bonds are issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5), that the bond order will take effect upon its adoption. If the bonds are to be issued pursuant to G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), or (d) and are not to be submitted to the voters, that the bond order will take effect 30 days after its publication following adoption, unless it is petitioned to a vote of the people as provided in G.S. 159-60, and that in that event the order will take effect when approved by the voters.

When the bond order is introduced, the board shall fix the time and place for a public hearing thereon. (1917, c. 138, s. 17; 1919, c. 178, s. 3(17); c. 285, s. 2; C.S., s. 2938; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 9; 1931, c. 60, ss. 49, 55; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1949, c. 497, ss. 1, 3; 1957, c. 856, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 6.)

CASE NOTES

Editor's Note. *— Many of the cases cited below were decided under former statutory provisions similar to this section.*

Applicability. — A fair reading of the language of this section and G.S. 159-54 indicates that this Act applies to general obligation bonds which pledge the faith and credit of the county. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

The bond order is the crucial foundation document which supports and explains the proposal to be submitted, and material representations set out in the bond order ordinarily become essential elements of the proposition submitted to the voters. Rider v. Lenoir County, 236 N.C. 620, 73 S.E.2d 913 (1952).

The courts are without authority to supply a deficiency in the bond order. Hall v.

Commissioners of Duplin, 195 N.C. 367, 142 S.E. 315 (1928).

Stipulation in Bond Order as Limitation on Subsequent Official Acts. — Where bond order contains a stipulation definitely fixing the maximum amount of county funds to be expended on a proposed project, such stipulation, treated as a compact, becomes a limitation upon subsequent official acts based on a favorable vote and may not be materially varied. Rider v. Lenoir County, 236 N.C. 620, 73 S.E.2d 913 (1952).

Provision Becoming Part of Bonds. — A provision set out in former G.S. 159-46 and incorporated in an ordinance authorizing the issuance of bonds entered into and became an integral part of the bonds when issued, with contractual force and effect, which could not be impaired by subsequent legislation. Nash v. Board of Comm'rs, 211 N.C. 301, 190 S.E. 475 (1937).

Ordinance authorizing a bond sale and calling a special election must state the purpose in only brief and general terms. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Use of Proceeds of Bonds Limited by Bond Order. — Where a bond order approved by the voters of a county authorized the issuance of bonds in an aggregate amount to finance a new building or buildings to be used as a public hospital and the acquisition of a suitable site therefor, the use of the proceeds of the bonds was limited by the bond order, and the county could not use the surplus left after completing the project contemplated in the bond order toward the construction of a clinic in another municipality of the county. Lewis v. Beaufort County, 249 N.C. 628, 107 S.E.2d 77 (1959).

No Substantial Deviation from Purpose Found. — Where the manifest purpose for which a civic center bond issue was proposed was to revitalize the downtown area, with the civic center becoming the catalyst for other projects, and the site finally chosen by the city council remained in the downtown area, although at a distance of approximately four blocks from the site noted in speeches by public officials before the election, there was not a substantial deviation from the purpose for which the bonds were proposed. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Misrepresentations made as to the site of the civic center for construction of which a bond issue to be paid by taxes was proposed did not vitiate the question as submitted to the voters in the bond issue election. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Use of Funds for Hospital "Buildings". — Where the resolution of the county commissioners in submitting to a vote the question of issuing bonds for a public hospital used the word "buildings," and it was later found that a surplus would remain after the erection and equipment of the main hospital building, such surplus could be used for the purpose of erecting on the hospital grounds a home for nurses, technicians and others engaged in essential employment incidental to the proper operation of the hospital. Worley v. Johnston County, 231 N.C. 592, 58 S.E.2d 99 (1950).

Intent to Use Funds for Construction of Water and Sewer Lines in Annexed Areas. — Where there was no irregularity in the authorization of municipal bonds for its water and sewer systems, and in the city's notice of intent to annex certain areas it was stated that the city intended to use certain of the proceeds of the bonds for the construction of water and sewer lines in areas intended to be annexed, the fact that neither the bond ordinance nor the ballots used in the election at which the issuance of the bonds was approved disclosed such intent did not affect the validity of the bonds. Upchurch v. City of Raleigh, 252 N.C. 676, 114 S.E.2d 772 (1960).

A bond order may contain several sections and authorize the issue of bonds for different purposes. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949).

Bond order need not set out in detail estimates of cost and descriptions of the particular projects for which the funds are proposed to be used, and their inclusion does not limit the allocation of the proceeds of the bonds, provided the use of the funds falls within the general purpose designated. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949).

Nor Specify That Public Funds Will Supplement Bond Moneys. — Where public funds are to supplement bond moneys, it is not required that the bond order specify, or the voters be advised, that the proceeds of the proposed bond issue are to be used with, or in addition to, a sum of money on hand or otherwise available for the proposed improvement. Rider v. Lenoir County, 236 N.C. 620, 73 S.E.2d 913 (1952).

But Where Order Stipulates Total Sum to Be Expended, Appropriation of Additional Sum Is Unauthorized. — While a county may ordinarily expend unallocated nontax moneys for the public purpose of a county hospital even in those instances in which a bond order for the hospital does not specify that the proceeds of the bonds are to be used together with such unallocated nontax moneys, where the bond order specifically specified that the total maximum amount to be expended by the county for the hospital was not to exceed $465,000, the allocation of an additional supplemental appropriation of over $138,000 out of nontax moneys on hand was a material variance from the compact as set forth in the bond order, and the county could be restrained in a proper suit from issuing the bonds and disbursing county funds in accordance with hospital plans predicated upon such increased appropriation. Rider v. Lenoir County, 236 N.C. 620, 73 S.E.2d 913 (1952).

Amount and Manner of Assessment Against Each Abutting Owner Need Not Be Set Forth. — It is not required that a bond ordinance of a municipality set forth in express terms the proportion of the cost of the proposed improvements which has been, or is to be, assessed against the property of each owner abutting upon the streets to be improved, or the terms and method of making the payment, if the procedure follow the direction of the statutes relating to the subject. Leak v. Town of Wadesboro, 186 N.C. 683, 121 S.E. 12 (1923).

A tax must be levied only if revenue from other sources is inadequate to repay the principal and interest on the bonds outstanding. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Repayment of Bonds by Charging Reasonable Fees. — Where the ballot that the voters considered indicated that the voters were asked only to authorize a tax rather than to approve an order imposing a tax, the County Commissioners were not compelled to impose a tax and were free, under these facts, to charge reasonable fees and charges to repay the bonds in lieu of the levy of a tax. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Cited in Citizens Ass'n for Reasonable Growth v. City of Washington, 45 N.C. App. 7, 262 S.E.2d 343 (1980).

§ 159-55. Sworn statement of debt; debt limitation.

(a) After the bond order has been introduced and before the public hearing thereon, the finance officer (or some other officer designated by the governing board for this purpose) shall file with the clerk a statement showing the following:

(1) The gross debt of the unit, excluding therefrom debt incurred or to be incurred in anticipation of the collection of taxes or other revenues or in anticipation of the sale of bonds other than funding and refunding bonds. The gross debt (after exclusions) is the sum of (i) outstanding debt evidenced by bonds, (ii) bonds authorized by orders introduced but not yet adopted, (iii) unissued bonds authorized by adopted orders, and (iv) outstanding debt not evidenced by bonds. However, for purposes of the sworn statement of debt and the debt limitation, revenue bonds and project development financing debt instruments (unless additionally secured by a pledge of the issuing unit's faith and credit) shall not be considered debt and shall not be included in gross debt nor deducted from gross debt.

(2) The deductions to be made from gross debt in computing net debt. The following deductions are allowed:

a. Funding and refunding bonds authorized by orders introduced but not yet adopted.

b. Funding and refunding bonds authorized but not yet issued.

c. The amount of money held in sinking funds or otherwise for the payment of any part of the principal of gross debt other than debt incurred for water, gas, electric light or power purposes, or sanitary sewer purposes (to the extent that the bonds are deductible under subsection (b) of this section), or two or more of these purposes.

d. The amount of bonded debt included in gross debt and incurred, or to be incurred, for water, gas, or electric light or power purposes, or any two or more of these purposes.

e. The amount of bonded debt included in the gross debt and incurred, or to be incurred, for sanitary sewer system purposes to the extent that the debt is made deductible by subsection (b) of this section.

f. The amount of uncollected special assessments theretofore levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred, to the extent that the assessments will be applied, when collected, to the payment of any part of the gross debt.

g. The amount, as estimated by the governing board of the issuing unit or an officer designated by the board for this purpose, of special assessments to be levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred, to the extent that the special assessments, when collected, will be applied to the payment of any part of the gross debt.

(3) The net debt of the issuing unit, being the difference between the gross debt and deductions.

(4) The assessed value of property subject to taxation by the issuing unit, as revealed by the tax records and certified to the issuing unit by the assessor. In calculating the assessed value, the incremental valuation of any development financing district located in the unit, as determined pursuant to G.S. 159-107, shall not be included.

(5) The percentage that the net debt bears to the assessed value of property subject to taxation by the issuing unit.

(b) Debt incurred or to be incurred for sanitary sewer system purposes is deductible from gross debt when the combined revenues of the water system and the sanitary sewer system (whether or not the water and sewer system are operated separately or as a consolidated system) were sufficient to pay all operating, capital outlay, and debt service expenditures attributable to both systems in each of the three complete fiscal years immediately preceding the date on which the sworn statement of debt is filed. For the purposes of this subsection, the "revenues" of a water system and a sanitary sewer system include:

(1) Rates, fees, rentals, charges, and other receipts and income derived from or in connection with the system.

(2) Fees, rents, or other charges collected from other offices, agencies, institutions, and departments of the issuing unit at rates not in excess of those charged to other consumers, customers, or users.

(3) Appropriations from the fund balance of the prior fiscal year from the fund or funds established to account for the revenues and expenditures of the water system or sewer system pursuant to G.S. 159-13(a) of the Local Government Budget and Fiscal Control Act.

Before the sworn statement of debt is filed, the secretary shall determine to what extent debt incurred or to be incurred for sanitary sewer system purposes qualifies for deduction from gross debt pursuant to this subsection, and shall give his certificate to that effect. The secretary's certificate shall be filed with and deemed a part of the sworn statement of debt. The secretary's certificate shall be conclusive in the absence of fraud.

(c) No bond order shall be adopted unless it appears from the sworn statement of debt filed in connection therewith that the net debt of the unit does not exceed eight percent (8%) of the assessed value of property subject to taxation by the issuing unit. This limitation shall not apply to:

(1) Funding and refunding bonds.

(2) Bonds issued for water, gas, or electric power purposes, or two or more of these purposes.

(3) Bonds issued for sanitary sewer system purposes when the bonds are deductible pursuant to subsection (b) of this section.

(4) Bonds issued for sanitary sewers, sewage disposal, or sewage purification plants when the construction of these facilities has been ordered by the Environmental Management Commission, which Commission is hereby authorized to make such an order, or by a court of competent jurisdiction.

(5) Bonds or notes issued for erosion control purposes.

(6) Bonds or notes issued for the purpose of erecting jetties or other protective works to prevent encroachment by the ocean, sounds, or

other bodies of water. (1917, c. 138, s. 19; 1919, c. 178, s. 3(19); c. 285, s. 4; C.S., s. 2943; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, ss. 13, 14; c. 102, s. 1; 1931, c. 60, s. 51; 1933, c. 259, s. 1; c. 321; Ex. Sess. 1938, c. 3; 1955, c. 1045; 1959, c. 779, s. 10; 1967, c. 892, s. 4; 1969, c. 1092; 1971, c. 780, s. 1; 1973, c. 494, s. 7; c. 1262, s. 231; 1991, c. 11, ss. 2, 3; 1991 (Reg. Sess., 1992), c. 1007, s. 41; 2003-403, s. 4.)

Editor's Note. — An amendment to subsection (a) of this section by Session Laws 1993, c. 497, s. 4, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to subsection (a) of this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 2, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the the people at the general election held on November 2, 2004.

CASE NOTES

Editor's Note. — *Most of the cases cited below were decided under former statutory provisions similar to this section.*

Action Attacking Bond Order on Ground of Failure to File Statement. — Where taxpayers instituted an action attacking a bond order passed by the board of county commissioners for failure of the commissioners to comply with the statute requiring the filing of a true statement of the county debt, the attack upon the order was upon statutory as distinguished from constitutional grounds, and an action instituted more than 30 days after the first publication of the order could not be maintained. Garrell v. Columbus County, 215 N.C. 589, 2 S.E.2d 701 (1939).

Bonds issued by a municipality for water and sewer systems do not come within the inhibition against incurring debt in excess of 8% of the assessed valuation (now 8% of the appraised value). Lamb v. Randleman, 206 N.C. 837, 175 S.E. 293 (1934).

Bonds Including Amount of Special Assessments. — Where a town has issued bonds for general street improvements under legislative authority, and includes the amount required for local improvements by assessment of owners of lands abutting a particular street improved, it may charge off from the proceeds of the sale of the bonds the estimated amount to be realized by the special assessments. Brown v. Town of Hillsboro, 185 N.C. 368, 117 S.E. 41 (1923).

Applied in Wright v. County of Macon, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

§ 159-56. Publication of bond order as introduced.

After the introduction of the bond order, the clerk shall publish it once with the following statement appended:

"The foregoing order has been introduced and a sworn statement of debt has been filed under the Local Government Bond Act showing the appraised value of the [issuing unit] to be $ ____________ and the net debt thereof, including the proposed bonds, to be $ ____________. A tax will [may] be levied to pay the principal of and interest on the bonds if they are issued. Anyone who wishes to be heard on the questions of the validity of the bond order and the advisability of issuing the bonds may appear at a public hearing or an adjournment thereof to be held at ____________.

____
Clerk"

(1927, c. 81, s. 16; 1971, c. 780, s., 1.)

CASE NOTES

Editor's Note. *— The case cited below was decided under former statutory provisions similar to this section.*

The proper publication of the notices is mandatory, and cannot be dispensed with. Frazier v. Board of Comm'rs, 194 N.C. 49, 138 S.E. 433 (1927).

Sufficiency of Publication. — Former statute requiring notice to taxpayers, etc., of an opportunity to be heard before a county could issue bonds for various purposes was sufficiently complied with if several orders of the county commissioners were published in the same advertisement and a date and place, fixed for passing upon the objections made, if any, was separately placed in the publication, distinctly referring to each of the separate purposes. Frazier v. Board of Comm'rs, 194 N.C. 49, 138 S.E. 433 (1927).

Publication of one statement in connection with three orders was sufficient as a compliance with former statute, a statement for each order not being necessary. Frazier v. Board of Comm'rs, 194 N.C. 49, 138 S.E. 433 (1927).

§ 159-56.1. Certain proceedings ratified notwithstanding provisions of § 159-56.

All proceedings heretofore taken by the governing boards of units of local government in connection with the authorization of bonds are hereby ratified, approved, confirmed and in all respects validated, notwithstanding the provisions of G.S. 159-56; provided that the issuance of said bonds, the indebtedness to be incurred by the issuance thereof and the levy of a tax for the payment thereof shall have been approved at an election by a majority of the qualified voters of the unit voting thereon. (1973, c. 1172.)

§ 159-57. Hearing; passage of bond order.

On the date fixed for the public hearing, which shall be not earlier than six days after the date of publication of the bond order as introduced, the board shall hear anyone who may wish to be heard on the question of the validity of the order or the advisability of issuing the bonds. The hearing may be adjourned from time to time.

After the hearing, (and on the same day as the hearing, if the board so desires) the board may pass the order as introduced, or as amended. No amendment may increase the amount of bonds to be issued, nor substantially change the purpose of the issue. If the board wishes to increase the amount of bonds to be issued, or to substantially change the purpose of the issue, a new proceeding under this Article is required.

The provisions of any city charter, general law, or local act to the contrary notwithstanding, a bond order may be introduced at any regular or special meeting of the governing board and adopted at any such meeting by a simple majority of those present and voting, a quorum being present, and need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Subchapter. Bond orders shall not be subject to the provisions of any city charter or local act concerning initiative and referendum. (1927, c. 81, s. 17; 1953, c. 1065, s. 1; 1971, c. 780, s. 1.)

CASE NOTES

Cited in Wright v. County of Macon, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

§ 159-58. Publication of bond order as adopted.

After adoption, the clerk shall publish the bond order once, with the following statement appended:

"The foregoing order was adopted on the ______ day of ______, ______, and is hereby published this ______ day of ______, ______. Any action or proceeding questioning the validity of the order must be begun within 30 days after the date of publication of this notice.

______
Clerk"

(1917, c. 138, s. 20; 1919, c. 49, s. 1; c. 178, s. 3(20); C.S., s. 2944; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 19; 1971, c. 780, s. 1; 1999-456, s. 59.)

CASE NOTES

Cited in Citizens Ass'n for Reasonable Growth v. City of Washington, 45 N.C. App. 7, 262 S.E.2d 343 (1980).

§ 159-59. Limitation of action to set aside order.

Any action or proceeding in any court to set aside a bond order, or to obtain any other relief, upon the ground that the order is invalid, must be begun within 30 days after the date of publication of the bond order as adopted. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section. (1917, c. 138, s. 20; 1919, c. 49, s. 1; c. 178, s. 3(20); C.S., s. 2945; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 20; 1971, c. 780, s. 1.)

CASE NOTES

***Editor's Note.** — Many of the cases cited below were decided under former statutory provisions similar to this section.*

Right to Test Constitutionality of Bond Issue Not Affected. — Former G.S. 153-90, similar to this section, did not prevent a suit to determine the constitutionality of the bond issue. Sessions v. Columbus County, 214 N.C. 634, 200 S.E. 418 (1939).

When the proposed bond issue contravened the Constitution, the requirement of former G.S. 153-90, similar to this section, that actions to restrain issuance of bonds by counties must be instituted within 30 days of the first publication of notice of the adoption of the bond resolution did not apply. Sessions v. Columbus County, 214 N.C. 634, 200 S.E. 418 (1939).

Suit Alleging Violation of Statutory Restrictions on Amount of Bonds. — Where a board of county commissioners, under ordinance duly passed and hearing thereon had, was about to issue bonds for the necessary purpose of erecting a jail, etc., contrary to the restrictions of the former County Finance Act limiting the amount of bonds, a suit to restrain the issuance of the bonds was required to be commenced within 30 days after the publication of the required notice and order, and a suit instituted after the time prescribed could not be maintained. The question whether former statute, similar to this section, was strictly one of limitation or a condition annexed to the cause of action was immaterial. Kirby v. Board of Comm'rs, 198 N.C. 440, 152 S.E. 165 (1930).

Suit Based on Failure to File True Statement of County Debt. — Where taxpayers instituted an action attacking a bond order passed by the board of county commissioners on the ground that the commissioners had failed to comply with former G.S. 153-84, requiring the filing of a true statement of the county debt, the attack upon the order was held to be upon statutory as distinguished from constitutional grounds, and an action instituted more than 30 days after the first publication of the order could not be maintained. Garrell v. Columbus County, 215 N.C. 589, 2 S.E.2d 701 (1939).

Suit Based on Irregularities in Bond Order and Ballot. — Action to enjoin issuance of hospital bonds and to restrain disbursement of county funds therefor on the ground of irregularities in the bond order and form of ballot was held precluded by former statutes similar to this section and G.S. 159-62 because not instituted until after 30 days subsequent to the statement of the result of election. Rider v. Lenoir County, 236 N.C. 620, 73 S.E.2d 913 (1952).

Applied in Citizens Ass'n for Reasonable Growth v. City of Washington, 45 N.C. App. 7, 262 S.E.2d 343 (1980).

Cited in Wright v. County of Macon, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

§ 159-60. Petition for referendum on bond issue.

A petition demanding that a bond order be submitted to the voters may be filed with the clerk within 30 days after the date of publication of the bond order as introduced. The petition shall be in writing, and shall be signed by a number of voters of the issuing unit equal to not less than ten percent (10%) of the total number of voters registered to vote in elections of the issuing unit according to the most recent figures certified by the State Board of Elections. The residence address of each signer shall be written after his signature. The petition need not contain the text of the order to which it refers, and need not be all on one sheet.

The clerk shall investigate the sufficiency of the petition and present it to the governing board, with a certificate stating the results of his investigation. The governing board, after hearing any taxpayer who may request to be heard, shall thereupon determine the sufficiency of the petition, and its determination shall be conclusive.

This section does not apply to bonds issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5). (1917, c. 138, s. 21; 1919, c. 49, ss. 1, 2; c. 178, s. 3(21); C.S., s. 2947; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 20; c. 102, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 8.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under former statutory provisions similar to this section.*

Validity of Bond Order in Absence of Petition for Referendum. — Where no petition was filed within the time prescribed, praying that a bond order duly passed by the board of commissioners of a county be submitted to the voters of the county, in accordance with the provisions of the former County Finance Act, the bond order was valid and effective, without the approval of the voters of the county. Hemric v. Board of Comm'rs, 206 N.C. 845, 175 S.E. 168 (1934).

Approval of Voters Required Where Petition Filed. — Where a petition was filed in accordance with statutory provisions, praying that a bond order duly passed by the board of commissioners of a county, authorizing and directing the issuance of bonds of the county for the purpose of procuring money for the purchase, construction, improvement or equipment of schoolhouses required for the maintenance of a school in each of the districts of the county as required by the Constitution of the State, be submitted to the voters of the county, such bond order was not valid or effective until the same had been approved by the voters of the county as provided. Hemric v. Board of Comm'rs, 206 N.C. 845, 175 S.E. 168 (1934).

Temporary Restraining Order Pending Determination of Sufficiency of Petition. — Where the taxpayers of a county filed suit under this section to restrain the issuance of bonds until authorized by the qualified voters of the county, and there was a controversy as to whether the signatures of the requisite 15% (now 10%) of qualified voters had been obtained to the petition, a temporary restraining order would be continued until the sufficiency of the petition could be determined. Scruggs v. Rollins, 207 N.C. 335, 177 S.E. 180 (1934).

§ 159-61. Bond referenda; majority required; notice of referendum; form of ballot; canvass.

(a) If a bond order is to take effect upon approval of the voters, the affirmative vote or a majority of those who vote thereon shall be required.

(b) The date of a bond referendum shall be fixed by the governing board, but shall not be more than one year after adoption of the bond order. The governing board may call a special referendum for the purpose of voting on a bond issue on any day, including the day of any regular or special election held for another purpose (unless the law under which the bond referendum or other election is held specifically prohibits submission of other questions at the same time). A special bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum, or within 30 days before or 10 days after any other primary, election, or referendum to be held in the same unit holding the bond referendum and already validly called or scheduled by law at the time the bond referendum is called. The clerk shall mail or deliver a certified copy of the resolution calling a special bond referendum to the board of elections that is to conduct it within three days after the resolution is adopted, but failure to observe this requirement shall not in any manner affect the validity of the referendum or bonds issued pursuant thereto. Bond referenda shall be conducted by the board of elections conducting regular elections of the county, city, or special district. In fixing the date of a bond referendum, the governing board shall consult the board of elections in order that the referendum shall not unduly interfere with other elections already scheduled or in process. Several bond orders or other matters may be voted upon at the same referendum.

(c) The clerk shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the maximum amount of the proposed bonds, the purpose of the bonds, a statement that taxes will or may be levied for the payment thereof, and a statement as to the last day for registration for the referendum under the election laws then in effect.

(d) The form of the question as stated on the ballot shall be in substantially the following words:

"Shall the order authorizing $ ________ bonds for (briefly stating the purpose) be approved?

[ ] YES
[ ] NO"

(e) The board of elections shall canvass the referendum and certify the results to the governing board. The governing board shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended:

"Any action or proceeding challenging the regularity or validity of this bond referendum must be begun within 30 days after

____
(date of publication)

____
(title of governing board)"

The statement of results shall be filed in the clerk's office and inserted in the minutes of the board. (1917, c. 138, s. 22; 1919, c. 178, s. 3(22); c. 291; C.S., s. 2948; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, ss. 22, 23, 25-27, 29; 1949, c. 497, ss. 2, 4; 1953, c. 1065, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 9.)

Editor's Note. — As to the publication of first notice and the closing of registration books for local elections held under G. S. 163-287 or this section on June 10, 1982, see Session Laws 1982, 2nd Ex. Sess., c. 3, s. 19.2.

Session Laws 1999-152, ss. 1 and 2, provides that bond referenda held by units of local government in connection with the authorization of bonds are hereby ratified, approved, confirmed, and in all respects validated, notwithstanding the provisions of G.S. 159-61(b), if the authorization of the bonds was approved at an election by a majority of the qualified voters of the unit voting thereon and notice of the referendum was published. This act applies to all bond referenda held by units of local government between April 1, 1997, and June 1, 1998.

As to any bond referendum held on the date of the 2002 statewide primary, see Session Laws 2002-21 (Extra Session), s. 1(i), (j), and (*l*).

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided under former statutory provisions similar to this section.*

Validity of Elections Favored. — It is the general rule that every reasonable presumption will be indulged in favor of the validity of elections, and the courts will uphold the validity of municipal bond elections unless clear grounds are shown for invalidating them. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

The result of an election as determined by the proper election officials shall stand until it shall be regularly contested and reversed by a tribunal having jurisdiction for that purpose. The court will not permit itself to be substituted for the proper election officials in the first instance for the purpose of canvassing the returns from the officers holding the election and declaring the result thereof. Garner v. Town of Newport, 246 N.C. 449, 98 S.E.2d 505 (1957).

Ordinance authorizing a bond sale and calling a special election must state the purpose in only brief and general terms. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Necessity of Notice. — While, so far as the officers are concerned who are charged with the duty of giving notice, the requirement as to notice is imperative, yet it will be regarded, otherwise, as directory, if the result would not be changed by a departure from the provisions of the statute. The law looks more to the substance than to the form, and if it appears that a clear majority of the qualified voters have cast their votes in favor of the proposition submitted to them, and that there has been a fair and full opportunity for all to vote, and that there has been no fraud, and the election is in all respects free from taint of any sort, so that no well founded suspicion can be cast upon it, it would be idle to say that this free and untrammeled expression of the popular will should be disregarded and set aside. Hill v. Skinner, 169 N.C. 405, 86 S.E. 351 (1915); Board of Comm'rs v. C.M. Malone & Co., 179 N.C. 604, 103 S.E. 134 (1920).

When Election Held. — The requirement of former G.S. 160-387, that a special bond election should not be held within one month before or after a regular municipal election, was mandatory, and the statutory period was to be computed by excluding the first and including the last day thereof as provided in G.S. 1-593. Adcock v. Town of Fuquay Springs, 194 N.C. 423, 140 S.E. 24 (1927).

The statute permits the use of a broad and general ballot in bond elections. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

As to directory nature of former statute with regard to the form and language of the ballot, see Board of Comm'rs v. C.M. Malone & Co., 179 N.C. 604, 103 S.E. 134 (1920).

Submission of More Than One Question or Proposal at Same Election. — While former G.S. 153-93 permitted the submission of more than one question or proposal in one and the same election, this contemplated questions authorized by law. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

Ballot Held to Comply with Statute. — A ballot for a school bond election which stated the question submitted for approval or disapproval, followed by a brief statement of the purposes for which the proceeds of the proposed bonds were to be used and that a tax would be levied to pay the principal and interest on the bonds in event of approval, followed by the word "Yes" and the word "No" and a square opposite each, with instructions as to how the ballot should be marked, was held to comply with former G.S. 153-96 and G.S. 163-150, and the fact that the number of proposed projects necessarily resulted in a ballot somewhat longer than usual was not objectionable. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

Misrepresentations made as to the site of a civic center, for whose construction a bond issue to be paid by taxes was proposed, did not vitiate the question as submitted to the voters in the bond issue election. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Publication of Returns. — It is not necessary to the validity of an election that the returns be published, if it appears that no prejudice was sustained because of such failure. Board of Comm'rs v. C.M. Malone & Co., 179 N.C. 604, 103 S.E. 134 (1920).

Necessary Allegations in Suit to Restrain Issuance of Bonds for Irregularities in Election. — In an action to restrain the issuance of bonds on the ground of irregularities in the bond election, a complaint which failed to allege that the officers appointed to hold the election had reported the results thereof to the governing body of the municipality and that the governing body had canvassed the returns and judicially determined the result, as required by former G.S. 160-387, was demurrable. Garner v. Town of Newport, 246 N.C. 449, 98 S.E.2d 505 (1957).

Cited in Citizens Ass'n for Reasonable Growth v. City of Washington, 45 N.C. App. 7, 262 S.E.2d 343 (1980).

§ 159-62. Limitation on actions contesting validity of bond referenda.

Any action or proceeding in any court to set aside a bond referendum, or to obtain any other relief, upon the ground that the referendum is invalid or was irregularly conducted, must be begun within 30 days after the publication of the statement of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section. (1917, c. 138, s. 22; 1919, c. 178, s. 3(22); c. 291; C.S., s. 2948; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 30; 1949, c. 497, s. 4; 1953, c. 1065, s. 2; 1971, c. 780, s. 1.)

Cross References. — As to suits to restrain issuance of bonds, see note to G.S. 159-59.

Legal Periodicals. — For survey of 1980 law on civil procedure, see 59 N.C.L. Rev. 1053 (1981).

CASE NOTES

Untimely Claims Extinguished. — This section provides that any claim not prosecuted within 30 days of the date of publication is extinguished. It is different from most statutes of limitation, since ordinarily a statute of limitation does not extinguish a claim but merely serves as a bar to the prosecution of the claim. Citizens Ass'n for Reasonable Growth v. City of Washington, 45 N.C. App. 7, 262 S.E.2d 343, cert. denied, 300 N.C. 195, 269 S.E.2d 622 (1980).

Statute Runs from First Publication. —

The statute of limitations of this section begins to run from the date of the first publication required by G.S. 159-61, where the sufficiency of the first notice is not questioned. A city cannot start the statute running anew by publishing the notice a second time. Citizens Ass'n for Reasonable Growth v. City of Washington, 45 N.C. App. 7, 262 S.E.2d 343, cert. denied, 300 N.C. 195, 269 S.E.2d 622 (1980).

§ 159-63. Repeal of bond orders.

A bond order may be repealed at any time before bonds or bond anticipation notes are issued thereunder. No referendum is required on the repeal of any bond order, nor is a petition for any such referendum permitted. (1971, c. 780, s. 1.)

§ 159-64. Within what time bonds may be issued.

Bonds may be issued under a bond order at any time within seven years after the bond order takes effect. Such period may be extended prior to the expiration of such period from seven years to 10 years as hereinafter provided. The board of the issuing unit shall file an application for Commission approval of such extension with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning such extension as the secretary may require. The Commission may prescribe the form of such application. In determining whether to approve such extension, the Commission may inquire into and give consideration to any matters which it believes may relate to such extension.

The Commission may enter an order approving a proposed extension of the maximum time period for issuing bonds under a bond order from seven to 10 years if, upon the basis of the information and evidence it receives, it finds and determines that governmental approvals relative to the purpose to be financed in whole or in part with the proceeds of the bonds cannot be obtained within seven years after the bond order has taken effect, that funds to be applied together with the proceeds of the bonds to finance the purpose for which the bonds are to be issued will not be available within seven years after the bond order has taken effect or that the proposed extension is necessary for other reasons that are not within the direct control of the issuing unit other than any order of any court. If the Commission enters an order denying such extension, then the proceedings under this section shall be at an end.

If the Commission enters an order approving a proposed extension of the maximum time period for issuing bonds under a bond order as provided in this section, then the board shall fix the time and place for a public hearing on such extension and the clerk shall publish such bond order once with the following statement appended:

> "The foregoing order took effect on ____________, ______. Anyone who wishes to be heard on the question of whether the maximum time period for issuing bonds under such order should be extended from seven years to 10 years after such date may appear at a public hearing or an adjournment thereof to be held at ________
> (time)
> on ____________ at ____________
> (date) (place)
>
> ______________________________
> Clerk"

On the date fixed for such hearing, which shall be not earlier than six days after the date of publication of the bond order with appended statement as provided in this section, the board shall hear anyone who might wish to be heard on the question of whether the maximum time period for issuing bonds under the bond order should be extended from seven years to 10 years. The hearing may be adjourned from time to time.

After such hearing, the board may adopt an order providing that the maximum time period for issuing bonds under the bond order has been extended from seven to 10 years after the bond order has taken effect. Such order shall provide that it will take effect 30 days after its publication following adoption.

After adoption, the clerk shall publish once an order extending the maximum time period for issuing bonds under a bond order with the following statement appended:

> "The foregoing order was adopted on the ________ day of __________, __________, and is hereby published this ________ day of __________, ________. Any action or proceeding questioning the validity of such order must be begun within 30 days after the date of publication of this notice.
>
> ______________________
>
> Clerk"

Any action or proceeding in any court to set aside an order extending the maximum time period for issuing bonds under a bond order, or to obtain any other relief, upon the ground that such order is invalid, must be begun within 30 days after the date of publication of such order as adopted. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of such order shall be asserted nor shall the validity of such order be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section.

When the issuance of bonds under any bond order is prevented or prohibited by any order of any court, the period of time within which bonds may be issued under the bond order in litigation shall be extended by the length of time elapsing between the date of institution of the action or proceeding and the date of its final disposition.

When the issuance of bonds under any bond order, to finance public improvements in an area to be annexed, is prevented or prohibited by reason of litigation respecting the annexation and the Local Government Commission shall certify to such effect, the period of time within which bonds may be issued under the bond order shall be extended by the length of time elapsing between the date of institution of the litigation and the date of its final disposition.

The General Assembly may at any time prior to the expiration of the maximum time period herein provided extend the time for issuing bonds under bond orders.

When any such extension is effected or granted pursuant to this section, no further approval of the voters shall be required. (1917, c. 138, s. 24; 1919, c. 178, s. 3(24); C.S., s. 2950; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81; s. 32; 1939, c. 231, ss. 1, 2(d); 1947, c. 510, ss. 1, 2; 1949, c. 190, ss. 1, 2; 1951, c. 439, ss. 1, 2; 1953, c. 693, ss. 1, 3; 1955, c. 704, ss. 1, 2; 1969, c. 99; 1971, c. 780, s. 1; 1975, c. 545, s. 1; 1977, 2nd Sess., c. 1219, s. 36; 1979, c. 444, s. 1.)

Editor's Note. — Session Laws 1975, c. 545, s. 1, amended this section by substituting "seven years" for "five years" in the first sentence. Section 2 of the 1975 amendatory act provided: "The provisions of this act shall apply to bonds authorized by bond orders which took effect from January 1, 1971, through the effective date of this act [June 11, 1975] or which take effect hereafter."

Session Laws 1975, c. 26, s. 1, amended this section by substituting "seven years" for "five years" in the first sentence. Session Laws 1975, c. 26, s. 2, provided that the act would apply only to bonds authorized during the period Jan. 1, 1970, through Dec. 31, 1970.

Session Laws 1975, c. 546, s. 1, amended this section by substituting "eight years" for "five years" in the first sentence. Session Laws 1975, c. 546, s. 2, provided that the act would apply only to bonds authorized during the period commencing March 1, 1968, and ending Dec. 31, 1969.

Session Laws 1987 (Reg. Sess., 1988), c. 1027, effective June 30, 1988, and applicable only to bonds authorized during the period January 1, 1981, through December 31, 1981, amended the first sentence of this section to read as follows: "Bonds may be issued under a bond order at any time within ten years after the bond order takes effect." Section 3 of c. 1027 provided that all laws in conflict with the provisions of the act would be repealed.

Session Laws 1991 (Reg. Sess., 1992), c. 987, s. 1 provides: "All proceedings taken in 1991 by the governing board of any unit of local government in connection with the extension of the period during which bonds may be issued pursuant to G.S. 159-64 are ratified, approved, confirmed, and in all respects validated if the governing board has adopted an order providing for the extension after a public hearing on the extension before the expiration of the period to be extended."

§ 159-65. Resolution fixing the details of the bonds.

(a) After the bond order has been adopted, the board shall adopt a resolution fixing the details of the bonds. In fixing details of the bonds, the board is subject to these restrictions and directions:

(1) The dates for payment of installments of principal shall not exceed the maximum periods of usefulness prescribed by the Commission pursuant to G.S. 159-122.

(2) Bonds authorized by two or more bond orders may be consolidated into a single issue.

(3) Bonds of each issue shall have principal paid in annual installments, the first of which shall be payable not more than three years after the date of the bonds, and the last within the maximum maturity period prescribed by regulation of the Commission under G.S. 159-122.

(4) No installment of principal for any issue may be more than four times as great in amount as the smallest prior installment of principal for the same issue.

(5) Bonds of each issue may be issued from time to time in series with different provisions for each series. Each series shall be deemed a separate issue for the purposes of this section, except that two or more series may be considered to be a single issue under subdivisions (3) and (4) of this subsection if issued on the same day or two consecutive days.

(6) Any bond may be made payable on demand or tender for purchase as provided in G.S. 159-79, and any bond may be made subject to redemption prior to maturity, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated therein. When any such bond has been validly called for redemption and provision has been made for the payment of the principal thereof, any redemption premium, and the interest thereon accrued to the date of redemption, interest thereon shall cease.

(7) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be made payable in such kind of money and in such place or places within or without the State of North Carolina, as the board may determine.

(b) Subdivisions (a)(3) and (4) of this section do not apply to refunding bonds or to bonds purchased by a State or federal agency. Subdivisions (a)(3) and (4) also do not apply to bonds the interest on which is or may be includable in gross income for purposes of federal income tax, as long as the dates for payment of principal on these bonds have been approved by the Commission. For the purposes of subdivisions (a)(3) and (4) of this section and for bonds the interest on which is or may be includable in gross income for purposes of federal income tax, payment of an installment of principal may be provided for by the maturity of a bond, mandatory redemption of principal prior to maturity, a sinking fund, a credit facility as defined in G.S. 159-79, or any other means satisfactory to the Commission. (1917, c. 138, s. 25; 1919, c. 178, s. 3(25); C.S.,

s. 2951; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; 1951, c. 440, s. 1; 1953, c. 1206, s. 3; 1969, c. 686; 1971, c. 780, s. 1; 1973, c. 494, s. 10; cc. 883, 995; 1987, c. 585, s. 2; c. 586; 2003-388, s. 2.)

Editor's Note. — Session Laws 1987, c. 585, ss. 7 and 8 provided: "The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"Nothing in this act shall be construed to impair the obligation of any bond, note or coupon issued under The Local Government Finance Act and outstanding on the effective date of this act."

The preamble to Session Laws 2003-388 reads: "Whereas, the State Treasurer's Office formed a Public Finance Advisory Committee comprised of representative city and county governments, as well as the public finance bar and financial services sectors, to review and propose changes to the General Statutes dealing with public finance in an effort to strengthen, modernize, and provide for the most efficient method of issuing of public debt by local governments and other political subdivisions of the State; and

"Whereas, the Public Finance Advisory Committee has developed, and the State Treasurer's Office has reviewed, a set of recommendations to the General Assembly for specific changes to relevant General Statutes around which there is consensus that the proposed changes are beneficial to local governments in their issuance of public debt; and

"Whereas, the Local Government Commission remains the statutorily designated entity to which all proposed issuances must be submitted for approval, and these recommendations in no way lower or lessen the level of due diligence performed in determining the appropriateness of a specific issuance; and

"Whereas, for these reasons, this legislation is submitted for consideration by the General Assembly on behalf of the State Treasurer, the staff of the Local Government Commission, and the Public Finance Advisory Committee; Now, therefore,

"The General Assembly of North Carolina enacts:"

§ 159-66. Validation of former proceedings and actions.

(a) All proceedings and actions heretofore taken by the governing boards of units of local government and by the Local Government Commission to fix the details of bonds and to provide for the advertisement and sale thereof are hereby ratified, approved, confirmed and in all respects validated, notwithstanding the provisions of G.S. 159-65(4).

(b) This section shall apply to all bonds sold by the Local Government Commission between July 1, 1973, and February 18, 1974. (1973, c. 872, ss. 1, 2.)

§ 159-67. Procedures if a county votes to relocate the county seat.

Whenever the citizens of a county, by referendum, decide that the county's county seat, along with the courthouse and other county buildings and agencies, should be relocated, the board of county commissioners of that county shall forthwith begin discussions with the Local Government Commission concerning financing of the relocation. If bonds are to be issued for the relocation, or a financing agreement entered into, the board of commissioners shall apply to the Local Government Commission no later than 10 months after the day of the referendum. If a bond election is necessary, it shall be held no later than 22 months after the day of the referendum. (1975, c. 324, s. 5.)

Editor's Note. — This section was enacted by Session Laws 1975, c. 324, s. 5. The 1975 act appeared from its title to be a local act applicable only to Brunswick County, and the provisions of the act other than s. 5 were expressly restricted to Brunswick County.

§ 159-68. Certain provisions not applicable to refunding bonds.

The provisions of G.S. 159-56 and the provisions of this Article related to the holding of a public hearing prior to the adoption of the bond order do not apply to refunding bonds issued by a unit of local government so long as the refunding bonds do not extend the final maturity of the debt or obligation to be refunded and so long as the aggregate debt service over the life of the refunding bonds is less than the aggregate debt service on the debt or obligation to be refunded. When the conditions of this section are satisfied, a unit of local government may introduce a bond order, adopt a bond order, and adopt a sale resolution with respect to refunding bonds in one or more meetings of the unit's governing body. (2005-238, s. 3.)

Editor's Note. — Session Laws 2005-238, s. 15, provides: "The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes."

Session Laws 2005-238, s. 16, is a severability clause.

§§ 159-69 through 159-71: Reserved for future codification purposes.

Part 3. Funding and Refunding Bonds.

§ 159-72. Purposes for which funding and refunding bonds may be issued; when such bonds may be issued.

A unit of local government may issue funding and refunding bonds under this Article for the purposes listed in G.S. 159-48(a)(4), (5), (6), or (7). Funding bonds may be issued if the debt, judgment, or other obligation to be paid is payable at the time of the passage of the bond order or within one year thereafter. Refunding bonds may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds shall be applied only as follows: either (i) to the immediate payment and retirement of the obligations being refunded or (ii) if not required for the immediate payment of the obligations being refunded such proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded, and to pay any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any amounts in excess of the amounts required for such purposes, including, without limitation, provision for the pledging of any such excess to the payment of the principal of and interest on any issue or series of refunding bonds issued pursuant to G.S. 159-78. Money in any such trust fund may be invested in (i) direct obligations of the United States government, or (ii) obligations the principal of and interest on which are guaranteed by the United States government, or (iii) to the extent then permitted by law in obligations of any agency or instrumentality of the United States government, or (iv) in certificates of deposit issued by a bank or trust company located in the State of North Carolina if such certificates shall be secured by a pledge of any of said obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing herein shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption.

The principal amount of refunding bonds issued pursuant to this section, together with the principal amount of refunding bonds, if any, issued under G.S. 159-78 in conjunction with refunding bonds issued pursuant to this section, shall not exceed the amount set forth in G.S. 159-78.

Except as expressly modified in this Part, funding and refunding bonds issued under the provisions of this Part shall be subject to the limitations and procedures set out in Parts 1 and 2 of this Article. (1917, c. 138, s. 16; 1919, c. 178, s. 3(16); C.S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 257, ss. 2-4; c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; c. 484; 1939, c. 231, ss. 1, 2(c), 4(b); 1941, c. 147; 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 11; 1977, c. 201, s. 1.)

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

CASE NOTES

Editor's Note. — *Most of the cases cited below were decided under former statutory provisions similar to this section.*

Constitution Does Not Require Election on Refunding Bonds. — An ordinance authorizing the issuance of refunding bonds by a municipality need not be submitted to the voters. A municipal corporation does not contract a debt, within the meaning of N.C. Const., Art. V, § 4(2), when under statutory authority it issues bonds to refund bonds which at the date of the issuance of the funding bonds are valid and enforceable obligations of the municipality. Bolich v. City of Winston-Salem, 202 N.C. 786, 164 S.E. 361 (1932).

Constitutionality. — This section and G.S. 159-78 allow municipalities to issue general obligation refunding bonds in an amount greater than the bonds to be refunded without a vote of the people, and do not violate N.C. Const., Art. V, § 4. City of Concord v. All Owners of Taxable Property, 330 N.C. 429, 410 S.E.2d 482 (1991).

Ordinance provision that holders of proposed refunding bonds should be subrogated to all rights and powers of holders of refunded bonds was sanctioned by law; such provision would enter into and become an integral part of the bonds when issued, with contractual force and effect, and could not be impaired by subsequent legislation. Bryson City Bank v. Town of Bryson City, 213 N.C. 165, 195 S.E. 398 (1938).

Statute Limiting Tax Rate of Municipality Held Inoperative Under Facts. — Where defendant municipality proposed to issue refunding bonds to be exchanged for like amounts of the original bonds in the hands of the holders of the original indebtedness, the refunding bonds to be secured by all rights and powers of taxation which protected and formed a part of the obligation of the original bonds, it was held that the parties and the debt were the same and the transaction amounted in reality to an extension and renewal of the original bonds under legislative sanction, and an act of the legislature, passed after the issuance of the original bonds, limiting the tax rate of the municipality was inoperative as to the refunding bonds when the limitation therein imposed would prevent the payment of the refunding bonds according to their tenor; the contention that even though the refunding bonds would not create a new debt, such debt would be evidenced by a new contract, and that therefore the refunding bonds would be subject to the limitation of the statute enacted prior to the issuance of the refunding bonds was untenable. Bryson City Bank v. Town of Bryson City, 213 N.C. 165, 195 S.E. 398 (1938).

§ 159-73. Financing or refinancing agreements.

Each unit of local government is authorized to enter into agreements with the holders of its outstanding debts for the settlement, adjustment, funding, refunding, financing, or refinancing of the debt. Such an agreement may contain any provisions not inconsistent with law and before the unit may enter into it, it must be approved by the Commission. (1971, c. 780, s. 1.)

§ 159-74. Test cases testing validity of funding or refunding bonds.

At any time after the procedure for authorizing the issuance of funding or refunding bonds has been completed, but before the issuance of the bonds, the issuing unit may institute an action in the Superior Court Division of the General Court of Justice in the county in which all or any part of the unit lies, to determine the validity of the bonds and the validity of the means of payment provided therefor. The action shall be in rem, and shall be against all of the owners of taxable property within the unit and all citizens residing in the unit, but it shall not be necessary to name each such owner or citizen in the summons or complaint. Jurisdiction of all parties defendant shall be acquired by publication of a summons once a week for three successive weeks, and jurisdiction shall be complete within 20 days after the date of the last publication. Any interested party may intervene in the action. Except as otherwise provided by this section, the action shall be governed by the Rules of Civil Procedure. (1931, c. 186, ss. 4, 5; 1935, c. 290, ss. 1, 2; 1937, c. 80; 1971, c. 780, s. 1.)

Editor's Note. — The Rules of Civil Procedure, referred to in this section, are found in G.S. 1A-1.

CASE NOTES

Editor's Note. — *The case cited below was decided under former statutory provisions similar to this section.*

Constitutionality of Former Statutes. — Former versions of G.S. 159-52 to 159-56 were not unconstitutional either on the ground that they conferred nonjudicial functions on the superior courts or on the ground that they denied due process of law to taxpayers or citizens of a local governmental unit, in violation of the provisions of U.S. Const., Amend. XIV, or of Art. I, § 17, Const. 1868. Castevens v. Stanly County, 211 N.C. 642, 191 S.E. 739 (1937).

Proceeding in Rem. — The action authorized by former versions of G.S. 159-52 to 159-56 was in the nature of a proceeding in rem, and was adversary both in form and in substance. These sections contemplated that issues both of law and of fact could be raised by pleadings duly filed, and that such issues should be determined by the court. The court had no power by virtue of these sections to validate bonds which were for any reason invalid. It had power only to determine whether or not on the facts as found by the court and under the law applicable to such facts the bonds were valid. Castevens v. Stanly County, 211 N.C. 642, 191 S.E. 739 (1937).

Service of Summons by Publication Sufficient. — The contention that an owner of taxable property within the unit, or a citizen residing therein, may be deprived of his property, without due process of law, or contrary to the law of the land, by a decree or judgment in the action declaring or adjudging that bonds and the tax to be levied for their payment, are valid, because it is not required that his name shall appear in the summons or in the complaint, or that the summons shall be served on him personally, cannot be sustained. The action is declared by statute to be in the nature of a proceeding in rem. In such case, all persons included within a well-defined class may be made parties defendant, and service of summons by publication is sufficient, although such persons are not named in the summons. Castevens v. Stanly County, 211 N.C. 642, 191 S.E. 739 (1937).

§ 159-75. Judgment validating issue; costs of the action.

A final decree of the General Court of Justice validating funding or refunding bonds or the financing or refinancing agreement shall be conclusive as to the validity of the bonds or the agreement.

The costs of any action brought under G.S. 159-74 shall be borne by the issuing unit, including a reasonable attorney's fee for the attorney assigned by the court to defend the interests of the citizens and taxpayers in general. (1931, c. 186, ss. 6, 7; 1935, c. 290, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 12.)

CASE NOTES

Taxpayer Who Fails to Exercise Rights Without Grounds of Complaint. — No decree or judgment adverse to a taxpayer's rights can be rendered in an action instituted and prosecuted by a taxing unit to have a proposed funding bond issue declared valid until every taxpayer and citizen of the unit has been lawfully served with summons, and until he has had ample opportunity to appear and file such pleadings as he may wish. If he has failed to avail himself of his constitutional rights, which are fully protected by the statute, he has no just ground of complaint that the court will not hear him when he invokes its aid after the decree or judgment has been finally rendered, and others have relied upon its protection. Castevens v. Stanly County, 211 N.C. 642, 191 S.E. 739 (1937), decided under former version of § 159-54.

§ 159-76. Validation of bonds and notes issued before March 26, 1931.

All bonds and notes issued before March 26, 1931, for which the issuing unit received an amount of money not less than the face amount of the bonds or notes and the proceeds of which have been spent for public purposes, and all bonds and notes subsequently issued to refund all or any portion of those bonds or notes, are hereby validated notwithstanding any lack of statutory authority or failure to observe any statutory provisions concerning the issuance of the bonds or notes. This section shall not validate any bonds or notes, the proceeds of which have been lost because of the failure of a bank. (1931, c. 186, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 13.)

§ 159-77. Validation of all proceedings in connection with the authorization of bonds taken before April 28, 1975.

All proceedings heretofore taken by the governing boards of units of local government in connection with the authorization of bonds are hereby ratified, approved, confirmed and in all respects validated, notwithstanding the provisions of G.S. 159-61(c); provided that the issuance of said bonds shall have been approved at an election by a majority of the qualified voters of the unit voting thereon and that notice of said referendum shall have been published. (1975, c. 178.)

§ 159-78. Special obligation refunding bonds.

In conjunction with the issuance of refunding bonds pursuant to G.S. 159-72 or G.S. 159-84 a unit of local government may issue a series of refunding bonds which shall be payable from the excess of the amount required by a trust fund established pursuant to G.S. 159-72 or G.S. 159-84 to provide for the payment and retirement of the obligations being retired and the amount required to pay any expenses incurred in connection with such refunding to the extent such expenses are payable from said trust fund.

Such refunding bonds shall be special obligations of the municipality issuing them. The principal of and interest on such refunding bonds shall not be payable from the general funds of the municipality, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the trust fund established pursuant to G.S. 159-72 or G.S. 159-84 from which such refunding bonds are payable. Neither the credit nor the taxing power of the municipality is pledged for the payment of the principal or interest of such refunding bonds, and no holder of such refunding bonds has the right to compel the exercise of the taxing power of the municipality or the forfeiture of any of its property in connection with any default thereon. Every such refunding bond shall recite in substance that the principal of and interest on the bond is payable solely from the trust fund established for its payment and that the municipality is not obligated to pay the principal or interest except from such trust fund.

Any refunding bonds issued under this section shall be issued in compliance with the procedure set forth in Article 5 of this Chapter.

The principal amount of any issue of refunding bonds issued pursuant to G.S. 159-72 or G.S. 159-84, together with the principal amount of refunding bonds, if any, issued pursuant to this section in conjunction with a series of bonds issued under G.S. 159-72 or G.S. 159-84, shall not exceed the sum of the following: (i) the principal amount of the obligations being refinanced, (ii) applicable redemption premiums thereon, (iii) unpaid interest on such obligations to the date of delivery or exchange of the refunding bonds, (iv) in the event the proceeds from the sale of the refunding bonds are to be deposited in trust as provided by G.S. 159-72 or G.S. 159-84, interest to accrue on such obligations being refinanced from the date of delivery of the refunding bonds to the first or any subsequent available redemption date or dates selected, in its discretion, by the governing body of the unit of local government, or to the date or dates of maturity, whichever shall be determined by the governing body of the unit of local government to be most advantageous or necessary and (v) expenses, including bond discount, deemed by the governing body to be necessary for the issuance of the refunding bonds. (1977, c. 201, s. 2.)

CASE NOTES

Constitutionality. — Section 159-72 and this section allow municipalities to issue general obligation refunding bonds in an amount greater than the bonds to be refunded without a vote of the people, and do not violate N.C. Const., Art. V, § 4. City of Concord v. All Owners of Taxable Property, 330 N.C. 429, 410 S.E.2d 482 (1991).

Restriction of Debt Amount. — This section also restricts the amount of debt which may be incurred by the issuance of refunding bonds so that the proceeds from the refunding bonds may not exceed an amount necessary to pay an existing indebtedness. City of Concord v. All Owners of Taxable Property, 330 N.C. 429, 410 S.E.2d 482 (1991).

§ 159-79. Variable rate demand bonds and notes.

(a) Notwithstanding any provisions of this Chapter to the contrary, including particularly, but without limitation, the provisions of G.S. 159-65, G.S. 159-112, G.S. 159-123 to G.S. 159-127, inclusive, G.S. 159-130, G.S. 159-138, G.S. 159-162, G.S. 159-164 and G.S. 159-172, a unit of local government, in fixing the details of general obligation bonds to be issued pursuant to this Article, general obligation notes to be issued pursuant to Article 9 of this Chapter, or project development financing debt instruments or notes to be issued pursuant to Article 6 of this Chapter, may provide that the instruments or notes:

(1) May be made payable from time to time on demand or tender for purchase by the owner provided a Credit Facility supports such bonds or notes, unless the Commission specifically determines that a Credit Facility is not required upon a finding and determination by the Commission that the proposed bonds or notes will satisfy the conditions set forth in G.S. 159-52;

(2) May be additionally supported by a Credit Facility;

(3) May be made subject to redemption prior to maturity, with or without premium, on such notice, at such time or times, at such price or prices and with such other redemption provisions as may be stated in the resolution fixing the details of such bonds or notes or with such

variations as may be permitted in connection with a Par Formula provided in such resolution;

(4) May bear interest at a rate or rates that may vary as permitted pursuant to a Par Formula and for such period or periods of time, all as may be provided in such resolution; and

(5) May be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds to new purchases prior to their presentment for payment to the provider of the Credit Facility or to the issuing unit.

(b) No Credit Facility, repayment agreement, Par Formula or remarketing agreement shall become effective without the approval of the Commission.

(c) As used in this section, the following terms shall have the following meanings:

(1) "Credit Facility" means an agreement entered into by an issuing unit with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution providing for prompt payment of all or any part of the principal (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner issued in accordance with this section, in consideration of the issuing unit agreeing to repay the provider of such Credit Facility in accordance with the terms and provisions of a repayment agreement. A bank may include a foreign bank or branch or agency thereof the obligations of which bear the highest rating of at least one nationally-recognized rating service and do not bear a rating below the highest rating of any nationally-recognized rating service which rates such particular obligations.

(2) "Par Formula" shall mean any provision or formula adopted by the issuing unit to provide for the adjustment, from time to time, of the interest rate or rates borne by any such bonds or notes so that the purchase price of such bonds or notes in the open market would be as close to par as possible.

(d) If the aggregate principal amount repayable by the issuing unit under a repayment agreement is in excess of the aggregate principal amount of bonds or notes secured by the related Credit Facility, whether as a result of the inclusion in the Credit Facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of unissued bonds or notes during the term of such repayment agreement shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the issuing unit subject to the approval of the Commission. In determining whether or not to grant such approval, the Commission shall consider, in addition to such other factors it may deem relevant, the ability of the issuing unit to pay such excess from other sources without incurring additional indebtedness secured by a pledge of the faith and credit of the issuing unit or levying additional taxes and the adequacy of such other sources to accomplish such purpose.

(e) Any bonds or notes issued pursuant to this section may be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe and at such prices as the Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or one or more persons designated by resolution of the governing board of the issuing unit to approve such prices. (1987, c. 585, s. 1; 2003-403, s. 5.)

Editor's Note. — Session Laws 1987, c. 585, ss. 7 and 8 provided: "The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"Nothing in this act shall be construed to impair the obligation of any bond, note or coupon issued under The Local Government Finance Act and outstanding on the effective date of this act."

An amendment to subsection (a) of this section by Session Laws 1993, c. 497, s. 5, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to subsection (a) of this section, therefore, never took effect.

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

ARTICLE 5.

Revenue Bonds.

§ 159-80. Short title; repeal of local acts.

(a) This Article may be cited as "The State and Local Government Revenue Bond Act."

(b) It is the intent of the General Assembly by enactment of this Article to prescribe a uniform system of limitations upon and procedures for the exercise by all municipalities in North Carolina of the power to finance revenue bond projects through the issuance of revenue bonds and notes. To this end, all provisions of special, local, or private acts in effect as of July 1, 1973, authorizing the issuance of bonds or notes secured solely by the revenues of the projects for which the bonds or notes are issued or prescribing procedures therefor are repealed. No special, local or private act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this Article unless it expressly so provides by specific reference to the appropriate section of this Article. It is further the intent of the General Assembly by enactment of this Article to provide an alternative and supplemental procedure for the exercise by the State of North Carolina of the power to finance revenue bond projects through the issuance of revenue bonds and notes. (1971, c. 780, s. 1; 1973, c. 494, s. 14; 1983, c. 554, ss. 1, 1.1.)

Cross References. — As to issuance of capital appreciation bonds pursuant to The State and Local Government Revenue Bond Act, see G.S. 159-100. As to modification of authority of a city to issue revenue bonds under this Article, see G.S. 160A-239.6.

Editor's Note. — Session Laws 1983, c. 554, which amended this section, in ss. 21 through 25 provided as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1987 (Reg. Sess., 1988), c. 882, s. 6 and Session Laws 1989, c. 90 provided that all actions and proceedings heretofore taken by units of local government relating to the authorization of general obligation refunding bonds, secured by a pledge of the taxing power and issued pursuant to the Local Government Bond Act, and revenue refunding bonds, secured by a pledge of revenues and issued pursuant to The State and Local Government Revenue Bond Act, and the sale and delivery of all such bonds pursuant to Article 7, as amended, of Chapter 159 of the General Statutes of North Carolina, in order to provide funds to purchase, at a discount, bonds of such units owned by the Farmers Home Administration, including without limitation, the introduction and adoption of bond orders, the holding of public hearings with respect to such bond orders, the passage of resolutions providing for the issuance and the sale, both public and private, of such refunding bonds, and the delivery of any such refunding bonds were in all respects approved, ratified, validated, and confirmed.

Legal Periodicals. — For comment on the Revenue Bond Act of 1938, see 17 N.C.L. Rev. 370 (1939).

For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

CASE NOTES

Purpose of the Revenue Bond Act of 1938 was to permit municipalities to engage in nongovernmental activities of a public nature by pledging the revenue derived from such undertakings to the payment of bonds issued in connection therewith. Thus the act avoided pledging the credit of the municipality to the payment of a debt, for by such arrangements no debt was incurred within the meaning of the Constitution. Britt v. City of Wilmington, 236 N.C. 446, 73 S.E.2d 289 (1952); Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

§ 159-81. Definitions.

The words and phrases defined in this section shall have the meanings indicated when used in this Article:

(1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water

district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, special district created under Article 43 of Chapter 105 of the General Statutes, regional public transportation authority, regional transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, a joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike Authority created pursuant to Article 6H of Chapter 136 of the General Statutes, but not any other forms of State or local government.

(2) "Revenue bond" means a bond issued by the State of North Carolina or a municipality pursuant to this Article.

(3) "Revenue bond project" means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the revenue-producing utility or public service enterprise facilities or systems listed in this subdivision, to be financed through the issuance of revenue bonds, thereby providing funds to pay the costs of the undertaking or to reimburse funds loaned or advanced by or on the behalf of either the State or a municipality to pay the costs of the undertaking.

A revenue bond project shall be (i) owned or leased as lessee by the issuing unit or (ii) owned by one or more of the municipalities participating in an undertaking established pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes. If the revenue bond project is owned by one or more municipalities as provided in (ii) of this subdivision, any one or more of the participating municipalities may each be an issuing unit consistent with their agreement to establish a joint undertaking. In addition, any joint agency established by participating municipalities pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes may be an issuing unit without owning the revenue bond project or leasing it as lessee.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises, and licenses used or useful in connection with the undertaking; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which the structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project.

The following facilities or systems may be revenue bond projects under this subdivision:

a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.

c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.

d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.

e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.

g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.

h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.

i. Hospitals and other health-related facilities.

j. Public auditoriums, gymnasiums, stadiums, and convention centers.

k. Recreational facilities.

l. Repealed by Session Laws 2001-474, s. 36, effective November 29, 2001.

m. Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.

n. Facilities for the use of any agency or agencies of the government of the United States of America.

o. Structural and natural stormwater and drainage systems of all types.

p. In the case of the North Carolina Turnpike Authority, a Turnpike Project, as defined in G.S. 136-89.181, including the planning and design of a Turnpike Project, that is designated by the Authority to be a revenue bond project.

(4) "Revenues" include all moneys received by the State or a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the State or a municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the State or a municipality, as the case may be, pertaining to the project. (Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1; 1953, c. 901, ss. 4, 5; c. 922, s. 1; 1965, c. 997; 1969, c. 1118, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 15; 1975, c. 821, s. 2; 1977, c. 466, s. 3; 1979, c. 727, s. 4; c. 791; 1983, c. 554, ss. 2-2.2; 1985, c. 639, s. 3; 1987 (Reg. Sess., 1988), c. 976, s. 1; 1989, c. 168, ss. 37, 38; c. 643, s. 4; c. 740, s. 2; c. 780, s. 2; 1991, c. 508, s. 1; 1995 (Reg. Sess., 1996), c. 644, s. 3; 1997-393, s. 3; 1997-426, s. 6; 2001-414, s. 48; 2001-474, ss. 36, 37; 2002-133, ss. 6, 7; 2009-527, s. 2(e).)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, ss. 2 to 2.2 of which amended this section, see the Editor's Note under G.S. 159-80.

Session Laws 1987, c. 577, s. 1 amended Session Laws 1985, c. 639, s. 4, as amended by Session Laws 1985 (Reg. Sess., 1986), cc. 846, 848, 849, 858, 874, 911, 916 and 921 and Session Laws 1987, c. 203, which formerly made subdivision (3)m of this section only applicable to certain counties, municipalities and towns, to read: "This act shall become effective January 1, 1986."

Session Laws 1987, c. 577, s. 1.2 added a new s. 3.1 to Session Laws 1985, c. 639, providing that s. 3 of that act, which added subdivision (3)m to this section, did not apply to Buncombe County or any municipality located within that county; however, Session Laws 1989, c. 374, s. 2, provided that Session Laws 1985, c. 639, s. 3.1, as added by Session Laws 1987, c. 577, s. 1.2, was repealed. Therefore subdivision 3(m) of this section now has statewide application; there is no longer an exception for Buncombe County and the municipalities therein.

Session Laws 1991, c. 508, s. 1, which added "to be financed through the issuance of revenue bonds, thereby providing funds to pay the costs of the undertaking or to reimburse funds loaned or advanced by the State or a municipality to pay the costs of the undertaking:" to subdivision (3), became effective July 2, 1991, and is applicable to loans and advances made by a municipality on or after January 1, 1982.

Session Laws 1997-426, s. 10(a), (b), and (c), provide that, insofar as the provisions of that act are not consistent with the provisions of any other law, public or private, the provisions of that act shall be controlling; that references in that act to specific sections or Chapters of the General Statutes are intended to be references to such sections or Chapters as they may be amended from time to time by the General Assembly; and that that act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

Session Laws 2001-414, s. 49, as amended by Session Laws 2002-72, provides: "Section 48 of this act [which amended subdivision (3)] does not derogate any existing powers."

Effect of Amendments. — Session Laws 2009-527, s. 2(e), effective August 27, 2009, inserted "special district created under Article 43 of Chapter 105 of the General Statutes" in subdivision (1).

CASE NOTES

A revenue-producing enterprise is manifestly one which produces revenue, not necessarily one which produces profit or net revenue. George v. City of Asheville, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935), decided under former § 160-397.

§ 159-82. Purpose.

The purpose of this Article is to establish a standard, uniform procedure for the financing by a municipality of revenue bond projects through the issuance of revenue bonds. Its provisions are intended to vest authority in and enable municipalities to secure and pay revenue bonds and the interest thereon solely out of revenues without pledging the faith and credit of the municipality. (1971, c. 780, s. 1; 1973, c. 494, s. 16.)

§ 159-83. Powers.

(a) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, subject to the provisions of this Article and of any revenue bond order or trust agreement securing revenue bonds:

(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest. The authority to exercise the power of eminent domain granted in this subdivision shall not apply to economic development projects described in G.S. 159-81(3)m., unless revenue bonds for the economic development project were approved by the Local Government Commission pursuant to G.S. 159-87 prior to August 15, 2006.

(2) To sell, exchange, transfer, assign or otherwise dispose of any revenue bond project or portion thereof or interest therein determined (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board not to be required for any public purpose.

(3) To sell, furnish, and distribute the services, facilities, or commodities of revenue bond projects.

(4) To enter into contracts with any person, firm, or corporation, public or private, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may determine, with respect to the acquisition, construction, reconstruction, extension, betterment, improvement, maintenance, or operation of revenue bond projects, or the sale, furnishing, or distribution of the services, facilities or commodities thereof.

(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, and to pledge, mortgage, or grant a security interest in all or a portion of the real and personal property, whether owned or leased, comprising any revenue-producing utility or public service enterprise facilities or systems acquired, constructed, reconstructed, extended, bettered, or improved with the proceeds of the borrowing. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subdivision may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property. The granting of a lien on, or security interest in, hospital or health-related real or tangible personal property and the conveyance of this property pursuant to the provisions of the lien or security interest are not subject to the provisions of G.S. 131E-8, 131E-13, or 131E-14.

(6) To establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, or other charges, free of any control or regulation by the North Carolina Utilities Commission or any other regulatory body except as provided in G.S. 159-95 for the use, services, facilities, and commodities of or furnished by any revenue bond project, and to provide methods of collection of and penalties for nonpayment of such rates, fees, rentals, tolls, or other charges. The rates, fees, rentals, tolls and charges so fixed and charged shall be such as will produce revenues at least sufficient with any other available funds to meet the expense and maintenance and operation of and renewals and replacements to the revenue bond project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) on all revenue bonds or bond anticipation notes secured thereby, and to fulfill the terms of any agreements made by the State or the issuing municipality with the holders of revenue bonds issued to finance all or any portion of the cost of the project.

(7) To pledge all or part of any proceeds derived from the use of on-street parking meters to the payment of the cost of operating, maintaining, and improving parking facilities whether on-street or off-street, and the principal of and the interest on revenue bonds or bond anticipation notes issued for on-street or off-street parking facilities.

(8) To pledge to the payment of its revenue bonds or bond anticipation notes and interest thereon revenues from one or more revenue bond projects and any leases or agreements to secure such payment,

including revenues from improvements, betterments, or extensions to such projects thereafter constructed or acquired as well as the revenues from existing systems, plants, works, instrumentalities, and properties of the projects to be improved, bettered, or extended.

(8a) In the case of any county, city, town, or incorporated village, to make loans or advances to a municipality to provide funds to the municipality to pay any costs of any revenue bond project. Funds received by a municipality in reimbursement of a loan or advance shall be distributed and restricted as provided in G.S. 159-27.1.

(9) To appropriate, apply, or expend for the following purposes the proceeds of its revenue bonds, notes issued in anticipation thereof, and revenues pledged under any resolution or order authorizing or securing the bonds: (i) to pay interest on the bonds or notes and the principal or redemption price thereof when due; (ii) to meet reserves and other requirements set forth in the bond order or trust agreement; (iii) to pay the costs of the revenue bond projects authorized in the bond order, reimburse funds loaned or advanced for the costs of these revenue bond projects in accordance with the bond order, and provide working capital for initial maintenance and operation until funds are available from revenues; (iv) to pay and discharge revenue bonds and notes issued in anticipation thereof; (v) to pay and discharge general obligation bonds issued under Article 4 of this Chapter or under any act of the General Assembly, when the revenues of the project financed in whole or in part by the general obligation bonds will be pledged to the payment of the revenue bonds or notes.

(10) To make and enforce rules and regulations governing the use, maintenance, and operation of revenue bond projects.

(11) To accept gifts or grants of real or personal property, money, material, labor, or supplies for the acquisition, construction, reconstruction, extension, improvement, betterment, maintenance, or operation of any revenue bond project and to make and perform such agreements or contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants.

(12) To accept loans, grants, or contributions from, and to enter into contracts and cooperate with the United States of America, the State of North Carolina, or any agency thereof, with respect to any revenue bond project.

(13) To enter on any lands, waters, and premises for the purpose of making surveys, borings, soundings, examinations, and other preliminary studies for constructing and operating any revenue bond project.

(14) To retain and employ consultants and other persons on a contract basis for rendering professional, financial, or technical assistance and advice and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed.

(15) Subject to any provisions of law requiring voter approval for the sale or lease of utility or enterprise systems, to lease to or from any person, firm, or corporation, public or private, all or part of any revenue bond project, upon such terms and conditions as and for such term of years, not in excess of 40 years, (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this Article, and to

provide in such lease for the extension or renewal thereof and, if deemed advisable, for an option to purchase or otherwise lawfully acquire the project upon terms and conditions therein specified.

(16) To execute such instruments and agreements and to do all things necessary or therein in the exercise of the powers herein granted, or in the performance of the covenants or duties of the State or a municipality, as the case may be, or to secure the payment of its revenue bonds.

(b) Any contract, agreement, lease, deed, covenant, or other instrument or document evidencing an agreement or covenant between bondholders or any public agency and the State or a municipality issuing revenue bonds with respect to any of the powers conferred in this section shall be approved by the commission.

(c) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, notwithstanding any provisions of this Article to the contrary, in connection with the development of new and existing seaports and airports:

(1) To acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interests therein;

(2) To finance and refinance for public and private parties seaport and airport facilities and improvements that relate to, develop, or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation, and environmental facilities and improvements;

(3) To secure any such financing or refinancing by all or any portion of its revenues, income or assets or other available moneys associated with any of its seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of its properties associated with any of its seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of its faith and credit.

(d) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, notwithstanding any provisions of this Article or any other statute to the contrary, in connection with the development of facilities for the use of any agency or agencies of the government of the United States of America:

(1) To acquire, construct, own jointly with public and private parties, lease as leasor or leasee, mortgage, sell, or otherwise dispose of lands, facilities and improvements, including undivided interests therein and to do so, regardless of the provisions of any other statute, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this subsection;

(2) To finance and refinance facilities and related improvements for the use of any agency of the government of the United States of America;

(3) To secure any such financing or refinancing by all or any portion of the revenue, income or assets or other available monies associated with such facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of its faith and credit.

(e) Repealed by Session Laws 2001-174, s. 39, effective November 29, 2001.

(f) In addition to the powers they may now or hereafter have, each municipality has the power to finance and refinance the cost of water treatment facilities and related transmission mains, and their expansion and improvement, all or some portion of which may be located on land leased from an authority created under the provisions of G.S. 162A-3.1, for a term not less than the term of the obligations issued or otherwise incurred for the purpose. The authority may own or operate (or both) such facilities and mains and may contract with one or more of the political subdivisions that are members of the authority for operation of all or portions thereof. For this purpose, each municipality has, in addition to the powers it has under applicable law, all the powers under G.S. 162A-6(b) of an authority created under G.S. 162A-3.1, and the political subdivisions that are members of the authority and that contract with such municipality for a supply of water and a portion of the capacity of the water treatment facilities and mains shall have all the powers of political subdivisions under G.S. 162A-6(b) and G.S. 162A-16 contracting with an authority created under G.S. 162A-3.1. This provision is supplemental to the other provisions of this Article. (Ex. Sess., 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3; 1953, c. 922, s. 2; 1969, c. 1118, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 17; 1983, c. 554, ss. 3-4; 1985, c. 723, s. 2; 1985 (Reg. Sess., 1986), c. 795, s. 1; c. 933, s. 4; 1987 (Reg. Sess., 1988), c. 976, s. 2; 1989, c. 168, ss. 39, 40; 1991, c. 508, s. 2; 2001-474, ss. 38, 39; 2005-238, s. 4; 2005-249, s. 1; 2006-224, s. 3; 2006-259, s. 47.)

Cross References. — For constitutional amendment permitting the General Assembly to grant to the State and other public bodies in the State additional powers to develop new and existing seaports and airports, see N.C. Const., Art. V, § 13.

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, ss. 3 to 4 of which amended this section, see the Editor's Note under G.S. 159-80.

Session Laws 1985 (Reg. Sess., 1986), c. 795, s. 1, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 933, s. 4, added subsection (c), effective upon there becoming effective an amendment to the North Carolina Constitution authorizing the General Assembly to enact laws dealing with the subject matter of the act. Session Laws 1985 (1986 Reg. Session), c. 933, s. 1 proposed to add a new section to N.C. Const., Art. V, authorizing enactment of laws pertaining to seaport and airport facilities. The amendment proposed by c. 933 was ratified at the general election in November, 1986, and became effective November 25, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 795, ss. 2 through 4, provide:

"Sec. 2. This act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"Sec. 3. Nothing in this act shall be construed to impair the obligation of any bond, note, or coupon issued under the State and Local Government Revenue Bond Act and outstanding on the effective date of this act.

"Sec. 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 2005-238, s. 15, provides: "The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes." Session Laws 2005-238, s. 4, amended subdivision (a)(5).

Session Laws 2005-238, s. 16, is a severability clause.

CASE NOTES

Power of Municipalities to Purchase Hydroelectric Systems by Sale of Revenue Bonds. — The General Assembly by general enactment of the Revenue Bond Act of 1938 authorized municipalities to acquire by purchase revenue-producing properties of various kinds, including hydroelectric plants or systems or works or properties, and to finance such purchases with funds derived from the sale of revenue bonds, payable solely out of the revenues from the undertaking. Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634

(1965), decided under former § 160-415.

As to statute being integral part of local bond issue, see Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965), decided under former § 160-415.

§ 159-84. Authorization of revenue bonds.

The State and each municipality is hereby authorized to issue its revenue bonds in such principal amount as may be necessary to provide sufficient moneys for the acquisition, construction, reconstruction, extension, betterment, improvement, or payment of the cost of one or more revenue bond projects, including engineering, inspection, legal and financial fees and costs, working capital, interest on the bonds or notes issued in anticipation thereof during construction and, if deemed advisable by the State or a municipality, as the case may be, for a period not exceeding two years after the estimated date of completion of construction, establishment of debt service reserves, and all other expenditures of the State or the municipality, as the case may be, incidental and necessary or convenient thereto.

Subject to agreements with the holders of its revenue bonds, the State or each municipality, as the case may be, may issue further revenue bonds and refund outstanding revenue bonds whether or not they have matured. Revenue bonds may be issued partly for the purpose of refunding outstanding revenue bonds and partly for any other purpose under this Article. Revenue bonds issued to refund outstanding revenue bonds shall be issued under this Article and not Article 4 of this Chapter or any other law.

Refunding bonds may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds shall be applied only as follows: either, (i) to the immediate payment and retirement of the obligations being refunded or (ii) if not required for the immediate payment of the obligations being refunded such proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded, and to pay any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any amounts in excess of the amounts required for such purposes, including, without limitation, provision for the pledging of any such excess to the payment of the principal of and interest on any issue or series or [of] refunding bonds issued pursuant to G.S. 159-78. Money in any such trust fund may be invested in (i) direct obligations of the United States government, or (ii) obligations the principal of and interest on which are guaranteed by the United States government, or (iii) to the extent then permitted by law in obligations of any agency or instrumentality of the United States government, (iv) certificates of deposit issued by a bank or trust company located in the State of North Carolina if such certificates shall be secured by a pledge of any of said obligations described in (i), (ii), or (iii) above having any aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing herein shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption.

The principal amount of refunding bonds issued pursuant to this section, together with the principal amount of refunding bonds, if any, issued under G.S. 159-78 in conjunction with refunding bonds issued pursuant to this section, shall not exceed the amount set forth in G.S. 159-78. (1953, c. 692; 1969, c. 1118, s. 4; 1971, c. 780, s. 1; 1977, c. 201, s. 3; 1983, c. 554, s. 5.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 5 of which amended this section, see the Editor's note under G.S. 159-80.

Cross References. — As to special assessmemts for critical infrastructure needs for counties, see Article 9A of Chapter 153A, G.S. 153A-210.1 et seq. As to special assessments for critical infrastructure needs for cities, see Article 10A of Chapter 160A, G.S. 160A-239.1 et seq.

§ 159-85. Application to Commission for approval of revenue bond issue; preliminary conference; acceptance of application.

(a) Neither the State nor a municipality may issue revenue bonds under this Article unless the issue is approved by the Commission. The State Treasurer or the governing board of the issuing municipality or its duly authorized agent, as the case may be, shall file an application for Commission approval of the issue with the secretary of the Commission. If the issuing municipality is a regional public transportation authority, the application must be accompanied by a resolution of the special tax board of that authority approving of the application. The application shall state such facts and have attached to it such documents concerning the proposed revenue bonds and the financial condition of the State or the issuing municipality, as the case may be, and its utilities and enterprises as the secretary may require. The Commission may prescribe the form of the application.

(b) Before he accepts the application, the secretary may require (i) in the case of the State, the State Treasurer or (ii) in the case of a municipality, the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the proposed issue and the timing of the steps taken in issuing the bonds.

(c) After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the State Treasurer or the municipality, as the case may be, in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the State or the municipality, as the case may be, has complied with this section.

(d) Repealed by Session Laws 2001-474, s. 39, effective November 29, 2001. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 18; 1983, c. 554, s. 6; 1989, c. 168, s. 41; c. 740, s. 6; 2001-474, s. 39.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 6 of which amended this section, see the Editor's note under G.S. 159-80.

§ 159-86. Approval of application by Commission.

(a) In determining whether a proposed revenue bond issue shall be approved, the Commission may consider:

(1) Whether the project to be financed from the proceeds of the revenue bond issue is necessary or expedient.

(2) Whether the proposed project is feasible.

(3) The State's or the municipality's, as the case may be, debt management procedures and policies.

(4) Whether the State or the municipality, as the case may be, is in default in any of its debt service obligations.

(5) Whether the probable net revenues of the project to be financed will be sufficient to service the proposed revenue bonds.

(6) The ability of the Commission to market the proposed revenue bonds at reasonable rates of interest.

The Commission may inquire into and give consideration to any other matters that it may believe to have a bearing on whether the issue should be approved.

(b) The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

(1) That the proposed revenue bond issue is necessary or expedient.
(2) That the amount proposed is adequate and not excessive for the proposed purpose of the issue.
(3) That the proposed project is feasible.
(4) That the State's or the municipality's, as the case may be, debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
(5) That the proposed revenue bonds can be marketed at reasonable interest cost to the State or the municipality, as the case may be. (1971, c. 780, s. 1; 1983, c. 554, ss. 7, 8.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, ss. 7 and 8 of which amended this section, see the Editor's note under G.S. 159-80.

§ 159-87. Order approving or denying the application.

(a) After considering an application the Commission shall enter its order either approving or denying the application. An order approving an issue shall not be regarded as an approval of the legality of the bonds in any respect.

(b) If the Commission enters an order denying the application, the proceedings under this Article shall be at an end. (1971, c. 780, s. 1.)

§ 159-88. Adoption of revenue bond order.

(a) At any time after the Commission approves an application for the issuance of revenue bonds, (i) in the case of the State, the Council of State and (ii) in the case of a municipality, the governing board of the municipality may adopt a revenue bond order pursuant to this Article.

(b) Notwithstanding the provisions of any city charter, general law, or local act, a revenue bond order may be introduced at any regular or special meeting of the governing board of a municipality and adopted at such a meeting by a simple majority of those present and voting, a quorum being present, and need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Article. Revenue bond orders are not subject to the provisions of any city charter or legal act concerning initiative or referendum.

(c) Notwithstanding any other provision of this Article, no bond order authorizing the issuance of revenue bonds of the State shall be adopted by the Council of State until such time as the General Assembly shall have enacted legislation authorizing the undertaking of the revenue bond project to be financed and fixing the maximum aggregate principal amount of revenue bonds that shall be issued for such purpose, and such legislation shall have taken effect.

(d) Repealed by Session Laws 2001-474, s. 39, effective November 29, 2001. (1971, c. 780, s. 1; 1973, c. 494, s. 19; 1983, c. 554, s. 9; 1989, c. 168, s. 42; 2001-474, s. 39.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 9 of which amended this section, see the Editor's note under G.S. 159-80.

Session Laws 2000-81, ss. 1-8, effective July 5, 2000, authorizes the issuance of state revenue bonds, not to exceed $40,000,000, to finance improvements to the water and sewer system for the Community of Butner and Camp Butner reservation. Specifically, the bonds are for paying the costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, and extension of the water supply and distribution system and sewage collection and disposal system and certain costs of issuance of the bonds. The bonds are to be issued in compliance with the State and Local Government Revenue Bond Act, pursuant to an order adopted by the Council of State under G.S. 159-88, and are to be sold by the Local Government Commission pursuant to the provisions of Article 7 of Chapter 159. The bonds are tax exempt, excepting estate, inheritance, or gift taxes, income taxes on the gain from transfer of securities, and franchise taxes. Section 7 of the act provides that the act is supplemental and additional to powers conferred by other laws. It, being necessary for the health and welfare of the people of the State, is to be liberally construed. Section 7(d) contains a severability clause.

§ 159-89. Special covenants.

A revenue bond order or a trust agreement securing revenue bonds may be between the State or the issuing municipality and a bank or trust company located within or without the State of North Carolina, and may contain covenants as to any of the following:

(1) The pledge of all or any part of revenues received or to be received from the undertaking to be financed by the bonds, or the utility or enterprise of which the undertaking is to become a part.

(2) Rates, fees, rentals, tolls or other charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants, and funds received or to be received.

(3) The setting aside of debt service reserves and the regulation and disposition thereof.

(4) The custody, collection, securing, investment, and payment of any moneys held for the payment of revenue bonds.

(5) Limitations or restrictions on the purposes to which the proceeds of sale of revenue bonds then or thereafter to be issued may be applied.

(6) Limitations or restrictions on the issuance of additional revenue bonds or notes; the terms upon which additional revenue bonds or notes may be issued and secured; or the refunding of outstanding or other revenue bonds.

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the percentage of revenue bonds the bondholders of which must consent thereto, and the manner in which such consent may be given.

(8) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which revenue bonds issued under this Article shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(9) The preparation and maintenance of a budget with respect to the expenses of the State or a municipality, as the case may be, for the operation and maintenance of revenue bond projects.

(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants in connection with revenue bond projects.

(11) Limitations on or the prohibition of free service by revenue bond projects to any person, firm, or corporation, public or private.

(12) The acquisition and disposal of property for revenue bond projects.

(13) Provisions for insurance and for accounting reports and the inspection and audit thereof.

(14) The continuing operation and maintenance of the revenue bond project or the utility or enterprise of which it is to become a part. (Ex. Sess. 1938, c. 2, s. 6; 1971, c. 780, s. 1; 1983, c. 554, s. 10; 2003-388, s. 1.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 10 of which amended this section, see the Editor's note under G.S. 159-80.

The preamble to Session Laws 2003-388 reads: "Whereas, the State Treasurer's Office formed a Public Finance Advisory Committee comprised of representative city and county governments, as well as the public finance bar and financial services sectors, to review and propose changes to the General Statutes dealing with public finance in an effort to strengthen, modernize, and provide for the most efficient method of issuing of public debt by local governments and other political subdivisions of the State; and

"Whereas, the Public Finance Advisory Committee has developed, and the State Treasurer's Office has reviewed, a set of recommendations to the General Assembly for specific changes to relevant General Statutes around which there is consensus that the proposed changes are beneficial to local governments in their issuance of public debt; and

"Whereas, the Local Government Commission remains the statutorily designated entity to which all proposed issuances must be submitted for approval, and these recommendations in no way lower or lessen the level of due diligence performed in determining the appropriateness of a specific issuance; and

"Whereas, for these reasons, this legislation is submitted for consideration by the General Assembly on behalf of the State Treasurer, the staff of the Local Government Commission, and the Public Finance Advisory Committee; Now, therefore,

"The General Assembly of North Carolina enacts:"

§ 159-90. Limitations on details of bonds; additional provisions.

(a) In fixing the details of revenue bonds, the State or the issuing municipality, as the case may be, shall be subject to the following restrictions and directions:

(1) The maturity dates may not exceed the maximum maturity periods prescribed by the Commission for general obligation bonds pursuant to G.S. 159-122. For bonds issued in reimbursement of a loan or advance, the maximum maturity period to be used in determining the maturity dates of the bonds shall be the maximum permissible period prescribed by the Commission for the original project for which the loan or advance was expended, calculated from the date the original project is completed.

(2) Any bond may be made subject to redemption prior to maturity, including redemption on demand of the holder, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated. When any such bond shall have been validly called for redemption and provision shall have been made for the payment of the principal thereof, any redemption premium, and the interest thereon accrued to the date of redemption, interest thereon shall cease.

(3) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be payable in such kind of money and in such place or places within or without the State of North Carolina, as the State Treasurer or the issuing municipality, as the case may be, may determine.

(b) In addition to the foregoing provisions of this section, in fixing the details of revenue bonds the State or the issuing municipality, as the case may be, may provide that bonds

(1) May be made payable from time to time on demand or tender for purchase by the owner provided a Credit Facility supports such bonds, unless the Commission specifically determines that a Credit Facility is not required upon a finding and determination by the Commission that the proposed bonds will satisfy the conditions set forth in G.S. 159-86(b);

(2) May be additionally supported by a Credit Facility;

(3) May be made subject to redemption prior to maturity, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated in the bond order or trust agreement or with such variations as may be permitted in connection with a Par Formula provided in such bond order or trust agreement;
(4) May bear interest, notwithstanding the provisions of G.S. 159-125(a), at a rate or rates that may vary as permitted pursuant to a Par Formula and for such period or periods of time, all as may be provided in the bond order or trust agreement; and
(5) May be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds to new purchasers prior to their presentment for payment to the provider of the Credit Facility or to the issuing municipality or the State.

No Credit Facility, repayment agreement, Par Formula or remarketing agreement shall become effective without the approval of the Commission.

As used in this subsection, the following terms shall have the following meanings:

"Credit Facility" means an agreement entered into by an issuing municipality or by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banker or other investment institution, or any financial institution providing for prompt payment of all or any part of the principal (whether at maturity, presentment for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds payable on demand or tender by the owner issued in accordance with this section, in consideration of the issuing municipality or the State agreeing to repay the provider of such Credit Facility in accordance with the terms and provisions of such repayment agreement, provided, that any such repayment agreement shall provide that the obligation of the issuing municipality or the State thereunder shall have only such sources of payment as are permitted for the payment of bonds issued under this Article.

"Par Formula" shall mean any provision or formula adopted by the issuing municipality or the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any such bonds so that the purchase price of such bonds in the open market would be as close to par as possible. (Ex. Sess. 1938, c. 2, s. 5; 1949, c. 1081; 1967, c. 100, s. 1; c. 711, s. 2; 1969, c. 688, s. 1; 1971, c. 780, s. 1; 1983, c. 554, s. 11; 1985, c. 265, s. 1; 1991, c. 508, s. 4.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 11 of which amended this section, see the Editor's note under G.S. 159-80.

Session Laws 1985, c. 265, ss. 3 to 5 provide: "Sec. 3. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"Sec. 4. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 5. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

§ 159-91. Lien of revenue bonds.

(a) All revenue bonds issued under this Article shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in the bond order, without priority by reason of number, or of dates of bonds, execution or delivery, in accordance with the provisions of this Article and of the bond order; except that the State or a municipality may provide in a revenue bond order that revenue bonds issued pursuant thereto shall to the extent and in the manner prescribed in the order or agreement be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other revenue bonds.

(b) Any pledge made by the State or a municipality pursuant to this Article shall be valid and binding from the date of final passage of the bond order upon the issuance of any bonds or bond anticipation notes thereunder. The revenues, securities, and other moneys so pledged and then held or thereafter received by the State or a municipality, as the case may be, or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the State or a municipality, as the case may be, without regard to whether such parties have notice thereof. The bond order by which a pledge is created need not be filed or recorded in any manner other than as provided in this Chapter. (1971, c. 780, s. 1; 1983, c. 554, s. 12.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 12 of which amended this section, see the Editor's note under G.S. 159-80.

§ 159-92. Status of revenue bonds under Uniform Commercial Code.

Whether or not the revenue bonds and interest coupons appertaining thereto are of such form and character as to be investment securities under Article 8 of the Uniform Commercial Code as enacted in this State, all revenue bonds represented by instruments and interest coupons appertaining thereto issued under this Article are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, subject only to the provisions of the bonds pertaining to registration. (1971, c. 780, s. 1; 1983, c. 322, s. 3.)

Editor's Note. — The Uniform Commercial Code, referred to in this section, is found in Chapter 25 of the General Statutes.

§ 159-93. Agreement of the State.

The State of North Carolina does pledge to and agree with the holders of any revenue bonds or revenue bond anticipation notes heretofore or hereafter issued by the State or any municipality in this State that so long as any such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the State or the municipality at the time of issuance of the bonds or notes to establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, and other charges for the use, services, facilities, and commodities of or furnished by the revenue bond project in connection with which the bonds or notes, or bonds or notes refunded by the bonds or notes, were issued as shall produce revenues at least sufficient with other available funds to meet the expense of maintenance and operation of and renewal and replacements to such project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) of the bonds or notes, and to fulfill the terms of any agreements made with the bondholders or noteholders, nor will the State in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged. (1971, c. 780, s. 1; 1973, c. 494, s. 20; 1983, c. 554, s. 13.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 13 of which amended this section, see the Editor's note under G.S. 159-80.

§ 159-94. Limited liability.

(a) Revenue bonds shall be special obligations of the State or the municipality issuing them. The principal of and interest on revenue bonds shall not be payable from the general funds of the State or the municipality, as the case may be, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the bond order authorizing the bonds. Neither the credit nor the taxing power of the State or the municipality, as the case may be, are pledged for the payment of the principal or interest of revenue bonds, and no holder of revenue bonds has the right to compel the exercise of the taxing power by the State or the municipality, as the case may be, or the forfeiture of any of its property in connection with any default thereon. Every revenue bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the State or the municipality, as the case may be, is not obligated to pay the principal or interest except from such revenues.

(b) Repealed by Session Laws 2001-474, s. 39, effective November 29, 2001. (Ex. Sess. 1938, c. 2, s. 7; 1953, c. 922, s. 3; 1971, c. 780, s. 1; 1983, c. 554, s. 14; 1989, c. 168, s. 43; 2001-474, s. 39.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 14 of which amended this section, see the Editor's note under G.S. 159-80.

CASE NOTES

Invocation of Taxing Power Not Provided For. — Where defendant municipality, which owned and operated its own electric distributing system, proposed to issue bonds to obtain funds for the construction of a municipal hydroelectric generating plant to be operated separate and apart therefrom, and the resolution of the city authorizing the issuance of the bonds provided that they should be payable solely out of the revenues of the system, and the bonds themselves were to contain a like provision, such bonds were not a general indebtedness of the municipality and its taxing power could not be invoked to provide for their payment. Provision that the city, if it should voluntarily elect to take energy from its generating system for its own uses, should pay the cost of furnishing the energy so taken, which in no event should exceed a fair and reasonable charge therefor, did not indirectly provide for invocation of the taxing power for the payment of the bonds. McGuinn v. City of High Point, 217 N.C. 449, 8 S.E.2d 462, 128 A.L.R. 608 (1940), decided under former § 160-419.

§ 159-95. Approval of State agencies.

The general design and plan of any revenue bond project undertaken for water systems or facilities or sewage disposal systems or facilities shall be subject to the approval of the Commission for Public Health or the State Environmental Management Commission to the same extent that such projects would be if they were not financed by revenue bonds, and the provisions of the revenue bond order shall be consistent with any requirements imposed on the project by the Commission for Public Health or the State Environmental Management Commission. No revenue bond project for the acquisition or construction of systems or facilities for the generation, production, or transmission of gas or electric power may be undertaken by the State or a municipality unless the State or municipality, as the case may be, shall first obtain a certificate of convenience and necessity from the North Carolina Utilities Commission. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2; 1971, c. 780, s. 1; 1973, c. 476, s. 128; c. 494, s. 21; c. 1262, s. 23; 1983, c. 554, s. 15; 2007-182, s. 2.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 15 of which amended this section, see the Editor's note under G.S. 159-80.

§ 159-96. Limitation on extraterritorial operation of enterprises financed by revenue bonds.

(a) Each utility or public service enterprise listed in G.S. 159-81(3), if financed wholly or partially by revenue bonds issued under this Article, shall be owned or operated by the municipality for its own use and for the use of public and private consumers residing within its corporate limits or, in the case of a joint agency or undertaking established pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, for the use of the municipalities that established the joint agency or undertaking and for the use of the public and private consumers residing within their corporate limits. A utility or public service enterprise financed wholly or partially by revenue bonds, when operated primarily for the municipality's own use and for users within its corporate limits or, in the case of two or more municipalities participating in a joint agency or undertaking, when operated primarily for the use of the municipalities that established the joint agency or undertaking, may be operated incidentally for users outside the corporate limits of either the issuing unit or a participating municipality. Provided, however, that revenue bonds may be issued for the purpose of financing in whole or in part mass transit systems, aeronautical facilities, marine facilities and systems, systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed), facilities and equipment for the collection, treatment or disposal of solid waste, notwithstanding that such systems, facilities or equipment may be operated for users outside the corporate limits of a municipality that is an issuing unit where the municipality finds that the systems, facilities, or equipment so financed would benefit the municipality or, in the case of two or more municipalities participating in a joint agency or undertaking, where the municipalities that are the issuing units find that the systems, facilities, or equipment so financed would benefit the municipalities that established the joint agency or undertaking.

Revenue bonds may not be issued for the purpose of financing in whole or in part systems or facilities for the transmission or distribution of gas (natural, artificial, or mixed) to users outside the corporate limits of a municipality to whom service is available or will be available within a reasonable time from a local distribution natural gas utility pursuant to a certificate of public convenience and necessity issued by the North Carolina Utilities Commission. A finding by the governing body of a municipality that is an issuing unit that the systems or facilities to be provided by the financing will not provide service to users to whom such service is available or will be available within a reasonable time from a local distribution natural gas utility shall be conclusive upon (i) the expiration of a 45 day period following the making of such finding, (ii) the mailing by the municipality of a copy of such notice within five days after the making of such finding to any local distribution company certificated to provide service to the area in which the facilities are to be located, and (iii) the absence of a written objection to such finding being mailed by any such certificated local distribution company to the municipality by not later than five days prior to the end of such 45 day period, all such mailings to be properly given or made if sent by United States registered mail, return receipt requested, postage prepaid. Time shall be computed pursuant to G.S. 1A-1, Rule 6(a).

(b) A revenue bond project financed wholly or partially by revenue bonds of the State may be located either within or without the State and, when operated primarily for the State's own use and for users within the State, may be operated incidentally for users outside the State.

(c) Repealed by Session Laws 2001-474, s. 39, effective November 29, 2001.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section and G.S. 160A-312, municipalities may acquire sewage collection and disposal systems and water supply and distribution systems located within and without the corporate limits of such municipalities and finance such acquisition with revenue bonds. Further, municipalities may own, maintain and operate such acquired systems, enlarge and improve such acquired systems and finance the enlargement and improvement of such acquired systems with revenue bonds. This subsection applies only to acquisitions by municipalities financed by revenue bonds during the calendar year ending December 31, 1989.

(e) In the case of a Turnpike Project of the North Carolina Turnpike Authority, the Turnpike Project may be located anywhere in the State the Authority is authorized to maintain a Turnpike Project. (1971, c. 780, s. 1; 1973, c. 1325; 1983, c. 554, s. 16; c. 795, s. 5; 1989, c. 168, s. 44; c. 263; 1991, c. 511, s. 1; 2001-414, s. 50; 2001-474, s. 39; 2002-133, s. 8.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 16 of which amended this section, see the Editor's note under G.S. 159-80.

Session Laws 1983, c. 795, which rewrote the last sentence in the first paragraph, provides in s. 7: "Sections 5 and 6 of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing."

Session Laws 1991, c. 511, s. 2 provides that c. 511, which rewrote subsection (a), provides an additional and alternative method for accomplishing the things authorized thereby, is supplemental and additional to powers conferred by other laws, and is not in derogation of any powers now existing.

§ 159-97. Taxes for supplementing revenue bond projects.

(a) For the purpose of supplementing the revenues of a revenue bond project, as defined in this section, any county or city may covenant with, or may enter into an agreement with a municipality for the benefit of the holders of revenue bonds of the issuing municipality issued pursuant to this Article, whereby such county or city agrees to:

(1) Levy for the life of all revenue bonds issued in connection with the revenue bond project an annual property tax not in excess of the rate set forth in the question submitted to voters as hereinafter provided, such levy to be based upon the operating supplement requirement, as defined in this section, or

(2) Levy for the life of the revenue bonds in respect of which such tax is being levied an annual property tax not in excess of the rate required to pay the principal of and the interest on the aggregate principal amount of revenue bonds set forth in the question submitted to the voters as hereinafter provided, such levy to be based upon the debt service reserve supplement requirement, as defined in this section.

When any such covenant has been made or any such agreement has been entered into, the issuing municipality shall determine, and, in those instances in which the issuing municipality is not also the taxing county or city, the issuing municipality shall certify to the governing board of the taxing county or city, by not later than June 1 of each fiscal year the amount required, determined as hereinafter provided, to be raised by taxation by such county or city in the next fiscal year. The county or city is obligated to levy such tax only to the extent that an operating supplement requirement or a debt service reserve supplement requirement shall occur during the fiscal year preceding the fiscal year in which the tax is to be levied. In no event shall the county or city be required to levy a tax in excess of the rate required to be levied in accordance with the approval of the voters as provided in subsection (c). When any such tax is to be levied, the county or city shall include in its budget ordinance an appropriation to the issuing municipality or the appropriate fund, as the case may be, equal to the estimated yield of the tax levy, and shall pay such appropriation to the issuing municipality or transfer moneys to the appropriate fund in equal monthly installments unless another mutually satisfactory schedule of payments is agreed upon.

(b) A covenant made, or the pledge of an agreement entered into, by a county or city pursuant to this section shall be effected by the provisions of the revenue bond order or the trust agreement securing revenue bonds of the issuing municipality and where the issuing municipality is not also the taxing county or city a resolution of the county or city approving the appropriate provisions of the bond order or trust agreement relating to the pledge of the tax. If the taxing county or city is not the issuing municipality, it shall file an application for approval of the resolution with the secretary of the Commission in the manner provided in G.S. 159-149, and the Commission shall determine whether to approve the application as provided by G.S. 159-151 and 159-152; provided, however, that G.S. 159-148 and 159-150 shall have no application to this section.

(c) A covenant made, or agreement entered into, by a county or city pursuant to this section shall take effect only if approved by the affirmative vote of a majority of those who vote thereon in a referendum held in the taxing county or city. The referendum shall be called and held as provided in G.S. 159-61, except that

(1) The ballot proposition shall be in substantially one of the following forms:

Operating Supplement Requirement:

"Shall the (order or agreement) binding the (taxing county or city) to levy annually a tax on property not in excess of __________ cents on the one hundred dollars ($100.00) value of property subject to taxation for the purpose of supplementing the revenues of (revenue bond project) in instances where the gross revenues of the project are estimated to be less than the estimated total costs of the (i) current operating expenses of the project, (ii) amount required to maintain the debt service reserve by repaying any withdrawals therefrom in respect of all outstanding bonds issued in connection with the project and (iii) debt service on all outstanding bonds issued in connection with the project, all as defined in such (order or agreement), the proceeds of such tax to be used for the payment of the current operating expenses of the project so long as any revenue bonds issued therefor remain outstanding and unpaid, be approved?

[ ] Yes

[ ] No"

Debt Service Reserve Supplement Requirement:

"Shall the (order or agreement) binding the (taxing county or city) to levy annually, without limitation as to rate or amount, a tax on property subject to taxation for the purpose of supplementing the revenues of (revenue bond project) for maintaining the debt service reserve required by said (order or agreement) in connection with the

issuance of not in excess of $ ________ revenue bonds of (the issuing municipality), so long as any of such revenue bonds remain outstanding and unpaid, be approved?
[ ] Yes
[ ] No"

and

(2) The published statement of result shall have the following statement appended:

"Any action or proceeding challenging the regularity or validity of this supplemental tax referendum must be begun within 30 days after (date of publication).

____

(title of governing board)."

(d) Any action or proceeding in any court to set aside a supplemental tax referendum held under this section, or to obtain any other relief, upon the ground that the referendum is invalid or was irregularly conducted, must be begun within 30 days after the publication of the statement of the result of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this subsection.

(e) An order or agreement submitted to and approved by the voters pursuant to this section may be repealed at any time before bonds are issued pursuant thereto.

(f) In instances where the taxing county or city is not the issuing municipality, such county or city may levy taxes as provided for in this section in respect of a revenue bond project located outside its corporate limits provided that such county or city is entitled by law to appoint one or more members of the governing body of such municipality.

(g) For the purposes of this section,

(1) A "revenue bond project" is limited, notwithstanding the provisions of G.S. 159-81, to (i) aeronautical facilities, including but not limited to airports, terminals and hangars, (ii) hospitals and other health-related facilities, and (iii) systems, facilities and equipment for the collection, treatment or disposal of solid waste within the meaning of said G.S. 159-81;

(2) An "operating supplement requirement" occurs when, as set forth in the budget prepared by the issuing municipality in respect of the revenue bond project, the estimated cost in the next succeeding fiscal year of the (i) current operating expenses of the revenue bond project, (ii) amount required to maintain the debt service reserve by repaying any withdrawals therefrom in respect of all outstanding bonds issued in connection with the revenue bond project, and (iii) debt service on all outstanding bonds issued in connection with the revenue bond project, are in excess of the pledged revenues of the revenue bond project for such fiscal year as estimated by the issuing municipality, excluding taxes levied pursuant to this section; provided, however, that the amount of the operating supplement requirement shall not exceed the total amount of the current operating expenses of the revenue bond project mentioned in clause (i) above, and

(3) A "debt service reserve supplement requirement" occurs when there have been withdrawn from the debt service reserve any moneys for the purpose of paying debt service on the bonds in respect of which the supplemental tax has been authorized by the voters; provided, however, that the amount of the debt service reserve supplement requirement shall not exceed the amount so withdrawn.

(h) Any covenant or agreement of a county or city made pursuant to this section, and the obligations assumed thereby, shall be excludable from the gross debt of the county or city for purposes of the statement of debt mentioned in G.S. 159-55.

(i) For the purposes of this section the terms county or city shall include a special airport district with respect to financing of aeronautical facilities. (1973, c. 786, s. 1; 1979, c. 727, s. 5; 1983, c. 795, s. 6.)

Editor's Note. — Session Laws 1983, c. 795, s. 7, provided: "Sections 5 and 6 of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing."

§ 159-98: Reserved for future codification purposes.

ARTICLE 5A.

Capital Appreciation Bonds.

§ 159-99. Definition; terms and conditions.

(a) Capital Appreciation Bond Defined. — For purposes of this Article, the term "capital appreciation bond" means a bond that meets all of the following conditions:

(1) It is sold, at public or private sale, at a price substantially less, as conclusively determined by the issuer of the bond, than the principal amount of the bond.

(2) Compounded interest on the bond is payable at maturity.

(3) The bond is designated as a capital appreciation bond within the meaning of this Article by the proceedings of the issuer of the bond providing for its issuance.

(b) Calculating Principal Amount. — For purposes of calculating the aggregate principal amount of bonds within the meaning of any constitutional or statutory limitation on the incurrence of debt, the aggregate principal amount of any capital appreciation bonds is the aggregate of the initial offering prices at which the bonds are offered for sale to the public, including private or negotiated sales, or sold to the initial purchaser of the bonds in a private placement, in either case without reduction to reflect underwriters' discount or placement agents' or other intermediaries' fees.

(c) Terms and Conditions. — The proceedings providing for the issuance of any capital appreciation bonds may provide for the issuance of terms bonds or serial bonds, or both, the establishment of sinking funds for or the redemption of term bonds, the issuance of capital appreciation bonds at the same time and as part of the same issue of any other type of bonds, the method of calculating the principal amount of any such capital appreciation bonds outstanding for the purpose of determining, within the meaning of the proceedings and otherwise, application of debt service provisions, funds into which debt service payments are to be deposited, application of redemption provisions, bondowners' voting rights and consents, pro rata application of available funds, and any other matters the issuer considers appropriate. (1987, c. 650; 2004-170, ss. 40(a), 40(c).)

Editor's Note. — Session Laws 2004-170, s. 40(a), codified Session Laws 1987-650, s. 6, as the first two paragraphs of G.S. 159-99.

§ 159-100. Authorization.

(a) Revenue Bond Act. — The State and local governmental units are authorized to issue capital appreciation bonds pursuant to the provisions of The State and Local Government Revenue Bond Act.

(b) Local Government Bond Act. — Local governmental units are authorized to issue capital appreciation bonds pursuant to the provisions of The Local Government Bond Act. In connection with the issuance of a series of bonds containing capital appreciation bonds issued by local governmental units pursuant to The Local Government Bond Act, the Local Government Commission may require that annual debt service on the series of bonds be as nearly level or equal as possible taking into consideration prevailing financial techniques, including, without limitation, the postponement of principal maturities in early years of the issue and the use of capitalized interest. The Local Government Commission may also limit the amount of a series of bonds that may be issued as capital appreciation bonds and to make the issuance of any capital appreciation bonds subject to a finding by the Commission or the issuer that the issuance of the bonds will not increase the aggregate amount of debt service payable on the series of bonds of which the capital appreciation bonds constitute a part.

(c) Future Acts. — Local governmental units are authorized to issue capital appreciation bonds pursuant to the provisions of any law enacted in the future. (1987, c. 650; 2004-170, ss. 40(b), 40(c).)

Editor's Note. — Session Laws 2004-170, s. 40(b), codified Session Laws 1987-650, ss. 7 and 5, as the second and third paragraphs, respectively, of G.S. 159-100.

Article 6.

Project Development Financing Act.

§ 159-101. Short title.

This Article may be cited as the "North Carolina Project Development Financing Act." (2003-403, s. 2.)

Editor's Note. — An Article 6 entitled "Economic Development Financing Act" was enacted by Session Laws 1993, c. 497, s. 2, but was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. Such an amendment was submitted to the people on November 2, 1993 and was defeated. This Article, therefore, never took effect.

An earlier Article 6, "Tax Increment Financing Act" was enacted by Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 1, but was made effective on certification of approval of an amendment to the state Constitution authorizing the enactment of general laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The earlier Article 6, therefore, never took effect.

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

Session Laws 2003-403, s. 25, makes this Article effective upon certification of approval of amendment to Article V, § 14 of the Constitution of North Carolina, as proposed by Session Laws 2003-403, s. 1.

§ 159-102. Unit of local government defined.

For the purposes of this Article, the term "unit of local government" means a county or a municipal corporation. (2003-403, s. 2.)

§ 159-103. Authorization of project development financing debt instruments; purposes.

(a) Each unit of local government may issue project development financing debt instruments pursuant to this Article and use the proceeds for one or more of the purposes for which any unit may issue general obligation bonds pursuant to the following subdivisions of G.S. 159-48: (b)(1), (3), (7), (11), (12), (16), (17), (19), (21), (23), (24), or (25), (c)(1), (4), (4a), or (6), or (d)(3), (4), (5), (6) or (7), or (b)(13) excluding stadiums, arenas, golf courses, swimming pools, wading pools, or marinas. In addition, the proceeds may be used for any service or facility authorized by G.S. 160A-536 to be provided in a municipal service district, but no such district need be created.

For the purpose of this Article, the term "capital costs" as defined in G.S. 159-48(h) also includes (i) interest on the debt instruments being issued or on notes issued in anticipation of the instruments during construction and for a period not exceeding seven years after the estimated date of completion of construction and (ii) the establishment of debt service reserves and any other reserves reasonably required by the financing documents. The proceeds of the debt instruments may be used either in a development financing district established pursuant to G.S. 160A-515.1 or G.S. 158-7.3 or, if the use directly benefits private development forecast by the development financing plan for the district, outside the development financing district. The proceeds may be used only for projects that enable, facilitate, or benefit private development within the development financing district, the revenue increment of which is pledged as security for the debt instruments. This subsection does not prohibit the use of proceeds to defray the cost of providing water and sewer utilities to a private development in a project development financing district.

(b) Subject to agreement with the holders of its project development financing debt instruments and the limitation on duration of development financing districts set out in this Article, each unit of local government may issue additional project development financing debt instruments and may issue debt instruments to refund any outstanding project development financing debt instruments at any time before the final maturity of the instruments to be refunded. General obligation bonds issued to refund outstanding project development financing debt instruments shall be issued under the Local Government Bond Act, Article 4 of this Chapter. Revenue bonds issued to refund outstanding project development financing debt instruments shall be issued under the State and Local Government Revenue Bond Act, Article 5 of this Chapter.

Project development financing debt instruments may be issued partly for the purpose of refunding outstanding project development financing debt instruments and partly for any other purpose under this Article. Project development financing debt instruments issued to refund outstanding project development financing debt instruments shall be issued under this Article and not under Article 4 of this Chapter.

(c) If the private development project to be benefited by proposed project development financing debt instruments affects tax revenues in more than one unit of local government and more than one affected unit of local government wishes to provide assistance to the private development project by issuing project development financing debt instruments, then those units may enter into an interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes for the purpose of issuing the instruments. The agreement may include a provision that a unit may pledge all or any part of the taxes received or to be received on the incremental valuation accruing to the development financing district to the repayment of instruments issued by another unit that is a party to the interlocal agreement. (2003-403, s. 2; 2007-395, s. 1.)

§ 159-104. Application to Commission for approval of project development financing debt instrument issue; preliminary conference; acceptance of application.

A unit of local government may not issue project development financing debt instruments under this Article unless the issue is approved by the Local Government Commission. The governing body of the issuing unit shall file with the secretary of the Commission an application for Commission approval of the issue. At the time of application, the governing body shall publish a public notice of the application in a newspaper of general circulation in the unit of local government. The application shall include any statements of facts and documents concerning the proposed debt instruments, development financing district, and development financing plan, and the financial condition of the unit, required by the secretary. The Commission may prescribe the form of the application.

Before accepting the application, the secretary may require the governing body or its representatives to attend a preliminary conference in order to discuss informally the proposed issue, district, and plan and the timing of the steps to be taken in issuing the debt instruments. The development financing plan need not be adopted by the governing body at the time it files the application with the secretary. However, before the Commission may enter its order approving the debt instruments, the governing body must adopt the plan and make the findings described in G.S. 159-105(b)(1) and (5).

After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the

Commission. The secretary's statement is conclusive evidence that the unit has complied with this section. (2003-403, s. 2.)

§ 159-105. Approval of application by Commission.

(a) In determining whether to approve a proposed project development financing debt instrument issue, the Commission may inquire into and consider any matters that it considers relevant to whether the issue should be approved, including:

(1) Whether the projects to be financed from the proceeds of the project development financing debt instrument issue are necessary to secure significant new project development for a development financing district.

(2) Whether the proposed projects are feasible. In making this determination, the Commission may consider any additional security such as credit enhancement, insurance, or guaranties.

(3) The unit of local government's debt management procedures and policies.

(4) Whether the unit is in default in any of its debt service obligations.

(5) Whether the private development forecast in the development financing plan would likely occur without the public project or projects to be financed by the project development financing debt instruments.

(6) Whether taxes on the incremental valuation accruing to the development financing district, together with any other revenues available under G.S. 159-110, will be sufficient to service the proposed project development financing debt instruments.

(7) The ability of the Commission to market the proposed project development financing debt instruments at reasonable rates of interest.

(b) The Commission shall approve the application if, upon the information and evidence it receives, it finds all of the following:

(1) The proposed project development financing debt instrument issue is necessary to secure significant new economic development for a development financing district.

(2) The amount of the proposed project development financing debt is adequate and not excessive for the proposed purpose of the issue.

(3) The proposed projects are feasible. In making this determination, the Commission may consider any additional security such as credit enhancement, insurance, or guaranties.

(4) The unit of local government's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.

(5) The private development forecast in the development financing plan would not be likely to occur without the public projects to be financed by the project development financing debt instruments.

(6) The proposed project development financing debt instruments can be marketed at reasonable interest cost to the issuing unit.

(7) The issuing unit has, pursuant to G.S. 160A-515.1 or G.S. 158-7.3, adopted a development financing plan for the development financing district for which the instruments are to be issued. (2003-403, s. 2.)

§ 159-106. Order approving or denying the application.

(a) After considering an application, the Commission shall enter its order either approving or denying the application. An order approving an issue is not an approval of the legality of the debt instruments in any respect.

(b) Unless the debt instruments are to be issued for a development financing district for which a project development financing debt instrument issue has already been approved, the day the Commission enters its order approving an application for project development financing debt instruments is also the effective date of the development financing district for which the instruments are to be issued.

(c) If the Commission enters an order denying the application, the proceedings under this Article are at an end. (2003-403, s. 2.)

§ 159-107. Determination of incremental valuation; use of taxes levied on incremental valuation; duration of the district.

(a) Base Valuation in the Development Financing District. — After the Local Government Commission has entered its order approving a unit of local government's application for project development financing debt instruments, the unit shall immediately notify the tax assessor of the county in which the development financing district is located of the existence of the development financing district. Upon receiving this notice, the tax assessor shall determine the base valuation of the district, which is the assessed value of all taxable property located in the district on the January 1 immediately preceding the effective date of the district. If the unit or an agency of the unit acquired property within the district within one year before the effective date of the district, the tax assessor shall presume, subject to rebuttal, that the property was acquired in contemplation of the district, and the tax assessor shall include the value of the property so acquired in determining the base valuation of the district. The unit may rebut this presumption by showing that the property was acquired primarily for a purpose other than to reduce the incremental tax base. After determining the base valuation of the development financing district, the tax assessor shall certify the valuation to: (i) the issuing unit; (ii) the county in which the district is located if the issuing unit is not the county; and (iii) any special district, as defined in G.S. 159-7, within which the development financing district is located.

(b) Adjustments to the Base Valuation. — During the lifetime of the development financing district, the base valuation shall be adjusted as follows:

(1) If the unit amends its development financing plan, pursuant to G.S. 160A-515.1 or G.S. 158-7.3, to remove property from the development financing district, on the succeeding January 1, that property shall be removed from the district and the base valuation reduced accordingly.

(2) If the unit amends its development financing plan, pursuant to G.S. 160A-515.1 or G.S. 158-7.3, to expand the district, the new property shall be added to the district immediately. The base valuation of the district shall be increased by the assessed value of the taxable property situated in the added territory on the January 1 immediately preceding the effective date of the district.

(3) Repealed by Session Laws 2007-395, s. 2, effective August 20, 2007.

Each time the base valuation is adjusted, the tax assessor shall immediately certify the new base valuation to: (i) the issuing unit; (ii) the county if the issuing unit is not the county; and (iii) any special district, as defined in G.S. 159-7, within which the development financing district is located.

(c) Revenue Increment Fund. — When a unit of local government has established a development financing district, and the project development financing debt instruments for that district have been approved by the Commission, the unit shall establish a separate fund to account for the proceeds paid to the unit from taxes levied on the incremental valuation of the district. The unit shall also place in this fund any moneys received pursuant to an agreement entered into under G.S. 159-108.

(d) Levy of Property Taxes Within the District. — Each year the development financing district is in existence, the tax assessor shall determine the current assessed value of taxable property located in the district. The assessor shall also compute the difference between this current value and the base valuation of the district. If the current value exceeds the base value, the difference is the incremental valuation of the district. In each year the district is in existence, the county, and if the district is within a city or a special district as defined by G.S. 159-7, the city or the special district shall levy taxes against property in the district in the same manner as taxes are levied against other property in the county, city, or special district. The proceeds from ad valorem taxes levied on property in the development financing district shall be distributed as follows:

(1) In any year in which there is no incremental valuation of the district, all the proceeds of the taxes shall be retained by the county, city, or special district, as if there were no development financing district in existence.

(2) In any year in which there is an incremental valuation of the district, the amount of tax due from each taxpayer on property in the district shall be distributed as provided in this subdivision. The net proceeds of the following taxes shall be paid to the government levying the tax: (i) taxes separately stated and levied solely to service and repay debt secured by a pledge of the faith and credit of the unit; (ii) nonschool taxes levied pursuant to a vote of the people; (iii) taxes levied for a municipal or county service district; and (iv) taxes levied by a taxing unit in a development financing district established by a different taxing unit and for which there is no increment agreement between the two units. All remaining taxes on property in the district shall be multiplied by a fraction, the numerator of which is the base valuation for the district and the denominator of which is the current valuation for the district. The amount shown as the product of this multiplication shall, when paid by the taxpayer, be retained by the county, city, or special district, as if there were no development financing district in existence. The net proceeds of the remaining amount shall, when paid by the taxpayer, be turned over to the finance officer of each issuing unit, who shall place this amount in the special revenue increment fund required by subsection (c) of this section. As used in this section, "net proceeds" means gross proceeds less refunds, releases, and any collection fee paid by the levying government to the collecting government.

(e) Increment Agreements. — Effect of Annexation on District Established by a County. — If a city annexes land in a development financing district established by a county pursuant to G.S. 158-7.3, the proceeds of all taxes levied by the city on property within the district shall be paid to the city unless the city enters into an agreement with the county pursuant to this subsection, and the annexed land in the county's district that subsequently becomes a part of the city does not count against the city's five-percent (5%) limit under G.S. 158-7.3 or G.S. 160A-515.1 unless the city and the county enter into an agreement pursuant to this section. The city and the county may enter into an increment agreement under which the city agrees that city taxes on part or all of the incremental valuation in the district shall be paid into the revenue increment fund for the district. An increment agreement may be entered into when the district is established or at any time after the district is established. The increment agreement may extend for the duration of the district or for a shorter time agreed to by the parties.

(f) Use of Moneys in the Revenue Increment Fund. — If the development financing district includes property conveyed or leased by the unit of local government to a private party in consideration of increased tax revenue expected to be generated by improvements constructed on the property pursuant to G.S. 158-7.1, an amount equal to the tax revenue taken into account in arriving at the consideration, less the increased tax revenue realized since the construction of the improvement, shall be transferred from the Revenue Increment Fund to the county, city, or special district as if there were no development financing district in existence. Any money in excess of this amount in the Fund may be used for any of the following purposes, without priority other than priorities imposed by the order authorizing the project development financing debt instruments:

(1) To finance capital expenditures (including the funding of capital reserves) by the issuing unit in the development financing district pursuant to the development financing plan.

(2) To meet principal and interest requirements on project development financing debt instruments and debt instrument anticipation notes issued for the district.

(3) To repay the appropriate fund of the issuing unit for any moneys actually expended on debt service on project development financing debt instruments pursuant to a pledge made pursuant to G.S. 159-111(b).

(4) To establish and maintain debt service reserves for future principal and interest requirements on project development financing debt instruments and debt instrument anticipation notes issued for the district.

(5) To meet any other requirements imposed by the order authorizing the project development financing debt instruments.

If in any year there is any money remaining in the Revenue Increment Fund after these purposes have been satisfied, it shall be paid to the general fund of the county and, if applicable, of the city and any special district as defined by G.S. 159-7, in proportion to their rates of ad valorem tax on taxable property located in the development financing district.

(g) Duration of District. — A development financing district shall terminate at the earlier of (i) the end of the thirtieth year after the effective date of the district or (ii) the date all project development financing debt instruments issued for the district have been fully retired or sufficient funds have been set aside, pursuant to the order authorizing the debt instruments, to meet all future principal and interest requirements on the instruments. (2003-403, s. 2; 2005-238, s. 5; 2007-395, s. 2.)

Editor's Note. — Session Laws 2005-238, s. 15, provides: "The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes." Session Laws 2005-238, s. 5, amended subsection (e) to add the clause concerning when annexed land does not count against a 5% limit.

Session Laws 2005-238, s. 16, is a severability clause.

Effect of Amendments. — Session Laws 2007-395, s. 2, effective August 20, 2007, deleted former subdivision (b)(3) which read: "If, at the time of revaluation pursuant to G.S. 105-286 of property in the county in which the district is located, it appears that, based on the schedule of values, standards, and rules approved by the board of county commissioners pursuant to G.S. 105-317, the property values of the district as they existed on the January 1 immediately preceding the effective date of the district would be increased because of the revaluation, then the base valuation shall be increased accordingly."

§ 159-108. Agreements with property owners.

(a) Authorization. — A unit of local government that issues project development financing debt instruments may enter into agreements with the owners of real property in the development financing district for which the instruments were issued under which the owners agree to a minimum value at which their property will be assessed for taxation. Such an agreement may extend for the life of the development financing district or for a shorter period agreed to by the parties. The agreement may vary the agreed-upon minimum assessed value from year to year.

(b) Filing and Recording Agreement. — The unit shall file a copy of any agreement entered into pursuant to this section with the tax assessor for the county in which the development financing district is located. In addition, the unit shall cause the agreement to be recorded in the office of the register of deeds of that county, and the register of deeds shall index the agreement in the grantor's index under the name of the property owner. Once the agreement has been recorded in the office of the register of deeds, as required by this subsection, it is binding, according to its terms and for its duration, on any subsequent owner of the property.

(c) Minimum Assessment of Property. — An agreement entered into pursuant to this section establishes a minimum assessment of the real property subject to the agreement. If the county tax assessor determines that the real property has a true value less than the minimum established by the agreement, the assessor shall nevertheless assess the property at the minimum set out in the agreement. If the assessor, however, determines that the real property has a true value greater than the minimum established by the agreement, the assessor shall assess the property at the true value.

(d) Effect of Reappraisal. — If an agreement entered into pursuant to this section continues in effect after a reappraisal of property conducted pursuant to G.S. 105-286, the minimum assessment established in the agreement shall be adjusted as provided in this subsection. After the issuing unit of local government has adopted its budget ordinance and levied taxes for the fiscal year that begins next after the effective date of the reappraisal, it shall certify to the county tax assessor the total rate of ad valorem taxes levied by the unit and applicable to the property subject to the agreement. It shall also certify to the assessor the total rate of ad valorem taxes levied by the unit and applicable to the property in the immediately preceding fiscal year. The assessor shall determine the total amount of ad valorem taxes levied by the unit on the property in the immediately preceding fiscal year, based on the tax rate certified by the issuing unit. The assessor shall then determine a value of the property that would provide the same total amount of ad valorem taxes based on the tax rate certified for the fiscal year beginning next after the effective date of the reappraisal. The value so determined is the new minimum assessment for the property subject to the agreement.

(e) Agreement Effective Regardless of Improvements. — An agreement entered into pursuant to this section remains in effect according to its terms regardless of whether the improvements anticipated in the development financing plan are completed or whether those improvements continue to exist during the duration of the agreement. However, if any part of the property subject to the agreement is acquired by a public agency, the agreement is automatically modified by removing the acquired property from the agreement and reducing the minimum assessment accordingly. (2003-403, s. 2.)

§ 159-109. Special covenants.

A project development financing debt instrument order or a trust agreement securing project development financing debt instruments may contain covenants regarding:

(1) The pledge of all or any part of the taxes received or to be received on the incremental valuation in the development financing district during the life of the debt instruments.

(2) Rates, fees, rentals, tolls, or other charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants, and funds received or to be received.
(3) The setting aside of debt service reserves and the regulation and disposition of these reserves.
(4) The custody, collection, securing, investment, and payment of any moneys held for the payment of project development financing debt instruments.
(5) Limitations or restrictions on the purposes to which the proceeds of sale of project development financing debt instruments may be applied.
(6) Limitations or restrictions on the issuance of additional project development financing debt instruments or notes for the same development financing district, the terms upon which additional project development financing debt instruments or notes may be issued or secured, or the refunding of outstanding project development financing debt instruments or notes.
(7) The acquisition and disposal of property for project development financing debt instrument projects.
(8) Provision for insurance and for accounting reports, and the inspection and audit of accounting reports.
(9) The continuing operation and maintenance of projects financed with the proceeds of the project development financing debt instruments. (2003-403, s. 2.)

§ 159-110. Security of project development financing debt instruments.

Project development financing debt instruments are special obligations of the issuing unit. Moneys in the Revenue Increment Fund required by G.S. 159-107(c) are pledged to the payment of the instruments, in accordance with G.S. 159-107(f). Except as provided in G.S. 159-111, the unit may pledge the following additional sources of funds to the payment of the debt instruments, and no other sources: the proceeds from the sale of property in the development financing district; net revenues from any public facilities, other than portions of public utility systems, in the development financing district financed with the proceeds of the project development financing debt instruments; and, subject to G.S. 159-47, net revenues from any other public facilities, other than portions of public utility systems, in the development financing district constructed or improved pursuant to the development financing plan.

Except as provided in G.S. 159-111, the principal and interest on project development financing debt instruments do not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of the unit's property or upon any of its income, receipts, or revenues, except as may be provided pursuant to this section. Except as provided in G.S. 159-107 and G.S. 159-111, neither the credit nor the taxing power of the unit is pledged for the payment of the principal or interest of project development financing debt instruments, and no holder of project development financing debt instruments has the right to compel the exercise of the taxing power by the unit or the forfeiture of any of its property in connection with any default on the instruments. Unless the unit's taxing power has been pledged pursuant to G.S. 159-111, every project development financing debt instrument shall contain recitals sufficient to show the limited nature of the security for the instrument's payment and that it is not secured by the full faith and credit of the unit. (2003-403, s. 2.)

§ 159-111. Additional security for project development financing debt instruments.

(a) In order to provide additional security for debt instruments issued pursuant to this Article, the issuing unit of local government may pledge its faith and credit for the payment of the principal of and interest on the debt instruments. Before such a pledge may be given, the unit shall follow the procedures and meet the requirements for approval of general obligation bonds under Article 4 of this Chapter. The unit shall also follow the procedures and meet the requirements of this Article. If debt instruments are issued pursuant to this Article and are also secured by a pledge of the issuing unit's faith and credit, the debt instruments are subject to G.S. 159-112 rather than G.S. 159-65.

(b) In order to provide additional security for debt instruments issued pursuant to this Article, and in lieu of pledging its faith and credit for that purpose pursuant to subsection (a) of this section, a unit of local government may pledge or grant a security interest in any available sources of revenues of the unit, including special assessments against property within the development financing district made by the unit pursuant to Article 9 of Chapter 153A of the General Statutes or Article 10 of Chapter 160A of the General Statutes, as long as doing so does not constitute a pledge of the unit's taxing power. In addition, to the extent the generation of the revenues is within the power of the unit, the unit may enter into covenants to take action in order to generate the revenues, as long as the covenant does not constitute a pledge of the unit's taxing power. In addition, the unit may pledge, mortgage, or grant a security interest in all or a portion of the real and personal property being financed or improved with the proceeds of the project development financing debt instrument. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subsection may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property.

(c) No agreement or covenant may contain a nonsubstitution clause that restricts the right of the issuing unit of local government to replace or provide a substitute for any project financed pursuant to this subsection.

(d) The obligation of a unit of local government with respect to the sources of payment shall be specifically identified in the proceedings of the governing body authorizing the unit to issue the debt instruments. The sources of payment so specifically identified and then held or thereafter received by the unit or any fiduciary of the unit are immediately subject to the lien of the proceedings without any physical delivery of the sources or further act. The lien is valid and binding as against all parties having claims of any kind against a unit without regard to whether the parties have notice of the lien. The proceedings or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in this Article.

(e) A unit of local government that issues project development financing debt instruments may agree in the proceedings relating to an issue of project development financing debt instruments to any one or more of the following:

(1) That in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for the amount due on such debt instruments during the next budget year.

(2) In the event any portion of a reserve fund relating to such debt instruments is less than any reserve requirement relating thereto, including as a result of a use of the reserve fund for the payment of amounts due on such debt instrument, that in preparing its budget for

any fiscal year its finance officer shall include in the proposed budget an appropriation for the amount required to restore such reserve fund to its required level during the next budget year.

(3) That if there is any surplus in any year in any fund or account of such unit of local government, it will consider appropriating such surplus for one or both of the uses set forth in subdivision (1) or (2) of this subsection.

In every instance, the unit of local government shall expressly state that its agreement under this provision is subject to a decision by its governing body to make such appropriation and that such an agreement does not create an obligation on such a governing body to make such appropriation.

(f) A unit of local government that enters into an increment agreement for the purposes described in G.S. 159-107(d)(2) may include in such increment agreement any one or more of the following:

(1) That in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for that portion of the amount due on such debt instruments during the next budget year which represents the expected percentage of such amount that would come from the taxes levied by such unit of local government.

(2) In the event any portion of a reserve fund relating to such debt instruments is less than any reserve requirement relating thereto, including as a result of a use of the reserve fund for the payment of amounts due on such debt instrument, that in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for some portion or all of the amount required to restore such reserve fund to its required level during the next budget year.

(3) That if there is any surplus in any year in any fund or account of such unit of local government, it will consider appropriating such surplus for one or both of the uses set forth in subdivision (1) or (2) of this subsection.

In every instance, the unit of local government shall expressly state that its agreement under this provision is subject to a decision by its governing body to make such appropriation and that such an agreement does not create an obligation on such a governing body to make such appropriation. (2003-403, s. 2; 2005-238, s. 6; 2009-525, s. 3.)

Editor's Note. — Session Laws 2005-238, s. 15, provides: "The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes." Session Laws 2005-238, s. 6, amended subsection (b).

Session Laws 2005-238, s. 16, is a severability clause.

Effect of Amendments. — Session Laws 2009-525, s. 3, effective August 26, 2009, added subsections (e) and (f).

§ 159-112. Limitations on details of debt instruments.

In fixing the de[illegible]s of project development financing debt instruments, the governing body of the issuing unit of local government is subject to these restrictions and directions:

(1) The maturity date shall not exceed the shorter of (i) the longest of the various maximum periods of usefulness for the projects to be financed with debt instrument proceeds, as prescribed by the Local Government Commission pursuant to G.S. 159-122, or (ii) the end of the thirtieth year after the effective date of the development financing district.

(2) The first payment of principal shall be payable not more than seven years after the date of the debt instruments.

(3) Any debt instrument may be made payable on demand or tender for purchase as provided in G.S. 159-79, and any debt instrument may be made subject to redemption prior to maturity, with or without premium, on such notice, at such times, and with such redemption provisions as may be stated. Interest on the debt instruments shall cease when the instruments have been validly called for redemption and provision has been made for the payment of the principal of the instruments, any redemption, any premium, and the interest on the instruments accrued to the date of redemption.

(4) The debt instruments may bear interest at such rates payable semi-annually or otherwise, may be in such denominations, and may be payable in such kind of money and in such place or places within or without this State as the issuing unit may determine. (2003-403, s. 2.)

§ 159-113. Annual report.

In July of each year, each unit of local government with outstanding project development financing debt instruments shall make a report to any other unit, and to any special district as defined in G.S. 159-7, in which the development financing district for which the instruments were issued is located. This report shall set out the base valuation for the development financing district, the current valuation for the district, the amount of remaining project development financing debt for the district, and the unit's estimate of when the debt will be retired. The unit of local government may meet this requirement by reporting this information in its annual financial statements required by G.S. 159-34. (2003-403, s. 2.)

§§ 159-114 through 159-119: Reserved for future codification purposes.

Article 7.

Issuance and Sale of Bonds.

§ 159-120. Definitions.

As used in this Article, unless the context clearly requires another meaning, the words "unit" or "issuing unit" mean "unit of local government" as defined in G.S. 159-44 or G.S. 159-102, "municipality" as defined in G.S. 159-81, and the State of North Carolina, and the words "governing body," when used with respect to the State of North Carolina, mean the Council of State. (1973, c. 494, s. 30; 1981 (Reg. Sess., 1982), c. 1276, s. 3; 1983, c. 554, s. 17; 2003-403, s. 6.)

Editor's Note. — An amendment to this section by Session Laws 1993, c. 497, s. 6, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 3, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, which amended this section, see the Editor's Note under G.S. 159-80.

Session Laws 1987 (Reg. Sess., 1988), c. 882,

s. 6 provides: "All actions and proceedings heretofore taken by units of local government relating to the authorization of general obligation refunding bonds, secured by a pledge of the taxing power and issued pursuant to the Local Government Bond Act, and revenue refunding bonds, secured by a pledge of revenues and issued pursuant to The State and Local Government Revenue Bond Act, and the sale and delivery of all such bonds pursuant to Article 7, as amended, of Chapter 159 of the General Statutes of North Carolina, in order to provide funds to purchase, at a discount, bonds of such units owned by the Farmers Home Administration, including without limitation, the introduction and adoption of bond orders, the holding of public hearings with respect to such bond orders, the passage of resolutions providing for the issuance and the sale, both public and private, of such refunding bonds, and the delivery of any such refunding bonds are hereby in all respects approved, ratified, validated, and confirmed."

Session Laws 1989, c. 90, effective May 5, 1989, provides: "All actions and proceedings heretofore taken since June 15, 1988, by units of local government relating to the authorization of general obligation refunding bonds, secured by a pledge of the taxing power and issued pursuant to The Local Government Bond Act, and revenue refunding bonds, secured by a pledge of revenues and issued pursuant to The State and Local Government Revenue Bond Act, and the sale and delivery of all such bonds pursuant to Article 7, as amended, of Chapter 159 of the General Statutes, in order to provide funds to purchase, at a discount, bonds of such units owned by the Farmers Home Administration, including without limitation, the introduction and adoption of bond orders, the holding of public hearings with respect to such bond orders, the passage of resolutions providing for the issuance and the sale, both public and private, of such refunding bonds, and the delivery of any such refunding bonds are hereby in all respects approved, ratified, validated, and confirmed."

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14m as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

Legal Periodicals. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-121. Coupon or registered bonds to be issued.

Bonds may be issued as (i) coupon bonds payable to bearer, (ii) coupon bonds registrable as to principal only or as to both principal and interest, or (iii) bonds without coupons registered as to both principal and interest. Each issuing unit may appoint or designate a bond registrar who shall be charged with the duty of attending to the registration and the registration of transfer of bonds. (1917, c. 138, s. 29; 1919, c. 178, s. 3(29); C.S., s. 2955; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 36; 1971, c. 780, s. 1; 1973, c. 494, s. 22.)

§ 159-122. Maturities of bonds.

(a) Except as provided in this subsection, the last installment of each bond issue shall mature not later than the date of expiration of the period of usefulness of the capital project to be financed by the bond issue, computed from the date of the bonds. The last installment of a refunding bond issue issued pursuant to G.S. 159-48(a)(4) or (5) shall mature not later than either (i) the shortest period, but not more than 40 years, in which the debt to be refunded can be finally paid without making it unduly burdensome on the taxpayers of the issuing unit, as determined by the Commission, computed from the date of the bonds, or (ii) the end of the unexpired period of usefulness of the capital project financed by the debt to be refunded. The last installment of bonds issued pursuant to G.S. 159-48(a)(1), (2), (3), (6), or (7) shall mature not later than 10 years after the date of the bonds, as determined by the Commission. The last installment of bonds issued pursuant to G.S. 159-48(c)(5) shall mature not later than eight years after the date of the bonds, as determined by the Commission. The last installment of project development financing debt instruments shall mature on the earlier of 30 years after the effective date of the development financing district for which the instruments are issued or the longest of the various maximum periods of usefulness for the projects to be financed with debt instrument proceeds, as prescribed by the Commission pursuant to this section.

(b) The Commission shall by regulation establish the maximum period of usefulness of the capital projects for which units of local government may issue bonds, but no capital project may be assigned a period of usefulness in excess of 40 years.

(c) The determination of the Commission as to the classification of the capital projects for which a particular bond issue is authorized, and the Commission's determination of the maximum period of usefulness of the project, as evidenced by the secretary's certificate, shall be conclusive in any action or proceeding involving the validity of the bonds. (1917, c. 138, s. 18; 1919, c. 178, s. 3(18); C.S., s. 2942; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 11; 1929, c. 170; c. 171, s. 2; 1931, c. 60, ss. 50, 56; cc. 188, 301; 1933, c. 259, ss. 1, 2; 1953, c. 1065, s. 1; 1957, c. 266, s. 2; 1967, c. 987, s. 3; c. 1001, s. 2; c. 1086, ss. 1, 2, 4, 5; 1969, cc. 475, 834; 1971, c. 780, s. 1; 1973, c. 494, s. 23; 1981 (Reg. Sess., 1982), c. 1276, s. 4; 2003-403, s. 7.)

Editor's Note. — An amendment to subsection (a) of this section by Session Laws 1993, c. 497, s. 7, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to subsection (a) of this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 4, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

§ 159-123. Sale of bonds by sealed bids; private sales.

(a) Bonds issued by units of local government shall be sold by the Local Government Commission after advertisement and upon sealed bids, except as otherwise authorized by subsection (b) of this section.

(b) The following classes of bonds may be sold at private sale:

(1) Bonds that a State or federal agency has previously agreed to purchase.

(2) Any bonds for which no legal bid is received within the time allowed for submission of bids.

(3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84, and special obligation bonds issued pursuant to Chapter 159I of the General Statutes.

(4) Refunding bonds issued pursuant to G.S. 159-78.

(5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(6) Bonds the ownership of which results in a tax credit to the owners thereof pursuant to the provisions of the federal income tax laws if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(7) Project development financing debt instruments.

(8) General obligation bonds issued pursuant to the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" (or comparable category if stated differently) or that are unrated and that are not described in subdivisions (1) through (7) of this subsection that are sold prior to December 31, 2010.

(9) Bonds that are part of an issue in which the interest payments on some or all of the bonds is intended to be subsidized by payments from the federal government pursuant to the provisions of the federal tax laws, if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(c) When the issuing unit wishes to have a private sale of bonds, the governing board of the issuing unit shall adopt and file with the Commission a resolution requesting that the bonds be sold at private sale without advertisement to any purchaser or purchasers thereof, at such prices as the Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or one or more persons designated by resolution of the governing board of the issuing unit to approve such prices. Upon receipt of a resolution requesting a private sale of bonds, the Commission may offer them to any purchaser or purchasers without advertisement, and may sell them at any price the Commission deems in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or the person or persons designated by resolution of the governing board of the issuing unit to approve such prices. For purposes of this subsection, any resolution of the governing board of the issuing unit which designates a person or persons to approve any price or prices shall also establish a minimum purchase price and a maximum interest rate or maximum interest cost and such other provisions relating to approval as it may determine. Notwithstanding any provisions of this Chapter to the contrary, general obligation bonds issued pursuant to Article 4 of this Chapter may be sold at private sale at not less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest.

(d) This section shall not apply to funding or refunding bonds when the governing board of the issuing unit and the holders of the debt to be funded or refunded have agreed to exchange the original obligations for new ones at the same or an adjusted rate of interest. This section also shall not apply to debt instruments that the State has previously agreed to purchase pursuant to Chapter 159G of the General Statutes.

(e) The issuing unit shall have the authority, subject to approval by the Commission, to select and retain the financial consultants, underwriters and bond attorneys to be associated with the bond issue. If the issuing unit shall affirmatively find that the underwriter, financial consultant or bond attorney selected and retained has adequately provided, in similar financial transactions, services of a nature and sophistication comparable to those required for the issuance and sale of the bonds in question and possesses the expertise necessary to perform the services required, approval of a financial consultant, underwriter or bond attorney shall not be withheld by the Commission solely for the reason that the underwriter, financial consultant or bond attorney has not had prior experience in the issuance and sale of a particular type, class or size of bond issue for which the underwriter, financial consultant or bond attorney is retained.

(f) The Commission shall not reject an application for approval of a bond issue because of the issuing units' selection of financial consultants, underwriters or bond attorneys so long as the selection is made in accordance with G.S. 159-123(e). Nothing herein shall limit or otherwise modify the role or powers of the Commission and its staff to review, approve, sell or participate in the sale of bonds pursuant to this Article. (1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1977, c. 201, s. 4; 1985, c. 723, s. 1; 1987, c. 585, s. 3; c. 796, s. 4; 1989, c. 756, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 43; 2000-69, s. 2; 2003-403, s. 8; 2009-140, s. 5.)

Editor's Note. — An amendment to subsection (b) of this section by Session Laws 1993, c. 497, s. 8, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to subsection (b) of this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 5, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

Session Laws 1987, c. 585, which in s. 3 amended this section by rewriting subsection (c), in ss. 7 and 8 provides: "The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"Nothing in this act shall be construed to impair the obligation of any bond, note or coupon issued under The Local Government Finance Act and outstanding on the effective date of this act."

Session Laws 1989, c. 756, s. 9 provides: "This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers."

Session Laws 2000-69, ss. 4(a)-(c), provide: "Interpretation of Act."

"(a) Additional Method. This act provides an additional and alternative method for the doing of the things it authorizes and is as supplemental and additional to powers conferred by other laws. Except as otherwise expressly provided, it does not derogate any powers now existing."

"(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as they may be amended from time to time by the General Assembly."

"(c) Liberal Construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-69, s. 4(d) contains a severability clause.

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

Effect of Amendments. — Session Laws 2009-140, s. 5, effective June 19, 2009, substituted "the ownership of which results in a tax credit to the owners thereof pursuant to the provisions of the federal income tax laws" for "designated as qualified zone academy bonds pursuant to G.S. 115C-489.6" in subdivision (b)(6), and added subdivisions (b)(8) and (b)(9).

§ 159-124. Date of sale; notice of sale and blank proposal.

The date of sale shall be fixed by the secretary in consultation with the issuing unit. Prior to the sale date, the secretary shall take such steps as are most likely, in his opinion, to give notice of the sale to all potential bidders within or without this State or the United States of America, taking into consideration the size and nature of the issue.

The secretary shall maintain a mailing list for notices of sale and blank proposals, and shall place thereon any person, firm, or corporation so requesting. Failure to send copies of notices and blank proposals to persons, firms, or corporations on the mailing list shall in no way affect the legality of the bonds.

The secretary shall prepare a notice of sale and blank proposal for bids for each bond issue required to be sold by sealed bids. The notice and blank proposal may be combined with such fiscal information as the secretary deems appropriate, and shall contain:

(1) A statement that the bonds are to be sold upon sealed bids without auction.
(2) The aggregate principal amount of the issue.
(3) The time and place of sale, the time within which bids must be received, the place to which bids must be delivered, and the time and place at which bids will be opened, which place or places may be within or without this State or the United States of America.
(4) Instructions for entering bids.
(5) Instructions as to the amount of bid deposit required, the form in which it is to be made, and the effect of failure of the bidder to comply with the terms of his bid. (1931, c. 60, s. 17; c. 296, s. 1; 1933, c. 256, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1987, c. 585, ss. 4, 5.)

Editor's Note. — Session Laws 1987, c. 585, which in ss. 4 and 5 amended this section, in ss. 7 and 8 provides: "The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"Nothing in this act shall be construed to impair the obligation of any bond, note or coupon issued under The Local Government Finance Act and outstanding on the effective date of this act."

§ 159-125. Bid instructions; bid deposit.

(a) Except for revenue bonds and project development financing debt instruments, no bid for less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest may be entertained.

Different rates of interest may be bid for bonds maturing in different years, and different rates of interest may be bid for bonds maturing in the same year unless the Secretary of the Commission requires one interest rate per maturity in connection with the sale of the bonds. This subsection applies to public sale of bonds only.

(b) The Secretary of the Commission may require that bids be accompanied by a bid deposit in an amount prescribed by the Secretary of the Commission or may determine that no bid deposit is required. If required, the bid deposit shall be made in a form approved by the Secretary of the Commission, and shall secure the issuing unit against loss resulting from the bidder's failure to comply with the terms of the bid.

(c) When a State or federal agency has agreed to purchase the bonds at a stated rate of interest unless more favorable bids are received, bids may be entertained from other purchasers for less than all of the bonds. (1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1981 (Reg. Sess., 1982), c. 1276, s. 6; 1987, c. 585, s. 6; 2003-403, s. 9; 2005-238, s. 7.)

Editor's Note. — An amendment to subsection (a) of this section by Session Laws 1993, c. 497, s. 9, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to subsection (a) of this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 6, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

Session Laws 1987, c. 585, ss. 7 and 8 provide: "The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"Nothing in this act shall be construed to impair the obligation of any bond, note or coupon issued under The Local Government Finance Act and outstanding on the effective date of this act."

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

Session Laws 2005-238, s. 15, provides: "The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes."

Session Laws 2005-238, s. 16, is a severability clause.

§ 159-126. Rejection of bids.

No legal bid may be rejected unless all bids are rejected. All bids shall be rejected upon objection to award by an authorized representative of the issuing unit. If bids have been rejected, another notice of sale shall be given and further bids invited. (1931, ch. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3; 1971, c. 780, s. 1.)

§ 159-127. Award of bonds.

All bids received pursuant to a public sale shall be opened in public on a date and at a time and place to be specified in the notice of sale. Bonds sold at public sale shall be awarded to the bidder offering to purchase the bonds at the lowest interest cost to the issuing unit calculated in the manner established by the Secretary of the Commission in the notice of sale. (1931, c. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3; 1971, c. 780, s. 1; 2005-238, s. 8.)

Editor's Note. — Session Laws 2005-238, s. 15, provides: "The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes."

Session Laws 2005-238, s. 16, is a severability clause.

§ 159-128. Makeup and formal execution of bonds; temporary bonds.

The governing board of the issuing unit shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto. The board may also provide for the authentication of the bonds by a trustee or fiscal agent. The board may authorize the use of facsimile signatures and seals on the bonds and coupons, if any, but at least one manual signature (which may be the signature of the representative of the Commission to the Commission's certificate) must appear on each bond that is represented by an instrument. Delivery of bonds executed in accordance with the board's determination shall be valid notwithstanding any change in officers or in the seal of the issuing unit occurring after the original execution of the bonds.

Before definitive bonds are prepared, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when they have been executed and are available for delivery. (1917, c. 138, s. 28; 1919, c. 178, s. 3(28); C.S., s. 2954; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 35; 1969, c. 29; 1971, c. 780, s. 1; 1983, c. 322, s. 4.)

§ 159-129. Obligations of units certified by Commission.

Each bond or bond anticipation note that is represented by an instrument shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by the secretary that the issuance of the bond or note has been approved under the provisions of The Local Government Bond Acts, the Local Government Revenue Bond Act, or the North Carolina Project Development Financing Act. This signature may be a manual or facsimile signature as the Commission may determine. Each bond or bond anticipation note that is not represented by an instrument shall be evidenced by a writing relating to such obligation, which writing shall identify such obligation or the issue of which it is part, bear this certificate, and be on file with the Commission. The certificate shall be conclusive evidence that the requirements of this Subchapter have been observed, and no bond or note without the Commission's certificate or with respect to which a writing bearing this certificate has not been filed with the Commission shall be valid. (1931, c. 60, s. 22; c. 296, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 24; 1981 (Reg. Sess., 1982), c. 1276, s. 7; 1983, c. 322, s. 5; 2003-403, s. 10.)

Editor's Note. — An amendment to this section by Session Laws 1993, c. 497, s. 10, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 7, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

CASE NOTES

Year Debt Contracted. — A county board of education's debt to the State Literary Fund was held to have been contracted during the fiscal year following that in which the county debt was reduced in accordance with N.C. Const., Art. V, § 4, even though the certificate of the secretary of the Local Government Commission was not executed within that time, since the certificate of the Local Government Commission was a detail not required by statute to be performed within any time limit, and the county accepted the offer to lend before the expiration of the fiscal year during which the increase in its indebtedness was permissible under the Constitution.

§ 159-130. Record of issues kept.

The secretary shall make a record of all bonds and notes issued under this Subchapter, showing the name of the issuing unit, the amount, date, the time fixed for payment of principal and interest, the rate of interest, the place at which the principal and interest will be payable, the denominations, the purpose of issuance, the name of the board in which is vested the authority and power to levy taxes or raise other revenues for the payment of the principal and interest thereof, and a reference to the law under which the bonds or notes were issued. The clerk of the issuing unit shall file with the secretary copies of all proceedings of the board in authorizing the bonds or notes, his certificate that they are correctly recorded in a bound book of the minutes and proceedings of the board, and a notation of the pages or other identification of the exact portion of the book in which the records appear. (1931, c. 60, s. 23; 1971, c. 780, s. 1; 1973, c. 494, s. 25.)

§ 159-131. Contract for services to be approved by Commission.

Any contract or agreement made by any unit with any person, firm, or corporation for services to be rendered in drafting forms of proceedings for a proposed bond issue or a proposed issue of notes shall be void unless approved by the Commission. Before giving its certificate to bonds or notes, the Commission shall satisfy itself by such evidence as it may deem sufficient, that no unapproved contract is in effect. This section shall not apply to contracts and agreements with attorneys-at-law licensed to practice before the courts of the State within which they have their residence or regular place of business so long as the contracts or agreements involve only legal services. (1931, c. 60, s. 24; 1971, c. 780, s. 1; 1973, c. 494, s. 26.)

§ 159-132. State Treasurer to deliver bonds and remit proceeds.

When the bonds are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then pay from the proceeds any notes issued in anticipation of the sale of the bonds, deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. The proceeds of funding or refunding bonds may be deposited at the place of payment of the indebtedness to be refunded or funded for use solely in the payment of such indebtedness. The proceeds of revenue bonds shall be remitted to the trustee or other depository specified in the trust agreement or resolution securing them. Unless otherwise provided in the trust agreement or resolution securing the debt instruments, the proceeds of project development financing debt instruments shall be remitted in the manner provided by this section for the remission of the proceeds of general obligation bonds. (1931, c. 60, s. 25; 1935, c. 356, s. 2; 1971, c. 780, s. 1; 1981 (Reg. Sess., 1982), c. 1276, s. 8; 2003-403, s. 11.)

Editor's Note. — An amendment to this section by Session Laws 1993, c. 497, s. 11, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 8, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

§ 159-133. Suit to enforce contract of sale.

The Commission may enforce in any court of competent jurisdiction any contract or agreement made by the Commission for the sale of any bonds or notes of a unit. (1931, c. 60, s. 26; 1971, c. 780, s. 1; 1973, c. 494, s. 27.)

§ 159-134. Fiscal agents.

An issuing unit may employ a bank or trust company either within or without this State as fiscal agent for the payment of installments of principal and interest on the bonds, and for the destruction of paid or cancelled bonds and coupons, and may pay reasonable fees for this service not in excess of maximum rates to be fixed by regulation of the Commission. If an issuing unit employs another person as such fiscal agent or any other person for other services pursuant to the Registered Public Obligations Act of North Carolina, then it may pay reasonable fees for such services not in excess of maximum rates to be fixed by regulation of the Commission. (1971, c. 780, s. 1; 1983, c. 322, s. 6.)

§ 159-135. Application of proceeds.

After payment of any notes issued in anticipation of the sale of the bonds and after payment of the cost of preparing, marketing, and issuing the bonds, the proceeds of the sale of a bond issue shall be applied only to the purposes for which the issue was authorized. Any excess amount which for any reason is not needed for any such purpose shall be applied either (i) toward the purchase and retirement of bonds of that issue at not more than their face value and accrued interest, or (ii) toward payment of the earliest maturing installments of that issue, or (iii) in accordance with any trust agreement or resolution securing the bonds. (1917, c. 138, s. 31; 1919, c. 178, s. 3(31); C.S., s. 2957; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 38; 1971, c. 780, s. 1; 1973, c. 494, s. 28.)

Cross References. — As to authority to invest idle funds, see G.S. 159-30.

CASE NOTES

Editor's Note. — The cases cited below were decided under former statutory provisions similar to this section.

Law Authorizing Bond Issue Need Not Declare Proportion of Proceeds Applicable to Each Specific Purpose. — A law authorizing a bond issue for various purposes which does not declare what proportion of the proceeds of the bonds shall be applied to each specific purpose is not void. Such matter may properly rest within the sound discretion of the municipal authorities. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

"Corporate Purpose." — A definition of corporate purpose cannot be static. Changing conditions require that application of the limitations be tempered with due recognition of the existing situation, so that the purpose for which the public body was organized may be accomplished and enjoyment thereof by the public made possible. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Right to Transfer and Allocate Funds. — Former G.S. 153-107, relating to application of proceeds of county bonds, did not place a limitation upon the legal right to transfer or allocate funds from one project to another included within the general purpose for which the bonds were issued. The inhibition contained in the statute was to prevent funds obtained for one general purpose from being transferred and used for another general purpose. For example, the statute prohibited the use of funds derived from the sale of bonds to erect, repair and equip school buildings from being used to erect or repair a courthouse or a county home or some similar project. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949); Mauldin v. McAden, 234 N.C. 501, 67 S.E.2d 647 (1951).

While the municipality has a limited authority, under certain conditions, to transfer or allocate funds from one project to another included within the general purpose for which bonds are authorized, the transfer must be to a project included in the general purpose as stated in the bond resolution, and the funds may be diverted to the proposed purposes only in the event the municipality finds in good faith that conditions have so changed since the bonds were authorized that proceeds therefrom are no longer needed for the original purpose. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Effect of Including Specifics in Bond Order. — A bond order is not required to set out in detail the estimates of cost and descriptions of the particular projects for which the funds are proposed to be used, and their inclusion does not limit the allocation of the proceeds of the bonds, provided the use of the funds falls within the general purpose designated. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949).

Immaterial or Temporary Changes Consistent with General Purpose Not Unlawful. — While the law will not justify the use of the proceeds of a State or municipal bond issue for purposes other than those specified in the act authorizing the issue, it does not follow that immaterial or temporary changes consistent with the general purpose of the legislative act should be interpreted as unlawful diversions of public funds. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Such changes as are necessary under existing conditions to accomplish the general purpose are not outlawed. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Minor Changes Are Expected If Conditions Change. — Bond ordinances are passed authorizing indebtedness for certain stated purposes. When an authorizing vote is required, the bond money is earmarked for the stated purposes. However, in planning large permanent improvements the governing authorities look ahead to the future fulfillment of the construction plans. The authorities will inspect and examine the work as it progresses, and minor changes from time to time are expected if conditions change and unforeseen developments occur. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Emphasis Is Placed on Final Result to Be Accomplished. — In construing statutory limitations upon the use of bond money for public improvements, emphasis is placed on the final result sought to be accomplished. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Erection of Consolidated School Instead of Remodeling Old School. — Where a bond issue for the remodeling of the old school buildings in a county administrative unit was duly approved by the voters in an election, it was held that the board of county commissioners had the legal authority to allocate funds from this bond issue to the erection of a proposed consolidated high school, since this was not a change which involved any change of purpose for which the bonds were issued, but was only a change in the manner or method of accomplishing the original purpose. Feezor v. Siceloff, 232 N.C. 563, 61 S.E.2d 714 (1950).

With respect to the use of bond money,

the court will not interfere with the exercise of discretionary powers of a municipal corporation unless its actions are so unreasonable and arbitrary as to amount to an abuse of discretion. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

§ 159-136. Issuing unit to make and report debt service payments.

The finance officer of each unit having outstanding bonds or notes shall remit the funds necessary for the payment of maturing installments of principal and interest on the bonds or notes to the fiscal agent or agreed upon place of payment in sufficient time for the payment thereof, together with the agreed upon fiscal agency fees, and shall at the same time report the payment to the secretary on forms to be provided by the Commission. (1931, c. 60, s. 27; 1971, c. 780, s. 1.)

§ 159-137. Lost, stolen, defaced, or destroyed bonds or notes.

(a) If lost, stolen, or completely destroyed, any bond, note, or coupon may be reissued in the same form and tenor upon the owner's furnishing to the satisfaction of the secretary and the issuing unit: (i) proof of ownership, (ii) proof of loss or destruction, (iii) a surety bond in twice the face amount of the bond or note and coupons, and (iv) payment of the cost of preparing and issuing the new bond, note, or coupons.

(b) If defaced or partially destroyed, any bond, note, or coupon may be reissued in the same form and tenor to the bearer or registered holder, at his expense, upon surrender of the defaced or partially destroyed bond, note, or coupon and on such other conditions as the Commission may prescribe. The Commission may also provide for authentication of defaced or partially destroyed bonds, notes, or coupons instead of reissuing them.

(c) Each new bond, note, or coupon issued under this section shall be signed by the officers of the issuing unit who are in office at the time, or by the State Treasurer if the unit no longer exists, and shall contain a recital to the effect that it is issued in exchange for or replacement of a certain bond, note, or coupon (describing it sufficiently to identify it) and is to be deemed a part of the same issue as the original bond, note, or coupon. (1935, c. 292, ss. 1, 2; 1939, c. 259; 1971, c. 780, s. 1.)

§ 159-138. Cancellation of bonds and notes.

Each bond or note and coupon shall be cancelled when (i) it is paid, or (ii) it is acquired by the issuing unit in any manner other than purchase for investment. A full report of the cancellation of all bonds, notes, and coupons shall be made to the secretary on forms provided by the Commission. (1931, c. 60, s. 27; 1939, c. 356; 1971, c. 780, s. 1.)

§ 159-139. Destruction of cancelled bonds, notes, and coupons.

(a) All cancelled bonds, notes, and interest coupons of a unit may be destroyed in one of the following ways, in the discretion of the governing board:

(1) Method 1. — The finance officer shall make an entry in the official records of the unit, which may include the register for the bonds, notes, and coupons, showing:

a. With respect to bonds and notes, the purpose of issuance, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount.

b. With respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity, and total amount of coupons.

After this entry has been made, the paid bonds, notes, and coupons shall be destroyed or marked cancelled in the manner determined by the finance officer, who shall make an entry of the destruction or cancellation in the official records of the unit. Cancelled bonds, notes, or coupons shall not be destroyed until after one year from the date of payment.

(2) Method 2. — The governing board may contract with the bank, trust company or other person acting as fiscal agent for a bond issue for the destruction of bonds and interest coupons which have been cancelled by the fiscal agent. The contract shall require that the fiscal agent give the unit a written certificate of each destruction containing the same information required by Method 1 to be entered in the record of destroyed bonds and coupons. The certificates shall be filed among the permanent records of the finance officer's office. Cancelled bonds or coupons shall not be destroyed until one year from the date of payment.

(b) The provisions of G.S. 121-5 and G.S. 132-3 do not apply to paid bonds, notes, and coupons. The information required to be recorded prior to destruction under either Method 1 or Method 2 may as an alternative, be shown by photocopying, microfilming or other similar method of recording the information by directly reproducing the cancelled documents. (1941, cc. 203, 293; 1961, c. 663, ss. 1, 2; 1963, c. 1173, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 29; 1983, c. 322, ss. 7, 8; 2005-238, s. 9.)

Editor's Note. — Session Laws 2005-238, s. 15, provides: "The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes."

Session Laws 2005-238, s. 16, is a severability clause.

§ 159-140. Bonds or notes eligible for investment.

Subject to the provisions of G.S. 159-30, bonds or notes issued under the provisions of this Chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions and agencies and all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds or notes are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law. (1977, c. 403.)

§ 159-141. Terms and conditions of sale.

Notwithstanding the foregoing, any bond of the State may be sold upon such terms and conditions, at such interest rate or rates, for such price and in such manner, either public or private, as the State Treasurer shall determine. (1983, c. 554, s. 18.)

Editor's Note. — For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 18 of which amended this section, see the Editor's Note under G.S. 159-80.

§§ 159-142 through 159-147: Reserved for future codification purposes.

ARTICLE 8.

Financing Agreements and Other Financing Arrangements.

§ 159-148. Contracts subject to Article; exceptions.

(a) Except as provided in subsection (b) of this section, this Article applies to any contract, agreement, memorandum of understanding, and any other transaction having the force and effect of a contract (other than agreements made in connection with the issuance of revenue bonds, special obligation bonds issued pursuant to Chapter 159I of the General Statutes, or of general obligation bonds additionally secured by a pledge of revenues) made or entered into by a unit of local government (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in Chapter 159I of the General Statutes), relating to the lease, acquisition, or construction of capital assets, which contract does all of the following:

(1) Extends for five or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend.

(2) Obligates the unit to pay sums of money to another, without regard to whether the payee is a party to the contract.

(3) Obligates the unit over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend:

a. For baseball park districts, to at least five hundred thousand dollars ($500,000).

b. For housing authorities, to at least five hundred thousand dollars ($500,000) or a sum equal to two thousand dollars ($2,000) per housing unit owned and under active management by the housing authority, whichever is less.

c. For other units, to at least five hundred thousand dollars ($500,000) or a sum equal to one-tenth of one percent (1⁄10 of 1%) of the assessed value of property subject to taxation by the contracting unit, whichever is less.

(4) Obligates the unit, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under the contract, or to pay any judgment entered against the unit as a result of the unit's breach of the contract.

Contingent obligation shall be included in calculating the value of the contract. Several contracts that are all related to the same undertaking shall be deemed a single contract for the purposes of this Article. When several contracts are considered as a single contract, the term shall be that of the contract having the longest term, and the sums to fall due shall be the total of all sums to fall due under all single contracts in the group.

(b) This Article shall not apply to:

(1) Contracts between a unit of local government and the State of North Carolina or the United States of America (or any agency of either) entered into as a condition to the making of grants or loans to the unit of local government.

(2) Contracts for the purchase, lease, or lease with option to purchase of motor vehicles or voting machines.

(3) Loan agreements entered into by a unit of local government pursuant to the North Carolina Solid Waste Management Loan Program, Chapter 159I of the General Statutes. (1971, c. 780, s. 1; 1973, c. 494, s. 31; 1989, c. 756, s. 6; 1991, c. 11, s. 4; 1997-380, s. 4; 1998-222, s. 1; 2001-206, s. 2; 2001-414, s. 52.)

Local Modification. — Mecklenburg County: 2009-162, s. 1(c).

Editor's Note. — Session Laws 1989, c. 756, s. 9 provides: "This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers."

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-149. Application to Local Government Commission for approval of contract.

A unit of local government may not enter into any contract subject to this Article unless it is approved by the Local Government Commission as evidenced by the secretary's certificate thereon. Any contract subject to this Article that does not bear the secretary's certificate thereon shall be void, and it shall be unlawful for any officer, employee, or agent of a unit of local government to make any payments of money thereunder. Before executing a contract subject to this Article, the governing board of the contracting unit shall file an application for Commission approval of the contract with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed contract and the financial condition of the contracting unit as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the proposed contract.

After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section. (1971, c. 780, s. 1.)

§ 159-150. Sworn statement of debt; debt limitation.

After or at the time an application is filed under G.S. 159-149, the finance officer, or some other officer designated by the board, shall prepare, swear to, and file with the secretary and for public inspection in the office of the clerk to the board a statement of debt in the same form prescribed in G.S. 159-55 for statements of debt filed in connection with general obligation bond issues. The sums to be included in gross debt and the deductions therefrom to arrive at net debt shall be the same as prescribed in G.S. 159-55, except that sums to fall due under contracts subject to this Article shall be treated as if they were evidenced by general obligation bonds of the unit.

No contract subject to this Article may be executed if the net debt of the contracting unit, after execution of the contract, would exceed eight percent (8%) of the assessed value of property subject to taxation by the contracting unit. (1971, c. 780, s. 1; 1991, c. 11, s. 5.)

§ 159-151. Approval of application by Commission.

(a) In determining whether a proposed contract shall be approved, the Commission may consider:

(1) Whether the undertaking is necessary or expedient.
(2) The nature and amount of the outstanding debt of the contracting unit.
(3) The unit's debt management procedures and policies.
(4) The unit's tax and special assessments collection record.
(5) The unit's compliance with the Local Government Budget and Fiscal Control Act.
(6) Whether the unit is in default in any of its debt service obligations.
(7) The unit's present tax rates, and the increase in tax rate, if any, necessary to raise the sums to fall due under the proposed contract.
(8) The unit's appraised and assessed value of property subject to taxation.
(9) The ability of the unit to sustain the additional taxes necessary to perform the contract.
(10) If the proposed contract is for utility or public service enterprise, the probable net revenues of the undertaking to be financed and the extent to which the revenues of the utility or enterprise, after addition of the revenues of the undertaking to be financed, will be sufficient to meet the sums to fall due under the proposed contract.
(11) Whether the undertaking could be financed by a bond issue, and the reasons and justifications offered by the contracting unit for choosing this method of financing rather than a bond issue.

The Commission shall have authority to inquire into and to give consideration to any other matters that it may believe to have bearing on whether the contract should be approved.

(b) The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

(1) That the proposed contract is necessary or expedient.
(2) That the contract, under the circumstances, is preferable to a bond issue for the same purpose.
(3) That the sums to fall due under the contract are adequate and not excessive for its proposed purpose.
(4) That the unit's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
(5) That the increase in taxes, if any, necessary to meet the sums to fall due under the contract will not be excessive.
(6) That the unit is not in default in any of its debt service obligations.

The Commission need not find all of these facts and conclusions if it concludes that (i) the proposed project is necessary and expedient, (ii) the proposed undertaking cannot be economically financed by a bond issue and (iii) the contract will not require an excessive increase in taxes.

If the Commission tentatively decides to deny the application because it cannot be supported from the information presented to it, it shall so notify the unit filing the information. If the unit so requests, the Commission shall hold a public hearing on the application at which time any interested persons shall be heard. The Commission may appoint a hearing officer to conduct the hearing and to present a summary of the testimony and his recommendation for the Commission's consideration. (1971, c. 780, s. 1; 1973, c. 494, s. 32.)

CASE NOTES

Applied in Wayne County Citizens v. Wayne County Bd. of Comm'rs, 328 N.C. 24, 399 S.E.2d 311 (1991).

§ 159-152. Order approving or denying the application.

(a) After considering an application, and conducting a public hearing thereon if one is requested under G.S. 159-151, the Commission shall enter its order either approving or denying the application. An order approving an application shall not be regarded as an approval of the legality of the contract in any respect.

(b) If the Commission enters an order denying an application, the proceedings under this Article shall be at an end. (1971, c. 780, s. 1.)

§ 159-153. Approval of other financing arrangements.

(a) Commission Approval Required. — Except as provided in subsection (b) of this section, approval by the Commission in accordance with this section is required before a unit of local government, or any public body, agency, or similar entity created by any action of a unit of local government, may do any of the following:

(1) Incur indebtedness.
(2) Enter into any similar type of financing arrangement.
(3) Approve or otherwise participate in the incurrence of indebtedness or the entering into of a similar type of financing arrangement by another party on its behalf.

(a1) Nonprofit Water Corporation. — A loan from the Water Infrastructure Fund to a nonprofit water corporation, as defined in G.S. 159G-20, is subject to approval by the Commission under this section.

(b) Exceptions. — Approval by the Commission in accordance with this section is not required in any of the following cases:

(1) Another law of this State already specifically requires Commission approval of the indebtedness or financing arrangement and the required approval is obtained in accordance with that law.
(2) The indebtedness or financing arrangement is a contract entered into by a unit of local government pursuant to G.S. 160A-20 and is not subject to review by the Commission pursuant to G.S. 160A-20(e).
(3) The indebtedness or financing arrangement is excepted from the review requirements of this Article because it does not meet the conditions of G.S. 159-148(a)(1) or (3) or because it is excluded pursuant to G.S. 159-148(b).

(c) Effect of Special Act. — No special, local, or private act shall be construed to create an exception from the review of the Commission required by this section unless the act explicitly excludes the review and approval of the Commission.

(d) Factors Considered. — The Commission may consider all of the following factors in determining whether to approve the incurrence of, entering into, approval of, or participation in any indebtedness or financing arrangement subject to approval pursuant to this section:

(1) Whether the undertaking is necessary or expedient.
(2) The nature and amount of the outstanding debt of the entity proposing to incur the indebtedness or enter the financing arrangement.
(3) Whether the entity proposing to operate the facilities financed by the indebtedness or financing arrangement and the entity obligating

itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement. In making this determination, the Commission may consider the operating entity's experience and financial position, the nature of the undertaking being financed, and any additional security such as insurance, guaranties, or property to be pledged to secure the indebtedness or financing arrangement.

(4) Whether the proposed date and manner of sale of obligations will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or by any agency of either of them.

(5) The local government unit's debt management procedures and policies.

(6) The local government unit's compliance with the Local Government Budget and Fiscal Control Act.

(7) Whether the local government unit is in default in any of its debt service obligations.

(e) Documentation. — To facilitate the review of the proposed indebtedness or financing arrangement by the Commission, the Secretary may require the unit or other entity to obtain and submit any financial data and information about the proposed indebtedness or financing arrangement and security for it, including any proposed prospectus or offering circular, the proposed financing arrangement and security document, and annual and other financial reports and statements of the obligated entity. Applications and other documents required by the Commission must be in the form prescribed by the Commission.

(f) Conditions for Approval. — If the Commission determines that all of the following conditions are met, the Commission shall approve the incurrence of the indebtedness, entering of the financing arrangement, or approval or other participation in the indebtedness or financing arrangement, by the unit of local government or the other entity referred to in subsection (a) of this section:

(1) The amount of the indebtedness to be incurred or financed is not excessive for the purpose contemplated.

(2) The entity that will operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement.

(3) The proposed date and manner of sale of obligations will not have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them. (1998-222, s. 2; 1999-213, s. 11; 2005-454, s. 10.)

§§ 159-154 through 159-159: Reserved for future codification purposes.

ARTICLE 9.

Bond Anticipation, Tax, Revenue and Grant Anticipation Notes.

Part 1. Bond Anticipation Notes.

§ 159-160. Definitions.

As used in this Part, the words "unit" or "issuing unit" means "unit of local government" as defined in G.S. 159-44 or G.S. 159-102, "municipality" as defined in G.S. 159-81, and the State of North Carolina. (1973, c. 494, s. 36; 1981 (Reg. Sess., 1982), c. 1276, s. 9; 1983, c. 554, s. 19; 2003-403, s. 12.)

Editor's Note. — An amendment to this section by Session Laws 1993, c. 497, s. 12, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 9, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, s. 19 of which amended this section, see the Editor's Note under G.S. 159-80.

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-161. Bond anticipation notes.

At any time after a bond order has taken effect and with the approval of the Commission, the issuing unit may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue. General obligation bond anticipation notes shall be payable not later than seven years after the time the bond order takes effect and shall not be renewed or extended beyond such time, except that, if the issuance of bonds under the bond order is extended by an order of the board of the issuing unit which takes effect pursuant to G.S. 159-64, the bond anticipation notes may be renewed and extended and shall be payable not later than 10 years after the time the bond order takes effect and that, if the issuance of bonds under the bond order is prevented or prohibited by any order of any court, the bond anticipation notes may be renewed or extended by the length of time elapsing between the date of institution of the action or proceeding and the date of its final disposition. Any extension of the time for issuing bonds under a bond order granted by act of the General Assembly pursuant to G.S. 159-64 shall also extend the time for issuing and paying notes under this section for the same period of time. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3(13), (14); C.S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 33; 1977, c. 404, s. 1; 1979, c. 444, s. 2.)

Editor's Note. — Session Laws 1977, c. 404, which substituted "seven years" for "five years" near the beginning of the second sentence, provided in s. 2: "The provisions of this act shall apply to general obligation bond anticipation notes authorized by bond orders in effect on the date of this act or which shall take effect hereafter." The act was ratified May 18, 1977, and made effective on ratification.

CASE NOTES

No valid bond anticipation note may be issued unless authority exists for the issuance of bonds to provide funds to pay the note. Barbour v. Carteret County, 255 N.C. 177, 120 S.E.2d 448 (1961), decided under former § 153-108.

§ 159-162. Security of general obligation bond anticipation notes.

The faith and credit of the issuing unit are hereby pledged for the payment of each note issued in anticipation of the sale of general obligation bonds according to its terms, and the power and obligation of the issuing unit to levy taxes and raise other revenues for the prompt payment of such notes shall be unrestricted as to rate or amount, notwithstanding any other provisions of law. The proceeds of each general obligation bond issue are also hereby pledged for the payment of any notes issued in anticipation of the sale thereof, and any such notes shall be retired from the proceeds of the bonds as the first priority. In the discretion of the governing board, notes issued in anticipation of the sale of general obligation bonds may be paid from current revenues or other funds instead of from the bond proceeds, but if this is done, the bond order shall be amended to reduce the aggregate authorized principal amount by the amount of the bond anticipation notes and accrued interest thereon. Such an amendment need not be published and shall take effect upon its passage. (1971, c. 780, s. 1.)

§ 159-163. Security of revenue bond anticipation notes.

Notes issued in anticipation of the sale of revenue bonds are hereby declared special obligations of the issuing unit. Neither the credit nor the taxing power of the issuing unit may be pledged for the payment of notes issued in anticipation of the sale of revenue bonds, and no holder of a revenue bond anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or the forfeiture of any of its property in connection with any default thereon. Notes issued in anticipation of the sale of revenue bonds shall be secured, to the extent and as provided in the resolution authorizing the issuance of such notes, by a pledge, charge, and lien upon the proceeds of the revenue bonds in anticipation of the sale of which such notes are issued and upon the revenues securing such revenue bonds; provided, however, that such notes shall be payable as to both principal and interest from such revenues if not paid from the proceeds of such revenue bonds or otherwise paid. The provisions of G.S. 159-90(b) shall apply to revenue bond anticipation notes as well as to revenue bonds. (1971, c. 780, s. 1; 1979, c. 428; 1985, c. 265, s. 2.)

Editor's Note. — Session Laws 1985, c. 265, ss. 3 to 5 provide:

"Sec. 3. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"Sec. 4. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 5. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

§ 159-163.1. Security of project development financing debt instrument anticipation notes.

Notes issued in anticipation of the sale of project development financing debt instruments are special obligations of the issuing unit. Except as provided in G.S. 159-107 and G.S. 159-110, neither the credit nor the taxing power of the issuing unit may be pledged for the payment of notes issued in anticipation of the sale of project development financing debt instruments. No holder of a project development financing debt instrument anticipation note has the right to compel the exercise of the taxing power by the issuing unit or the forfeiture of any of its property in connection with any default on the note. Notes issued in anticipation of the sale of project development financing debt instruments may be secured by the same pledges, charges, liens, covenants, and agreements made to secure the project development financing debt instruments. In addition, the proceeds of each project development financing debt instrument issue are pledged for the payment of any notes issued in anticipation of the sale of the instruments, and these notes shall be retired from the proceeds of the sale as the first priority. (2003-403, s. 13.)

Editor's Note. — Session Laws 2003-403, s. 25, provides that this section is effective upon certification of approval of amendment to Article V, § 14 of the Constitution of North Carolina, as proposed in Session Laws 2003-403, s. 1.

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

A G.S. 159-163.1 was enacted by Session Laws 1993, c. 497, s. 13, but was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The section, therefore, never took effect.

An earlier G.S. 159-163.1 was enacted by Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 10, but was made effective on certification of approval of an amendment to the state Constitution authorizing the enactment of general laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The section therefore never took effect.

§ 159-164. Form of notes to be issued.

Bond anticipation loans shall be evidenced by negotiable notes in bearer form or by certificated or uncertificated registered public obligations pursuant to the Registered Public Obligations Act. Such notes and certificated registered public obligations are hereby declared to be investment securities within the meaning of Article 8 of the Uniform Commercial Code as enacted in this State. Bond anticipation notes may be renewed or extended from time to time, but not beyond the time period allowed in G.S. 159-161. The governing board may authorize the issuance of bond anticipation notes by resolution which shall fix the maximum aggregate principal amount of the notes and may authorize any officer to fix, within the limitations prescribed by the resolution, the rate of interest, the place or places of payment, and the denomination or denominations of the notes. The notes shall be signed with the manual or facsimile signatures of officers designated by the governing board for that purpose, but at least one manual signature must appear on each note (which may be the signature of the representative of the Commission to the Commission's certificate). The resolution shall specify the form and manner of execution of the notes. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3(13), (14); C.S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 34; 1983, c. 322, s. 9.)

Editor's Note. — The Uniform Commercial Code, referred to in this section, is found in Chapter 25 of the General Statutes.

§ 159-165. Sale and delivery of bond anticipation notes.

(a) Bond anticipation notes of a municipality, including special obligation bond anticipation notes issued pursuant to Chapter 159I of the General Statutes, shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Bond anticipation notes of the State shall be sold by the State Treasurer at public or private sale, upon such terms and conditions, and according to such procedures as the State Treasurer may prescribe.

(b) When the bond anticipation notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. The net proceeds of revenue bond anticipation notes, special obligation bond anticipation notes, or project development financing debt instrument anticipation notes shall be remitted to the trustee or other depository specified in the trust agreement or resolution securing them. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed. (1917, c. 138, s. 14; 1919, c. 178, s. 3(14); C.S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, s. 2; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 35; 1983, c. 554, s. 20; 1989, c. 756, s. 7; 2003-403, s. 14.)

Editor's Note. — An amendment to subsection (b) of this section by Session Laws 1993, c. 497, s. 14, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to subsection (b) of this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 11, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

For provisions of ss. 21 through 25 of Session Laws 1983, c. 554, which amended this section, see the Editor's Note under G.S. 159-80.

Session Laws 1989, c. 756, s. 9 provides: "This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers."

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

§§ 159-166, 159-167: Reserved for future codification purposes.

Part 2. Tax, Revenue and Grant Anticipation Notes.

§ 159-168. "Unit" defined.

For purposes of this Part, "unit," "unit of local government," or "issuing unit" mean a "unit of local government" as defined by G.S. 159-7(b) and a "public authority" as defined by G.S. 159-7(b). (1973, c. 494, s. 40; 1975, c. 674, s. 2.)

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-169. Tax anticipation notes.

(a) A unit of local government having the power to levy taxes is authorized to borrow money for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of taxes due and payable within the fiscal year, and to issue its negotiable notes in evidence thereof. A tax anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) No tax anticipation loan shall be made if the amount thereof, together with the amount of tax anticipation notes authorized or outstanding on the date the loan is authorized, would exceed fifty percent (50%) of the amount of taxes uncollected as of the date of the proposed loan authorization, as certified in writing to the governing board by the chief financial officer of the issuing unit. Each tax anticipation note shall bear on its face or reverse the following certificate signed by the finance officer: "This note and all other tax anticipation notes of (issuing unit) authorized or outstanding as of (date) amount to fifty percent (50%) or less of the amount of taxes for the current fiscal year uncollected as of the above date." No tax anticipation note shall be valid without this certificate.

(c) The faith and credit of the issuing unit are hereby pledged for the payment of each tax anticipation note issued under this section according to its terms, and the power and obligation of the issuing unit to levy taxes and raise other revenues for the prompt payment of such notes shall be unrestricted as to rate or amount, notwithstanding any other provisions of law. (1917, c. 138,

s. 12; 1919, c. 178, s. 3(12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1971, c. 780, s. 1; 1973, c. 494, s. 37.)

Cross References. — As to limitations upon the increase of public debt, see N.C. Const., Art. V, § 4.

CASE NOTES

City May Anticipate Collection of Taxes. — Where the levy of taxes had been approved by the qualified voters of a city, the city, under former G.S. 160-374, had the authority to borrow money to pay judgments in anticipation of the collection of taxes validly levied for that purpose. Hammond v. City of Charlotte, 206 N.C. 604, 175 S.E. 148 (1934).

§ 159-170. Revenue anticipation notes.

(a) Authorization; Term. — A unit of local government or a nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39, is authorized to borrow money for the purpose of paying appropriations made or expenses budgeted or incurred for the current fiscal year in anticipation of the receipt of revenues, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year, and to issue its negotiable notes in evidence thereof. A nonprofit corporation or association operating or leasing a public hospital may only borrow money pursuant to this section if it is legally entitled to collect and pledge such revenues to the payment of the noted as provided in this section. A revenue anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) Limit on Amount; Disclosure. — No revenue anticipation loan shall be made if the amount thereof, together with the amount of all revenue anticipation notes authorized or outstanding on the date the loan is authorized, would exceed eighty percent (80%) of the revenues of the issuing unit or the nonprofit corporation or association operating or leasing a public hospital, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year. Each revenue anticipation note shall bear on its face a statement to the effect that it is payable solely from budgeted nontax revenues of the issuing unit or the nonprofit corporation or association operating or leasing a public hospital and that the faith and credit of the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital are not pledged for the payment of the note. Each note shall also bear on its face or reverse the following certificate signed by the finance officer: "This note and all other revenue anticipation notes of (issuer) authorized or outstanding as of (date) amount to eighty percent (80%) or less of the budgeted nontax revenues for the current fiscal year as of the above date." No revenue anticipation note shall be valid without this certificate.

(c) Faith and Credit Not Pledged. — Revenue anticipation notes issued under this section shall be special obligations of the issuing unit or the nonprofit corporation or association operating or leasing a public hospital. Neither the credit nor the taxing power of the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital may be pledged for the payment of revenue anticipation notes. No holder of a revenue anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital or the forfeiture of any of its property in connection with any default thereon.

(d) Any revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital pursuant to this section are subject to the approval of the city, county, hospital district, or hospital authority which owns the hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

(1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by such entity.

(2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.

(3) The entering into of the contract would have a material adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or otherwise materially interfere with an anticipated financing by such entity. (1917, c. 138, s. 12; 1919, c. 178, s. 3(12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1971, c. 780, s. 1; 1973, c. 494, s. 38; 1999-386, s. 3.)

§ 159-171. Grant anticipation notes.

(a) A unit of local government is authorized to borrow money for the purpose of paying appropriations made for a capital project in anticipation of the receipt of moneys from grant commitments for such capital project from the State or the United States or any agencies of either, and to issue its negotiable notes in evidence thereof. Grant anticipation notes shall mature not later than 12 months after the estimated completion date of such capital project as determined by the governing body of the unit of local government and may be renewed from time to time, but no renewal shall mature later than 12 months after the estimated completion date of such capital project.

(b) No grant anticipation note may be issued if the amount thereof, together with the amount of all other notes authorized or issued in anticipation of the same grant commitment, shall exceed ninety percent (90%) of the unpaid amount of said grant commitment. Each note shall bear on its face a statement to the effect that it is payable solely from moneys received from a described grant and that the faith and credit of the issuing unit are not pledged for the payment thereof, and on its face or reverse the following certificate signed by the finance officer: “This note and all other grant anticipation notes of (issuing unit) authorized or outstanding as of (date) and issued or to be issued in anticipation of (describe grant commitment) amount to ninety percent (90%) or less of the unpaid amount of said grant commitment.” No grant anticipation note shall be valid without this certificate.

(c) Grant anticipation notes issued under this section shall be special obligations of the issuing unit. Neither the credit nor the taxing power of the issuing unit may be pledged for the payment of grant anticipation notes, and no holder of such notes shall have the right to compel the exercise of the taxing power by the issuing unit or the forfeiture of any of its property in connection with any default thereon. (1975, c. 674, s. 1.)

§ 159-172. Authorization and issuance of notes.

(a) Notes issued under this Part shall be authorized by resolution of the governing board of the issuing unit. The resolution shall fix the maximum aggregate principal amount of notes to be issued thereunder, and may authorize any officer to fix, within the limitations prescribed by the resolution, the rate of interest, the place or places of payment, and the denomination or denominations of the notes. Notes that are represented by instruments shall be signed with the manual or facsimile signatures of the officers designated by the government board for that purpose, but at least one manual signature (which may be the signature of the representative of the Commission to the Commission's certificate) must appear on each note that is represented by an instrument. Several notes may be issued under one authorization so long as the aggregate principal amount of notes outstanding at any one time does not exceed the limits of the authorization.

(b) Before any notes may be issued pursuant to this Part, they must be approved by the Commission. In determining whether to approve the issuance of notes, the Commission may consider (i) the reasonableness of the budget estimates of the taxes or other revenues in anticipation of which the tax or revenue anticipation notes are to be issued, (ii) the firm and binding character of the grant commitment in anticipation of which the grant anticipation notes are to be issued, (iii) whether the amount of the notes, together with the amount of other authorized or outstanding notes issued or to be issued in anticipation of the same taxes or other revenues or grant commitments, exceeds the limitations prescribed in G.S. 159-169, 159-170 or 159-171 as the case may be, and (iv) any other matters that the Commission considers to have a bearing on whether the issue should be approved. The Commission shall approve the issuance of the notes if, upon the information and evidence it receives, it finds and determines that (i) the issue is necessary and expedient, (ii) the budget estimates of the taxes or other revenues are reasonable or the grant commitment is firm and binding, and (iii) the amount of the notes, together with the amounts of other authorized or outstanding notes issued or to be issued in anticipation of the same taxes or other revenues or grant commitments do not exceed the appropriate limitations prescribed by this Part. An order approving an issue shall not be regarded as an approval of the legality of the notes in any respect.

(c) Notes issued under this Part shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Each such note that is represented by an instrument shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by him that the issuance of the note has been approved under the provisions of The Local Government Finance Act. Such signature may be a manual or facsimile signature as the Commission may determine. Each note that is not represented by an instrument shall be evidenced by a writing relating to such note, which writing shall identify such note or the issue of which it is a part, bear such certificate and be on file with the Commission. The certificate shall be conclusive evidence that the requirements of this Part have been observed, and no note without the Commission's certificate or with respect to which a writing bearing such certificate has not been filed with the Commission shall be valid.

(d) When the notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall also collect from their purchaser the purchase price or proceeds of notes that are not represented by instruments. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed. (1917, c. 138, s. 14; 1919, c. 178, s. 3(14); C.S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1931, c. 293; 1939, c. 231, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 39; 1975, c. 674, ss. 3-5; 1983, c. 322, ss. 10-12.)

§§ 159-173 through 159-175: Reserved for future codification purposes.

Article 10.

Assistance for Defaulting Units in Refinancing Debt.

§ 159-176. Commission to aid defaulting units in developing refinancing plans.

If a unit of local government or municipality (as defined in G.S. 159-44, 159-81, or 159-102) fails to pay any installment of principal or interest on its outstanding debt on or before the due date (whether the debt is evidenced by general obligation bonds, revenue bonds, project development financing debt instruments, bond anticipation notes, tax anticipation notes, or revenue anticipation notes) and remains in default for 90 days, the Commission may take such action as it deems advisable to investigate the unit's or municipality's fiscal affairs, consult with its governing board, and negotiate with its creditors in order to assist the unit or municipality in working out a plan for refinancing, adjusting, or compromising the debt. When a plan is developed that the Commission finds to be fair and equitable and reasonably within the ability of the unit or municipality to meet, the Commission shall enter an order finding that it is fair, equitable, and within the ability of the unit or municipality to meet. The Commission shall then advise the governing board to take the necessary steps to implement it. If the governing board declines or refuses to do so within 90 days after receiving the Commission's advice, the Commission may enter an order directing the governing board to implement the plan. When this order is entered, the members of the governing board and all officers and employees of the unit or municipality shall be under an affirmative duty to do all things necessary to implement the plan. The Commission may apply to the appropriate division of the General Court of Justice for a court order to the governing board and other officers and employees of the unit or municipality to enforce the Commission's order. (1935, c. 124, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 41; 1981 (Reg. Sess., 1982), c. 1276, s. 12; 2003-403, s. 15.)

Cross References. — For statute authorizing local units of the State to avail themselves of the Federal Bankruptcy Act, see G.S. 23-48.

Editor's Note. — An amendment to this section by Session Laws 1993, c. 497, s. 15, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 12, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

Session Laws 2003-403, s. 22, provides: "Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect these purposes."

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

§ 159-177. Power to require reports and approve budgets.

When a refinancing plan has been put into effect pursuant to G.S. 159-176, the Commission shall have authority to require any periodic reports on the unit's or municipality's financial affairs (in addition to those otherwise required by law) that the secretary deems necessary, and to approve or reject the unit's or municipality's annual budget ordinance. The governing board of the unit or municipality shall obtain the approval of the secretary before adopting the annual budget ordinance. If the Commission recommends modifications in the budget, the governing board shall be under an affirmative duty to make the modifications before adopting the budget ordinance. (1935, c. 124, ss. 3, 4; 1971, c. 780, s. 1; 1973, c. 494, ss. 41, 42.)

Editor's Note. — An amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 12, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

§ 159-178. Duration of Commission's powers.

The power and authority granted to the Commission in this Article shall continue with respect to a defaulting unit of local government or municipality until the Commission is satisfied that the unit or municipality has performed or will perform the duties required of it in the refinancing plan, and until agreements made with the unit's or municipality's creditors have been performed in accordance with the plan. (1935, c. 124, s. 5; 1971, c. 780, s. 1; 1973, c. 494, s. 41; 1975, c. 19, s. 62.)

Editor's Note. — An amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 12, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

§§ 159-179, 159-180: Reserved for future codification purposes.

Article 11.

Enforcement of Chapter.

§ 159-181. Enforcement of Chapter.

(a) If any finance officer, governing board member, or other officer or employee of any local government or public authority (as local government and public authority are defined in G.S. 159-7(b)) shall approve any claim or bill knowing it to be fraudulent, erroneous, or otherwise invalid, or make any written statement, give any certificate, issue any report, or utter any other document required by this Chapter, knowing that any portion of it is false, or shall willfully fail or refuse to perform any duty imposed upon him by this Chapter, he is guilty of a Class 3 misdemeanor and upon conviction shall only be fined not more than one thousand dollars ($1,000) and forfeits his office, and shall be personally liable in a civil action for all damages suffered thereby by the unit or authority or the holders of any of its obligations.

(b) If any person embezzles any funds belonging to any local government or public authority, or appropriates to his own use any personal property having a value of more than fifty dollars ($50.00) belonging to any local government or public authority, in addition to the crimes and punishment otherwise provided by law, upon conviction he forfeits his office or position and is forever thereafter barred from holding any office or place of trust or profit under the State of North Carolina or any political subdivisions thereof until the disability is removed in the manner provided for restoration of citizenship in Chapter 13 of the General Statutes.

(c) The Local Government Commission shall have authority to impound the books and records of any unit of local government or public authority and assume full control of all its financial affairs (i) when the unit or authority defaults on any debt service payment or, in the opinion of the Commission, will default on a future debt service payment if the financial policies and practices of the unit or authority are not improved, or (ii) when the unit or authority persists, after notice and warning from the Commission, in willfully or negligently failing or refusing to comply with the provisions of this Chapter. When the Commission takes action under this section, the Commission is vested with all of the powers of the governing board as to the levy of taxes, expenditure of money, adoption of budgets, and all other financial powers conferred upon the governing board by law. This subsection (c) does not apply to contractual obligations undertaken by a unit of local government in a debt instrument issued pursuant to Chapter 159G of the General Statutes unless such debt instrument is secured by a pledge of the faith and credit of the unit of local government. (1971, c. 780, s. 1; 1973, c. 494, s. 43; 1987, c. 796, s. 5; 1993, c. 539, s. 108; 1994, Ex. Sess., c. 24, s. 14(c).)

Legal Periodicals. — For symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

CASE NOTES

Foundation of Public Officers' Liability. — The foundation of liability of public officers can be expressed as follows: However honest the defendants may be, the public has a right to be protected against the wrongful conduct of their servants, if there is carelessness amounting to a willful want of care in the discharge of their official duties, which injures the public. State v. Davis, 48 N.C. App. 526, 269 S.E.2d 291, cert. denied and appeal dismissed, 301 N.C. 237, 283 S.E.2d 134 (1980).

The elements of approving a false claim in violation of this section are (1) that defendant was a finance officer, other officer or employee of local government, (2) that in such capacity she approved a claim or bill, and (3) that at the time she approved the claim or bill she knew it was fraudulent, erroneous or otherwise invalid. State v. Davis, 48 N.C. App. 526, 269 S.E.2d 291, cert. denied and appeal dismissed, 301 N.C. 237, 283 S.E.2d 134 (1980).

The elements of making a false report in violation of this section are (1) that defendant was a finance officer, other officer or employee of local government, (2) that the written statement was required by rules and regulations established by the local government for the lawful disbursement of funds, and (3) that defendant made a written statement on a voucher knowing that a portion of it was false. State v. Davis, 48 N.C. App. 526, 269 S.E.2d 291, cert. denied and appeal dismissed, 301 N.C. 237, 283 S.E.2d 134 (1980).

The State was not required to elect between offenses of approving a false claim in violation of this section and making a false report, since the elements of the two charges were not the same. State v. Davis, 48 N.C. App. 526, 269 S.E.2d 291, cert. denied and appeal dismissed, 301 N.C. 237, 283 S.E.2d 134 (1980).

Corrupt Intent Need Not Be Proved. — In order for the State to prove official misconduct proscribed by this section, it is not necessary for the State to prove a corrupt intent or willful design to cheat and defraud the public. Every public officer is bound to perform the duties of his office faithfully, to use reasonable skill and diligence, and to act primarily for the benefit of the public. State v. Davis, 48 N.C. App. 526, 269 S.E.2d 291, cert. denied and appeal dismissed, 301 N.C. 237, 283 S.E.2d 134 (1980).

Submission of Charges to Jury. — Where the evidence showed that expenditures contained both valid and invalid items, the court properly submitted the charges of approving an invalid claim and failure to preaudit to the jury. State v. Davis, 48 N.C. App. 526, 269 S.E.2d 291, cert. denied and appeal dismissed, 301 N.C. 237, 283 S.E.2d 134 (1980).

Applied in State v. Davis, 45 N.C. App. 72, 262 S.E.2d 827 (1980).

§ 159-182. Offending officers and employees removed from office.

If an officer or employee of a local government or public authority persists, after notice and warning from the Commission, in failing or refusing to comply with any provision of this Chapter, he forfeits his office or employment. The Commission may enter an order suspending the offender from further performance of his office or employment after first giving him notice and an opportunity to be heard in his own defense, pending the outcome of quo warranto proceedings. Upon suspending a local officer or employee under this section, the Commission shall report the circumstances to the Attorney General who shall initiate quo warranto proceedings against the officer or employee in the General Court of Justice. If an officer or employee persists in performing any official act in violation of an order of the Commission suspending him from performance of his duties, the Commission may apply to the General Court of Justice for a restraining order and injunction. (1931, c. 60, s. 45; 1971, c. 780, s. 1; 1973, c. 494, s. 44.)

§§ 159-183 through 159-187: Reserved for future codification purposes.

ARTICLE 12.

Borrowing by Development Authorities Created by General Assembly.

§ 159-188. Borrowing authority.

A development authority created as a body corporate and politic by an act of the General Assembly, and having as its purpose to stimulate, foster, coordinate, plan, improve and encourage economic development in order to relieve poverty, dependency, chronic unemployment, underemployment and to promote the improvement and development of the economy of a county of the State, and whose members are appointed by the board of commissioners of such county, shall have authority to borrow money from an agency or instrumentality of the United States government and to execute and deliver obligations for the repayment thereof and to encumber its property for the purpose of securing any such obligation and to execute and deliver such mortgages, deeds of trust and other instruments as are necessary or proper for such purpose; provided, that such obligations shall be repayable only from the revenues of such authority.

Insofar as the provisions of this section are not consistent with the provisions of any other section or law, public or private, the provisions of this section shall be controlling. (1979, c. 512, ss. 1, 2.)

§§ 159-189 through 159-192: Reserved for future codification purposes. (2003-388, s. 4.)

ARTICLE 13.

Interest Rate Swap Agreements for Governmental Units.

§ 159-193. Definitions.

The following definitions apply in this Article:

(1) Governmental unit. — Any of the following:
   a. A unit of local government as defined in G.S. 159-44.
   b. A municipality as defined in G.S. 159-81.
   c. A joint agency as defined in G.S. 159B-3.
   d. Any department, agency, board, commission, or authority of the State that is authorized by law to issue bonds.
   e. The State Treasurer in connection with the issuance, incurrence, carrying, or securing of obligations for or on behalf of the State pursuant to an act of the General Assembly.

(2) Obligations. — Any of the following:
   a. Bonds, notes, bond anticipation notes, or other evidences of indebtedness issued by a governmental unit.
   b. Lease purchase or installment financing agreements entered into by a governmental unit.

(3) Swap agreement. — Any of the following:
   a. An agreement, including terms and conditions incorporated by reference in the agreement, that is a rate swap agreement, basis swap, forward rate agreement, interest rate option, rate cap agreement, rate floor agreement, rate collar agreement, or other similar agreement, including any option to enter into or terminate any of the foregoing.

b. Any combination of the agreements described in sub-subdivision a. of this subdivision.
c. A master agreement for any of the agreements described in sub-subdivisions a. and b. of this subdivision, together with all supplements.
d. One or more transactions entered into pursuant to a master agreement. (2003-388, s. 4; 2005-403, s. 4.)

Editor's Note. — The preamble to Session Laws 2003-388 reads: "Whereas, the State Treasurer's Office formed a Public Finance Advisory Committee comprised of representative city and county governments, as well as the public finance bar and financial services sectors, to review and propose changes to the General Statutes dealing with public finance in an effort to strengthen, modernize, and provide for the most efficient method of issuing of public debt by local governments and other political subdivisions of the State; and

"Whereas, the Public Finance Advisory Committee has developed, and the State Treasurer's Office has reviewed, a set of recommendations to the General Assembly for specific changes to relevant General Statutes around which there is consensus that the proposed changes are beneficial to local governments in their issuance of public debt; and

"Whereas, the Local Government Commission remains the statutorily designated entity to which all proposed issuances must be submitted for approval, and these recommendations in no way lower or lessen the level of due diligence performed in determining the appropriateness of a specific issuance; and

"Whereas, for these reasons, this legislation is submitted for consideration by the General Assembly on behalf of the State Treasurer, the staff of the Local Government Commission, and the Public Finance Advisory Committee; Now, therefore,

"The General Assembly of North Carolina enacts:"

Session Laws 2005-403, s. 1, provides: "The Secretary of the Department of Transportation and the State Treasurer shall jointly form a committee to develop a plan to implement the provisions of this act. The plan shall address all financial, legal, and practical issues involved in issuing "GARVEE" bonds. The plan shall be submitted to the Board of Transportation for review and comment. Following review of the plan by the Board, the two Departments shall jointly submit their implementation plan to the cochairs of the Transportation Appropriations Subcommittee and the cochairs of the Joint Legislative Transportation Oversight Committee by December 1, 2005."

§ 159-194. Swap agreements.

(a) Subject to the provisions of this Article, a governmental unit may from time to time purchase, enter into, modify, amend, or terminate one or more swap agreements that it determines are necessary or desirable in connection with the issuance, incurrence, carrying, or securing of obligations. This authorization also includes the authority to enter into modifications or reversals of a swap agreement previously entered into by the governmental unit and the authority to enter into a swap agreement that modifies the interest rate payment calculation method under a swap agreement previously entered into to another interest rate calculation method or that reverses, in whole or in part, the effect of a prior swap agreement on the governmental unit's interest rate cost or risk. A swap agreement entered into by a governmental unit may contain any provisions, including provisions regarding payments, term, termination payments, security, default, and remedies, and may be with any parties, that the governmental unit determines are necessary or desirable.

(b) No governmental unit shall enter into a swap agreement pursuant to this Article other than for the primary purpose of managing interest rate risk on or interest rate costs of its obligations. A swap agreement may provide that the payments thereunder are based upon a fixed or variable interest rate calculation method. A governmental unit shall not engage in the business of acting as a dealer in swap agreements. A swap agreement may be entered into in connection with specific obligations of the governmental unit, which may consist of multiple series or issues of obligations as specified by the governmental unit. The swap agreement may be entered into at a time before, at the same time as, or after, the obligations are issued or incurred by the governmental unit. Each swap agreement may be entered for a notional amount up to, but not exceeding, the principal amount of the obligations with respect to which the swap agreement is entered. A swap agreement may have a term as long as, or less than, the term of the obligations with respect to which the swap agreement is entered.

(c) In connection with entering into a swap agreement, a governmental unit may enter into credit enhancement agreements to secure the obligations of the governmental unit under the swap agreement, with any payment, security, default, remedy, and other terms and conditions that the governmental unit determines, including entering into binding agreements to deliver collateral, either at the time the swap agreement is entered into or at future times under conditions set forth in the swap agreement. (2003-388, s. 4.)

§ 159-195. Nature of duties of a governmental unit under a swap agreement.

The duty of a governmental unit to make the payments required and to perform the other duties of the governmental unit under a swap agreement shall constitute a continuing contractual obligation of the governmental unit, enforceable in accordance with applicable law for the enforcement of contractual obligations of that governmental unit. A governmental unit may limit its duties under a swap agreement to designated property or a designated source of revenues or receipts of the governmental unit, such as the revenues of a specified utility or other public service enterprise system of the governmental unit. If a governmental unit enters into a swap agreement in connection with obligations that are secured by a designated form of security, then, subject to the terms of the bond order or resolution, trust indenture or trust agreement, installment contract or lease purchase agreement, or similar instrument pursuant to which the obligations are issued or incurred, the governmental unit may pledge, mortgage, or grant a security interest in the revenues of the utility or other public service enterprise system, program, receipts, property, or similar arrangement securing the obligations to secure the payment and performance of its duties under the swap agreement. Any pledge of assets, revenues, or receipts to secure the duties of a governmental unit under a swap agreement shall become effective in the same manner and to the same extent as a pledge of those assets, revenues, or receipts to secure the obligations with respect to which the swap agreement is entered. (2003-388, s. 4.)

§ 159-196. Approval by Commission.

(a) Approval Required. — If either of the following conditions is met, a governmental unit shall not enter into a swap agreement unless the Commission first approves the governmental unit's entering into the swap agreement:

(1) The unit is a unit of local government as defined in G.S. 159-44, a municipality as defined in G.S. 159-81, or a joint agency as defined in G.S. 159B-3.

(2) The sale, issuance, or incurrence of the obligations with respect to which the swap agreement is entered into is subject to the approval of the Commission.

(b) Factors. — The Commission may consider all of the following factors in determining whether to approve the swap agreement:

(1) The nature and amount of the outstanding debt of the governmental unit proposing to enter the swap agreement.

(2) The governmental unit's debt management procedures and policies.

(3) To the extent applicable, the governmental unit's compliance with the Local Government Budget and Fiscal Control Act.
(4) Whether the governmental unit is in default in any of its debt service obligations.
(5) The credit rating of the governmental unit.

(c) Amendments. — If a swap agreement is subject to approval by the Commission pursuant to this section and is approved, then the governmental unit shall not enter into any amendment to the swap agreement that terminates or changes the time period covered by the swap agreement, changes the interest rate calculation method under the swap agreement, or changes the notional amounts covered by the swap agreement without the prior approval of the Secretary of the Commission.

(d) Approval Not Required. — A swap agreement is not subject to approval by the Commission except as provided in this section. This section does not require the approval of the Commission of a swap agreement entered into by a private entity receiving the benefit of financing through the issuance of obligations by a governmental unit. (2003-388, s. 4.)

§ 159-197. Additional method.

This Article provides an additional and alternative method for the doing of the things authorized by it and is supplemental to powers conferred by other laws. This Article does not derogate any existing powers. (2003-388, s. 4.)

§ 159-198. Severability.

If any provision of this Article or its application is held invalid, the invalidity does not affect other provisions or applications of this Article that can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable. (2003-388, s. 4.)

§ 159-199. Validation of preexisting swap agreements.

All proceedings taken by the governing bodies of governmental units in connection with the authorization of swap agreements and all swap agreements entered into by governmental units before the effective date of this Article are ratified. (2003-388, s. 4.)

§ 159-200. Liberal construction.

This Article, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect its purposes. (2003-388, s. 4.)

§§ 159-201 through 159-209: Reserved for future codification purposes.

Article 14.

Borrowing by Airport Authorities.

§ 159-210. Borrowing authority.

Whenever an airport authority is authorized by general or local act to erect and construct improvements and facilities and to lease these improvements and facilities, the authority may borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans. The airport authority's power to borrow money under this section is subject to the approval of the Commission. To the extent this section conflicts with any local act, then this section shall control. (2005-342, s. 4.)

Editor's Note. — This section was enacted as G.S. 159-201, and was redesignated as G.S. 159-210 at the direction of the Revisor of Statutes.

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